

**THE LEGAL SYSTEM
OF THE CHANNEL ISLANDS**

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CHAPTER SEVEN

SECTION NINE

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CHAPTER SEVEN**SECTION NINE****THE LEGAL SYSTEM OF THE CHANNEL ISLANDS****§ 1.1. Introduction.****§ 1.1(A). Geography.**

The Channel Islands consist of the two principal islands, Jersey and Guernsey, three smaller islands, namely, Alderney, Herm and Sark, and a number of tiny islets. They are situated in the English Channel off the north-west coast of France. With the exception of Roches Douvres and Isles Chausey, the islands are dependencies of the United Kingdom but do not form part of it. Jersey is the largest of the islands, with an area of forty-five square miles and a population of about 73,000.¹ Guernsey is the next largest, with a land area of twenty-five square miles and a population of about 55,000.² Alderney and Sark are much smaller than either Jersey or Guernsey, and have populations of 1,962 and 604 respectively.³ The islands of Herm, Jethou and Litiou, as well as several islets, are uninhabited. The capital of Jersey is St. Helier, while that of Guernsey is St. Peter's Port.

§ 1.1(B). History.

The islands are believed to have been inhabited since the third millenium B.C. In the ninth century A.D., they were conquered by the Breton, and became part of the territory of William Longsword, Duke of Normandy, in 933 A.D. Thereafter, the islands became closely integrated with the Duchy of Normandy, and this influence continues to the present day.⁴ In 1066, William, Duke of Normandy, invaded England and became King of England after defeating Harold, his predecessor, in the Battle of Hastings. In spite of divisions in 1077 and 1090, the two domains were united in 1105. In 1204, during the reign of King John, continental Normandy was lost to the King of France. In spite of early disputes over the sovereignty of the islands between the Kings of France and England, especially in the thirteenth and fifteenth centuries, the islands have remained a British possession until the present day.⁵ The islands have never fully become a part of the United Kingdom, and appear to remain British possessions as the vestigial remnants of the Duchy of Normandy, as opposed to being part of the Kingdom of England. This is the basis for the separate administration of the islands and the distinctive position they occupy in relation to the Crown.⁶

§ 1.1(C). Economy.

Traditionally, economic activity on the Channel Islands has centered around agriculture, including dairy farming (the Islands are famous for their dairy breeds) and horticulture. More recently the emphasis has been on the development of the Islands as financial centres.

§ 1.2. Government.**§ 1.2(A). In Summary.**

The Channel Islands are divided into two Bailiwicks, Jersey and Guernsey. The Bailiwick of Jersey consists of the island of Jersey together with the islets of Les Minquiers and Les Ecrehos.⁷ The Bailiwick of Guernsey consists of the islands of Guernsey, Alderney and Sark together with the uninhabited dependencies of Herm, Litiou and Jethou.⁸ I will deal with the domestic administration of Jersey, Guernsey, and Alderney and Sark in turn, and then with the relationship between Guernsey and the Islands of Alderney and Sark.

§ 1.2(B). Jersey.⁹**§ 1.2(B) (1). Persons in Authority.****§ 1.2(B) (1) (a). In Summary.**

The principal officers of the island are the Lieutenant-Governor, the Bailiff, the Deputy Bailiff, the Dean, the Attorney General, the Viscount and the Solicitor General. They are all Crown appointees, the Lieutenant-Governor being typically in office to a term of five years. The other officers may remain in office until their seventieth birthday. The Bailiff may also appoint one or more Lieutenant Bailiffs.

The legislative body of Jersey is the Assembly of the States,¹⁰ usually referred to as the States. The States consist of elected members, namely: the Senators; Constables and Deputies, non-elected members; the Bailiff; Lieutenant-Governor; the Dean; the Attorney General and the Solicitor General, and finally the officers of the States: the Greffier; the Deputy Greffier; and the Viscount.

The Island is divided into twelve parishes, which are further sub-divided into Vingtaines.¹¹ The offices of the parish are: the Constable; the Rector; the Centeniers; the Procurers du Bein Public (the Public Trustees) the Churchwardens; Vingtaines; Constable's officers; and the Almoners.¹²

The Courts of Justice of the Islands are: the Court of Appeal, the Royal Court, the Police Court and the Petty Debts Court. The Judges of the Court of Appeal are the Bailiff, Deputy Bailiff, and the ordinary Judges. The Royal Court consists of the Bailiff, the Deputy Bailiff or a Lieutenant Bailiff and either two or seven Jurists. The Police and Petty Debts Courts are generally presided over by Stipendiary Magistrates.¹³ The judicial structure of the Channel Islands is more fully discussed below.

§ 1.2(B) (1) (b). Island Officials.

The Lieutenant-Governor has been the representative of the English Crown since 1854,

when the last Governor died.¹⁴ The Governor was responsible for the appointment of the Dean, Bailiff, Attorney General, Viscount and Solicitor General, but since 1615 these offices have been reserved to the Crown.¹⁵ The Lieutenant Governor retains the power of veto in the States in respect of matters which "concern the special interest of Her Majesty."¹⁶

The Bailiff was originally a delegate of the Governor,¹⁷ but has become a key figure in the administration of the Island being President of both the Royal Court and of the States.¹⁸ No qualifications are required for the office of Bailiff,¹⁹ but it is considered desirable that any person appointed to the office has had legal experience.²⁰ The Bailiff acts as Deputy Governor during the absence of the Lieutenant Governor. The Bailiff holds office during Her Majesty's Pleasure, as does the Deputy Bailiff. Both of these officials may therefore be diminished on grounds other than failing to be of good behaviour.²¹ The Bailiff may appoint Lieutenant Bailiffs to act in his absence,²² but not to preside in the States.²³ The Deputy Bailiff, on the other hand, is a Crown Appointee, and, like the office of Bailiff, needs no qualifications.²⁴ He exercises such functions of the Bailiff as are assigned to him by the Bailiff.²⁵ He is also the Deputy Governor if both the Bailiff and Lieutenant Governor are absent.²⁶ However, unlike the Lieutenant Bailiff, the Deputy Bailiff is not merely a delegate, as he sits in the States and the Royal Court in his own right.²⁷

The Attorney General is the senior law officer on the island.²⁸ He is also a member of the states.²⁹ His functions have been described in the following words:

"And His Majesty doth hereby declare that the Procurer is the superior officer and the proper person to commence and carry on all criminal prosecutions and all suits relating to the King's revenue and all other suits in which the King's interest is concerned; that he is likewise the proper person to be made a party in all adjunct causes."³⁰

Since the Police Court was instituted, the Attorney General only commences proceedings before the Royal Court. Proceedings in the Police Court are instituted by the Constable.³¹ The Solicitor General is the other law officer of the Island; he may, in addition to his own duties, on the authority of the Attorney General, perform any function of the office of Attorney General.³² As is stated above, the Attorney General and the Solicitor General are both Crown appointees.

The Viscount is the executive officer of the States³³ and of the Courts. In addition, he acts as the Coroner,³⁴ He is entitled to be present in the States, but he is not entitled to speak. No special qualifications are required to hold the office.³⁵ This is in contrast to the offices of Attorney General and Solicitor General which do have formal qualification requirements.³⁶

All of the above offices, except that of Lieutenant Governor, carry a salary payable by the States.³⁷ In some cases, the officers were also entitled to be paid a fee from Crown revenues, but this practice has been abolished.³⁸

The Office of the Greffe was divided in 1931 into the Judicial Greffe, responsible for all the courts, and the States' Greffe, which deals with the States and the Committees of the States.³⁹ The principal officers of these offices are the Judicial Greffier and the Greffier of the States.⁴⁰ Prior to 1931, the two officers were combined under the supervision of the Greffier. Since 1711, the Greffier has been appointed by the Bailiff.⁴¹ The Deputy Greffier is the assistant to the Greffier.

§ 1.2(B) (1) (c). Elected Members of the States.

There are twelve Senators who are members of the States. The office was created in 1948, when the States were reconstituted and the Senators took over the functions of the Jwats.⁴² The Senators are elected by the Island as a single constituency.⁴³ Senators hold office for a term of six years, with six of the twelve Senators retiring, unless re-elected, every three years.⁴⁴

By contrast, the twenty-eight Deputies are elected by sixteen constituencies on the island, each of which returns from one to four Deputies.⁴⁵ Deputies hold office for a term of three years. Unlike the office of Senator, Deputies have been part of the administration of the Island for some time.⁴⁶ In 1856, the word "Deputy" was first used in its modern sense, with provision for the election of fourteen additional members of the States.⁴⁷ The number was increased to twenty-eight in 1948, when the Deputies effectively replaced the Rectors who ceased to sit in the States.⁴⁸

The third category of elected members of the States consists of the Constables.⁴⁹ Constables are elected by the Parish and sit in the States by virtue of their office as Head of the Civil Parish and Chief of the Parish Police.⁵⁰ The office dates from 1285 and is thought to be related to the English offices of High Constable and Petty or Parish Constable.⁵¹ The main function of the Constables is to supervise the administration of the Parish.

§ 1.2(B) (1) (d). Parish Officials.

Apart from the Constables, there are several other Parish officials. The Centeniers (of whom the senior is the Chief de Police) and the Vingteniers are, in effect, junior Constables.⁵² Officials of either of these—the Centeniers and the Vingteniers—may be designated by the Constable to attend a meeting of the States if the Constable is himself unable to attend.⁵³ Constables and Centeniers are elected by the Parish, without interference from other Island officials,⁵⁴ for a term of three years. The Vingteniers are elected by the entire Parish as well, but between 1853 and 1871 they were elected by the Vingtaines.⁵⁵

The Rectors are appointed by the Crown and act as heads of the Ecclesiastical Parish; one among their number is the Dean, who acts as the head of the Church on the Island.⁵⁶ The Churchwardens are responsible for looking after church property and for overseeing the poor.⁵⁷ The Procureurs du Bein Public (or Public Trustees) are responsible for the collection of Parish rates.⁵⁸

§ 1.2(B) (1) (e). Jurats.

The office of Jurat is a very ancient one. The appointment was formerly for life, but since 1949 Jurats cease to hold office on their seventieth birthday.⁵⁹ Jurats must have attained the age of forty and be residents of the Island for five years prior to their appointment.⁶⁰ Until 1949, the Jurats were elected by popular SUFFRAGE, but since that time the Jurats have been elected by an ELECTORAL COLLEGE consisting of the Bailiff (who is the president), the Jurats, the Constables, the other elected members of the States, members of the legal profession of at least seven years' standing, and the Lieutenant Governor, Dean, Attorney General and Solicitor General.⁶¹ Elections are called by the Bailiff who is obliged to summon a meeting of the Electoral College within

twenty-one days of a vacancy among the Jurats.⁶² Jurats may be selected from among the Senators and Deputies, but shall cease to hold that office upon taking the oath of office of Jurat, and vice-versa.⁶³ Jurats may be asked to resign by the Royal Court for failure to discharge the duties of their office, or if they are, in the opinion of the Royal Court, either mentally or physically unable to carry out these duties.⁶⁴ If a Jurat wishes to resign, he is required to obtain the sanction of Her Majesty in Council.⁶⁵

§ 1.2(B) (2). Suffrage.

Since many of the above officials are elected, it is worth mentioning the rules governing eligibility to vote in public elections. Since 1897, all elections have been by secret ballot.⁶⁶ British subjects of either sex who have attained the age of twenty and who are residents of the Island may vote.⁶⁷ Prior to 1930, voting rights were restricted to ratepayers.

§ 1.2(B) (3). Legislative and Administrative.

§ 1.2(B) (3) (a). The Assembly of The States.

The Assembly of the States (the States) is the main legislative body on the Island. I have already described its composition.⁶⁸ The States originated when the Royal Court, at some unknown time prior to 1524, called upon the Parishes to send representatives to their meetings. The resulting body was an assembly of the Three Estates, the Jurats, the Rectors and the Constables.⁶⁹ Originally, the Governor or his Lieutenant had to give his consent to a meeting of the States in which matters affecting the Crown's interest were to be discussed.⁷⁰ The Lieutenant Governor is still entitled to veto resolutions concerning such matters.⁷¹ The legislative functions of the States were examined in 1770, and on 28th March 1771 an Order in Council was made which sets out the legislative functions of the States.⁷² In 1786, further questions were decided by order in Council, including such issues as the raising of revenue without Crown consent, who had the power to convene the Assembly, and whether meetings should be held in public. The Order provided, inter alia, that the States could, in some circumstances, raise revenue of its own volition, the Lieutenant Bailiff or the Bailiff had the power to convene meetings, and that public meetings were illegal as they would be a license to the public to meddle with the business of the States.⁷³ In 1669, a separate Assembly was established to levy duties on wines, cider and apples.⁷⁴ This was done by the Bailiff and Jurats, with the advice of the Governor, so the body was known as the Assembly of the Governor, Bailiff and Jurats. Its sole remaining function is to issue licenses for the sale and consumption of spirits.

The functioning and constitution of the States⁷⁵ are now governed by the States of Jersey Law 1966. Twenty-four members of the States are required to constitute a quorum,⁷⁶ and anyone absent without excuse when it is impossible to obtain a quorum is subject to a fine of one pound.⁷⁷ Absence from the Island or illness are deemed to be sufficient excuse for failure to attend.⁷⁸ By Order in Council of 6th August 1784,⁷⁹ it was provided that an Assembly of the States could be constituted by a meeting of a majority of each of the three Orders of the States. However, in 1807, another Order in Council modified the rules. The reason for this was that the age and infirmity of the Rectors and Jurats, who were members for life, and occasional but vital absences from the Island, meant that the States was unable to conduct its business.⁸⁰ The order provided that, in matters concerning the defence or safety of the Island, if a majority of the Jurats or

Rectors were too sick to attend (to be certified on oath),⁸¹ then the States could proceed provided that the majority of the rest of the Jurats and Rectors were present. In 1839, a fine for absence without excuse was introduced and in 1897 the quorum was altered so that the States could act provided that thirty members were present.⁸²

In 1833, the issue of public attendance at meetings of the States was reopened when the States passed legislation allowing such attendance. The legislation was refused confirmation by the Privy Council.⁸³ The Lieutenant Governor refused to attend meetings at which the public were present, and stated that he would veto any resolutions arising from those meetings.⁸⁴ After representations to the Privy Council, it was declared, by Order in Council,⁸⁵ that the States had the power to control attendance at its meetings. The current rule is that no one is entitled to attend meetings of the States as of right. The Bailiff is entitled to issue regulations governing such attendance, and may, at any time, order a stranger to withdraw.⁸⁶ In 1866, a law was passed which provided for a session of the States to be held on a regular basis; it also recognized the right of the Bailiff to convene a meeting of the States at the request of not less than seven of its members.⁸⁷ This is continued by the 1966 law which provides for regular ordinary sessions, at times to be determined by standing order of the states, and for extraordinary sessions to be convened by the Bailiff at any time, either when he feels that "public business so requires" or at the request of seven of the elected members.⁸⁸

In 1947, a Committee of the Privy Council visited the Island at the request of the States to consider reform of the Royal Court and of the States.⁸⁹ This visit resulted in the radical alteration of the States in 1948, under which the Jurats, Rectors, and the Viscount ceased to be members of the States.⁹⁰ At the same time, the number of Deputies was increased to twenty-eight and the Office of Senator was introduced.

The States had, for a long time, delegated administration to Committees of members of the States. This practice continues today.⁹¹ The numbers and constitution of the States' Committees were originally fixed⁹² by law, but since 1966 this is no longer the case.⁹³ Thus, the law permits the formation of Committees of any number of any of the members of the States.⁹⁴

The members of the States all possess the right to speak, whereas the officers of the States do not.⁹⁵ However, only the Constables, Senators and Deputies may vote,⁹⁶ unless votes are equal, in which case the Bailiff, a Deputy Bailiff if he is presiding, has and must exercise the casting vote.⁹⁷ The States is the only body on the island with power to legislate for the Island as a whole.⁹⁸

§ 1.2(B) (3) (b). The Assembly of Principals and Officers of the Parish.

This body is also known as the Parish Assembly. When dealing with civil matters, the constable of the Parish presides, while the Rector presides when dealing with Ecclesiastical affairs.⁹⁹ Parish funds are derived from the rates assessed on owners and occupants of houses,¹⁰⁰ and the Parish Assembly is responsible for the government of the Parish. Administration is usually performed by the officers of the Parish under the Supervision of the Constable.¹⁰¹

§ 1.2(B) (4). Legislation.

There are seven different types of legislation which may apply to Jersey.¹⁰² The first three are Acts of Parliament, Orders in Council and Statutory Instruments derived from

Acts of Parliament. These all originate in Parliament and are discussed below.¹⁰³ The remaining four originate from the States and are: Laws; Triennial Regulations; Regulations and orders.¹⁰⁴

§ 1.2(B) (4) (a). Laws.

A Law is a legislative Act of the States which is sanctioned by Her Majesty in Council.¹⁰⁵ The modern role of the States began with the Code of 1771, which provided that the only insular body entitled to enact legislation in the States.¹⁰⁶ It also provided that the States could pass provision allows to be in force for up to three years; to acquire permanent validity the assent of His Majesty in Council was needed. Voting in the States is by simple majority.¹⁰⁷ Before certain types of legislation or resolutions of the States may be passed, they must be "lodged au Greffe."¹⁰⁸ This applies to propositions for the enactment of laws, since these require the sanction of Her Majesty in Council.¹⁰⁹

Once an Act is passed by the States, it must be submitted for confirmation by Her Majesty in Council. To do this, the Greffier transmits copies of the proposed law to the Clerk of the Privy Council, who will pass on the Act to the Home Secretary in England, who is responsible for ensuring that the island's legislative measures are duly scrutinized.¹¹⁰ The Home Secretary consults with the other Ministers of the Crown and also with the Lieutenant Governor to determine if the Act should be ratified. Very often the Home Secretary will be asked to advise on Bills in the States before they are enacted.¹¹¹ If no objections to the Act arise, the Home Secretary will recommend that Her Majesty be advised to ratify the Act. The Act is then duly ratified and entered on the Register of the Island of Jersey, together with the Order in Council ratifying it.¹¹²

§ 1.2(B) (4) (b). Triennial Regulations.

These are Acts of the States pursuant to an order in Council of 14th April 1884.¹¹³ This enables the States to pass ordinances to last for no more than three years, although the States may renew these regulations if they are of a purely municipal nature.¹¹⁴ It is the practice to time these regulations to end on the 12th April every third year. Because the re-enactment of such statutes every three years was felt to be wasteful, since it required the time of members of the States and the civil service, and also because other legislative tools were available, this mode of legislation is falling into disuse.¹¹⁵

§ 1.2(B) (4) (c). Regulations.

These are Acts of the States made pursuant to powers granted to them to legislate on particular subjects by Orders in Council.¹¹⁶ Laws may also confer such powers and, where these powers have been conferred on the States, the sanction of Her Majesty in Council is unnecessary.¹¹⁷ It is now the practice to include provision for amendments of laws in this fashion.¹¹⁸ Both these and Triennial Regulations must be lodged au Greffe.¹¹⁹

§ 1.2(B) (4) (d). Orders.

These are instruments made in the exercise of power conferred by Laws or Regulations, often on Committees of the States.¹²⁰

§ 1.2(C). Guernsey.

The domestic administration of Guernsey is very similar to that of Jersey. The following discussion will therefore focus on the differences between the two administrations.

§ 1.2(C) (1). Persons In Authority.**§ 1.2(C) (1) (a). Crown Appointments.**

The officers appointed by the Crown are the Lieutenant-Governor, Bailiff, Deputy Bailiff, Procureur Comptroller, Greffier, Receiver-General, Sheriff and Sergeant.¹²¹ Of these, the first six are appointed by Her Majesty on the advice of the Home Secretary, while in the case of the Receiver-General the Chancellor of the Exchequer and the Home Secretary give their advice. The Sheriff is appointed by the States Appointments Board of which the Bailiff is President, but he may only be dismissed on Her Majesty's Command. The Sergeant is an appointment of the Lieutenant who is authorized to make the appointment by the Home Secretary.¹²²

The offices of Lieutenant-Governor and Bailiff are similar to those in Jersey. The Bailiff is President of the States of Election, of the States of Deliberation, of the Royal Court, and of the Court of Appeals; he is also head of the administration.¹²³ The Bailiff is the representative of the Island in disputes with the Crown. The Deputy Bailiff fulfills a function similar to that of the Deputy Bailiff of Jersey. The Bailiff may appoint Lieutenant-Bailiffs to exercise any of his functions (usually three are appointed) pursuant to the power conferred on him or his own appointment by the Crown.¹²⁴

The law officers are the Procureur (or Attorney-General) and the Comptroller (or Solicitor-General). Unlike the Bailiff, their main duty is to the Crown.¹²⁵ They are both debarred from private practice. The Law Officers are full members of the States of Election, but not of the States of Deliberation.¹²⁶ They are responsible for, inter alia, the drafting of legislation, the institution of criminal proceedings and the holding of inquests.¹²⁷

The Greffier is the clerk to both the Royal Court and to the States¹²⁸; his functions are similar to those of the Greffier to the States in Jersey. The Sheriff is responsible for the execution of judgments and sentences of the Royal Court and of the Magistrate's Court.¹²⁹ He is also an officer of the Royal Court, the States of Deliberation, and the States of Election. The Sergeant is responsible for the issuance of summonses and other legal process. he is an officer of the Royal Court and both of the States.¹³⁰ The Receiver-General is responsible for the collection of revenues of the Crown.¹³¹

As in Jersey, the Lieutenant Governor typically holds office for five years. The Bailiff, Deputy-Bailiff and the Law Officers hold office during Her Majesty's Pleasure, subject to a retiring age of seventy years.¹³² In contrast, the Greffier must retire at the age of sixty-five years, while the Sergeant retires at the age of sixty.

§ 1.2(C) (1) (b). Other Officials.

The Jurats are appointed by the States of Election,¹³³ which consists of the Bailiff, the Jurats, Conseillers, Rectors, the Procureur, the Comptroller, the People's Representatives, and the Douzaine Representatives.¹³⁴ Each candidate for the office must be

appointed after receiving more than one-half of the votes cast.¹³⁵ Conseillers, who are members of the States of Deliberation, are appointed in the same way.¹³⁶ Jurats hold office until they reach the age of seventy and, again, their function is similar to that of Jurats in Jersey.¹³⁷ Conseillers hold office for six years, with six of the twelve Conseillers retiring every three years.¹³⁸

Other members of the States of Election and the States of Deliberation are the People's Deputies and the Douzaine Representatives.¹³⁹ The Douzaine Representatives are nominated by the Douzainer of each Parish to sit in the States of Deliberation for one year, one Douzaine Representative from each of the ten parishes.¹⁴⁰ The same Douzaine Representatives sit in the States of Election, but twenty-four further Douzaine Representatives are also elected by their Douzaine, with from three to twelve extra Douzaine Representatives selected by the five Parish Douzaines entitled to nominate extra Douzaine Representatives to the States of Election.¹⁴¹ The function of the Douzaine Representatives is to voice the views of the Douzaine which he represents; he is not, however, obliged to vote in accordance with directions given to him by his Douzaine.¹⁴²

The People's Deputies, of whom there are thirty-three, are elected by each of the ten electoral districts, which are the ten Parishes, with from one to eleven Deputies being returned by each Parish.¹⁴³ The People's Deputies sit in both the States of Election and the States of Deliberation.¹⁴⁴ To be eligible for election as a Conseiller or People's Deputy, a person must be a British subject, and have been a resident of the Island for the year prior to his election.¹⁴⁵

Parish officials include the Constable and the Douzaniers, who are subject to the same eligibility requirements as Conseillers and People's Deputies.¹⁴⁶ One person may hold more than one of these offices, but no one may sit in the States of Deliberation as the holder of more than one office making him a member thereof.¹⁴⁷ Conseillers, People's Deputies and Douzaine Representatives may resign of their own volition, but that resignation is ineffective until accepted by the States of Deliberation.¹⁴⁸

§ 1.2(C) (2). Suffrage.

All residents of the Island who have attained the age of eighteen are entitled to vote, provided that they are listed on the Electoral Roll of the District in which they intend to vote.¹⁴⁹ Detailed provisions for voting are made in Part IV of the Reform (Guernsey) Law of 1948. Elections for the Office of People's Deputy are held triennially in March, and those elected take office in April. The voting is by secret ballot¹⁵⁰ under the supervision of the Constable and Douzaine of the Parish where the vote is taking place.¹⁵¹ In the case of elections to the offices of Douzenier and Constable, only those persons listed in the Electoral roll of that Parish may vote.¹⁵² Ballots for Parish offices are secret if more than six of those present at the elector's meeting demand it.¹⁵³

§ 1.2(C) (3). Legislature and Administration.

§ 1.2(C) (3) (a). States of Deliberation.

The States of Deliberation consist of the Bailiff, who is the President,¹⁵⁴ twelve Conseillers, the Procureur, the Comptroller, the thirty-three People's Deputies and ten Douzaine Representatives.¹⁵⁵ The Bailiff, as the Acting President, (SDG) if he is not present,¹⁵⁶ the Procureur and the Comptroller have no original vote, but the Bailiff or

Acting President has a casting vote.¹⁵⁷ A quorum of the States is formed by twenty members or more. However, if there are less than thirty voting members present, no resolution may be disposed of without a majority vote of at least twice the minority vote.¹⁵⁸ In all other cases, the vote is by simple majority. Each meeting of the States is convened by the Bailiff who issues each member with a Billet d'Etat containing proposals being put before the States and draft resolutions, which, if passed, will indicate the States' response to each proposal.¹⁵⁹ When passed, the Resolutions are printed by the Greffier.

Historically, the States grew out of the Royal Court, and have been in existence since before 1605.¹⁶⁰ The States were formed by adding the clergy and the Constables of each Parish to the Royal Court. The Constables were, therefore, the only representative element of the States.¹⁶¹ However, in the nineteenth century, the constitution of the States began to evolve into its modern form, which dates from 1948.¹⁶² Under the Reform (Guernsey) Law 1948, the States consist of two bodies, the States of Deliberation and the States of Election. The sole function of the States of Election is to elect new Jurats and Conseillers, as we have seen.¹⁶³ Prior to the nineteenth and twentieth century changes, the States consisted of the Bailiff, Jurats, eight Rectors, the Procurer, and the Constables and Douzaines of all the Parishes. Each Parish had one vote, delivered by the Constable.¹⁶⁴ Since 1948, the States of Deliberation has been the only insular body with the ability to legislate for the Island.¹⁶⁵

As in Jersey, much of the administration of the Island is done by the Committees of the States of Deliberation.¹⁶⁶ It is noteworthy that neither of the Islands has anything like a cabinet system of government.¹⁶⁷ On both Jersey and Guernsey, the Committees are entirely subordinate to the States and are answerable to the States for their acts. The committees of the States are set up by Resolution of the States or by legislation.¹⁶⁸ There were, in 1975, forty-eight permanent committees and eight temporary committees.¹⁶⁹ The committees, in turn, control the civil service, which is therefore subordinate to the States. All the administration of the Island is thus controlled, eventually, by the States.

§ 1.2(C) (3) (b). Douzaines.

The Douzaines are the Parish assemblies and are headed by the Constable, who is responsible for the administration of the Parish.¹⁷⁰

§ 1.2(C) (4). Legislation.

There are three main types of enacted laws in Guernsey's Laws: Ordinances, Acts of Parliament and Statutory Instruments.¹⁷¹ Acts of Parliament are discussed below.

§ 1.2(C) (4) (a). Laws.

Laws originate either with a Projet de Loi, or Bill, which is drafted to implement proposals of one of the Committees, or with a Requete or Petition, which must be signed by seven members of the States.¹⁷² After passage through the States, a law must receive the Sanction of Her Majesty in Council before it becomes effective.¹⁷³ The Projet de Loi is transmitted to the Privy Council together with a report by the Procureur. When the Royal Sanction is obtained by Order in Council, the Order is assessed to the Projet de Loi, which becomes law. It is sent to the Royal Court of Guernsey with directions that it be entered on the Register of the Island and observed accordingly.¹⁷⁴

In some areas, the States cannot move the enactment of a Law.¹⁷⁵ Examples include nationality, citizenship, defence, succession to the Throne, extraction, fugitive offenders, trading with an enemy and broadcasting. Legislation in these areas is reserved to the Parliament.

§ 1.2(C) (4) (b). Ordinances.

The power to make Ordinances was transferred to the States of Deliberation by the Reform (Guernsey) Law 1948.¹⁷⁶ This power is a common law power, so that legislation made under it is original and not subordinate legislation. The States Legislation Committee has the power, if it decides that the public interest requires it, to bring any draft Ordinance into force immediately. In all such cases, the Ordinance must be put before the States for its approval as soon as possible.¹⁷⁷ Apart from this, the States of Deliberation has the sole power to make Ordinances. The common law power to make Ordinances is limited in scope; such an ordinance may not alter a law or the common law, nor may it impose taxation.¹⁷⁸

§ 1.2(C) (4) (c). Statutory Instruments.

These are laws which are made pursuant to other forms of legislation. Like the Ordinances described in the last section, statutory instruments do not require the Royal Sanction. These rules are subordinate to the legislation, be it an Act of Parliament, Law or Ordinance, pursuant to which they are made. Where legislation required the Royal Court to approve of rules made under, the power to approve such rules is now in the States; approval is by way of an Ordinance.¹⁷⁹ All legislation is now in English; it was formerly in French.

§ 1.2(D). Alderney.

Although Alderney is part of the Bailiwick of Guernsey, it does possess a domestic administration, albeit with somewhat limited powers. The current constitution of Alderney is provided by the Government of Alderney Law 1948.

§ 1.2(D) (1). History.

Until 1949, the chief organs of government were the States, the Court, the Court of Chief Pleas and the Douzaine.¹⁸⁰ These bodies, as appears traditional in the Channel Islands, were interrelated. The Judge was the President of the States, the Court and the Court of Chief Pleas. Likewise the Jurats sat in all three of those bodies, while members of the Douzaine would occasionally sit in the States.¹⁸¹ The eligibility requirements for the office of Jurat made the Office an hereditary one.¹⁸² Much of this was changed in 1949, with the abolition of the Offices of Judge, the Court of Chief Pleas¹⁸³ and the Douzaine were abolished.¹⁸⁴

§ 1.2(D) (2). Present Position.

§ 1.2(D) (2) (a). States of Alderney.

The Legislature of Alderney is the States of Alderney set up by Part IV of the 1948 Law.

The States consist of the President and twelve other members of the States.¹⁸⁵ Originally, there were nine members of the States in addition to the President, but in 1971 three more were added.¹⁸⁶ The members of the States hold office for three years, including the President.¹⁸⁷ Elections to any office in the States are by secret ballot;¹⁸⁸ everyone who has attained the age of twenty and has been a resident of the Island for one year is entitled to vote.¹⁸⁹

The States of Alderney is entitled to appoint committees from among its own members and to include non-members of the States in those committees, provided that a majority of the committee members are also members of the States.¹⁹⁰ The States may delegate executive functions to the Committees on such terms as it sees fit.¹⁹¹ Such committees have a quorum of three members, excluding those who are not members of the States.¹⁹² The States also has power to appoint a Clerk of the States, a Treasurer and a Surveyor.¹⁹³ The States must also appoint two people to sit in the States of Deliberation and four to sit in the States of Election in Guernsey.¹⁹⁴

§ 1.2(D) (2) (b). Court of Alderney.

The Court of Alderney is constituted of Jurats who are appointed by the Home Secretary,¹⁹⁵ and who remain in office during good behaviour until they attain the age of seventy.¹⁹⁶ One of their number is designated to be the Chairman. Three Jurats constitute a quorum; however, if an even number sit, the chairman has the casting vote.¹⁹⁷ The Court appoints a Clerk, subject to approval by the Home Secretary.¹⁹⁸ The Court has unlimited civil jurisdiction,¹⁹⁹ while in criminal cases it must commit cases carrying a potential sentence in excess of a 100 fine or one month's imprisonment to the Royal Court in Guernsey.²⁰⁰ With certain exceptions, all decisions of the Court are subject to review by the Royal Court.²⁰¹

§ 1.2(D) (2) (c). Legislation.

The Legislative powers of the States of Alderney are exercised by way of Projets de Loi, which require the Royal Sanction, and also by way of Ordinances, in a fashion similar to Guernsey.²⁰²

§ 1.2(D) (2) (d). Relations with Guernsey.

In the aftermath of the Second World War, a great deal of expenditure was required to re-establish such mundane matters as the ownership of property. A Commission of the Privy Council, which visited all the Island in 1947, concluded that Alderney would require a yearly subsidy of £20,000 and would be unable to function as an independent entity.²⁰³ Since the States of Guernsey were willing to take the responsibility for Alderney, since 1947 the affairs of Alderney have been administered in part by Guernsey.²⁰⁴ However, because of the fiscal prudence of the States of Alderney, the subsidy has not been required; in fact, Alderney stood in credit in 1970.²⁰⁵ Equally, the practice developed of consulting the States of Alderney before any major expenditures for the Island was made.²⁰⁶ Nevertheless, the States of Guernsey remain responsible for the administration of the airfield, education, health services, police, immigration, major roads and sewerage, social services and water supply on Alderney.²⁰⁷

§ 1.2(E). Sark.

§ 1.2(E) (1). Chief Pleas.

The present constitution of Sark is contained in the Reform (Sark) Law 1951. Under that Law, the Chief Pleas of Sark is to consist of the Seigneur,²⁰⁸ the Seneschal, the Tenants and Twelve Deputies.²⁰⁹ The Seigneur is a hereditary office, and he is the holder of a veto²¹⁰ power in the Chief Pleas; in addition, he holds various property rights.²¹¹ The Seigneur is also responsible, with the approval of the Lieutenant Governor of the Bailiwick of Jersey, for the appointment of the Seneschal, the Prevot, the Greffiter and the Treasurer.²¹²

The Seneschal is the President of the Chief Pleas²¹³ and is appointed for a term of three years.²¹⁴ The term "Tenant" is the legacy of Letters Patent granting the Island of Sark to Hilary de Carteret, Seigneur of St. Onen in Jersey to hold in Chief by the twentieth part of a Knight's service.²¹⁵ For reasons of security, the Island was required to be continually inhabited by forty men and their families. The descendants of those forty men are its holders of tenements,²¹⁶ and as such are entitled to sit in the Chief Pleas.²¹⁷

To qualify for election as a Deputy, a person must be of full age, not the owner of a tenement, but a resident of the Island, provided that he is not one of the officers of the Island.²¹⁸ Electors are required to be of full age and residents of twelve months standing (but not the holder of a proprietary interest in a tenement).²¹⁹ Deputies are elected for a period of three years.²²⁰

Like the States of Alderney, the Chief Pleas legislates by way of Projets de Loi and Ordinances.²²¹ Under the 1951 Law, the Chief Pleas may make Ordinances "for the maintenance of public order and for the regulation of the local affairs of the island."²²² The Chief Pleas ordinarily meets three times a year and is constituted by a quorum of nine.²²³

§ 1.2(E) (2). Court of the Seneschal.

The Court of the Seneschal is the sole court of the Island.²²⁴ It currently has jurisdiction to try any civil matter,²²⁵ while in criminal cases it has jurisdiction to pass a sentence of one month's imprisonment or a fine of £50 or both.²²⁶ The Breffier acts as Clerk of the Court, while the Provost is responsible for the execution of judgments.²²⁷ Appeals lie to the Royal Court in Guernsey.²²⁸

§ 1.2(E) (3). Relations with Guernsey.

The States of Guernsey legislates for Sark in criminal matters, while in civil matters it does so by agreement with the consent of the Chief Pleas.²²⁹ The Royal Court of Guernsey is also able to annul an Ordinance of the Chief Pleas as being unreasonable or ultra vires.²³⁰ In such cases, the Chief Pleas may appeal against the annulment to Her Majesty in Council.

If all of the above strikes you as rather antiquated, it is worth noting a remark made by the present Seigneur, "The last thing I want to do is to drag this island into the twentieth century."²³¹ Who can blame him?

§ 1.3. The Legal System.

I have decided to treat the courts of Jersey and Guernsey separately from the rest of the government for two reasons. The first is that they are very much alike, and the second is that the appeals process in both is largely identical.

§ 1.3(A). Guernsey.**§ 1.3(A) (1). Magistrate's Court.**

The Magistrate's Court consists of a stipendiary Magistrate sitting alone. It possesses summary jurisdiction in criminal matters; it also possesses jurisdiction in civil suits if the matter in controversy is less than £100.²³²

§ 1.3(A) (2). The Royal Court.**§ 1.3(A) (2) (a). In Summary.**

The Royal Court of Guernsey consists of the Bailiff and Twelve Jurats. Until 1964, the Twelve Jurats were sole judges of law and of fact. However, the Bailiff, or anyone designated to perform his functions, is now the sole judge of law.²³³

§ 1.3(A) (2) (b). Sitting as a Court of Chief Pleas.

In this capacity, the Royal Court consists of the Bailiff and at least seven Jurats. Since the transfer of the legislative functions of the Royal Court to the States of Deliberation,²³⁴ the function of the Court, sitting on three occasions each year, is largely ceremonial. The Seigneurs of the FIEFS, the Advocates, and the Constables of the Parishes come to answer the Roll.²³⁵

§ 1.3(A) (2) (c). Sitting as a Full Court.

A quorum of the Full Court consists of the Bailiff, or his deputy, and seven Jurats.²³⁶ The Full Court has no original jurisdiction in civil matters, but it does hear applications for liquor licenses and appeals from decisions of the States Committees.²³⁷ The appellate jurisdiction in civil matters now lies with the Court of Appeal.²³⁸ In criminal matters, the Court hears virtually all indictable cases, both as to trial and sentence. It tries other offences which are beyond the competence of the Magistrate's Court, or where the accused so elects.²³⁹ It also hears criminal cases transferred from Alderney or Sark which are beyond the competence of the Ordinary Court;²⁴⁰ appeals against conviction or sentence from the Magistrate's Court or the Ordinary Court lie, provided the sentence is in excess of certain limits.²⁴¹ All decisions of the Court of Alderney or the Court of the Seneschal are appealable to the Full Court (in criminal matters).²⁴²

§ 1.3(A) (2) (d). Sitting as an Ordinary Court.

The Ordinary Court has a quorum of the Bailiff and two Jurats, three if it is sitting as the Cour des Plaich d'Heritage.²⁴³ It has original jurisdiction in all civil matters, although the Magistrate's Court has concurrent jurisdiction in some cases.²⁴⁴ It also deals with a wide variety of non-contentious matters.²⁴⁵ The Court also possesses jurisdiction in certain criminal cases transferred from Alderney and Sark.

§ 1.3(A) (2) (e). Matrimonial Causes Division.

The Matrimonial Causes Division may consist of the Bailiff and four Jurats, or the Bailiff alone, or the Judge in Matrimonial Causes.²⁴⁶ The court has original jurisdiction in

most matrimonial suits and appellate jurisdiction in respect of certain such suits in Alderney and Sark.

§ 1.3(A) (3). Court of Appeal.

The Court of Appeal was in its current form created by the Court of Appeal (Guernsey) Law 1961. It consists of the Bailiff and at least two ordinary judges.²⁴⁷ It has the entire civil jurisdiction formerly vested in the Royal Court sitting as the Cour des Jugements et Records,²⁴⁸ and hears appeals in criminal matters from the Royal Court sitting as a Full Court.²⁴⁹

§ 1.3(B). Jersey.

The Courts of Jersey are the Police Court and the Petty Debts Court (similar to the Magistrate's Court in Guernsey) and the Royal Court. Appeals lie from the Royal Court to the Court of Appeal. The Royal Court consists of the Inferior Number, constituted by the Bailiff and at least two Jurats, and the Superior Number, consisting of the Bailiff, Deputy Bailiff or a Lieutenant Bailiff and at least five Jurats.^{249a} The Inferior Number may refer any matter before it to the Superior Number, which also possesses appellate jurisdiction in criminal cases before its Inferior Number.²⁵⁰ In all civil matters, appeals are to the Court of Appeals, constituted in a fashion similar to Guernsey.²⁵¹

In both Jersey and Guernsey, it is notable that the Bailiff is expected to perform, or be able to perform, virtually the entire range of judicial functions. Formerly, the Jurats were responsible for all of these tasks, but the fact that they generally did not possess legal qualifications resulted in their power being reduced to being judges of fact only.²⁵² In the end, the reduction of the sole of the Jurats in the Islands has resulted in the Bailiff's functions becoming more extensive. The difficulty of the Bailiff's role was compounded by the fact that traditionally all the court documents were in French, although proceedings were in English "for convenience."²⁵³ However, another interesting aspect of this system is that there was no Court of Appeal until the 1950s. Thus, before the 1950s there was no appellate tribunal consisting purely of professional lawyers.²⁵⁴

§ 1.3(C). The Privy Council.

Appeals lie from the Court of Appeal to the Privy Council for both Jersey and Guernsey. The circumstances under which such appeals may be made are identical for both Bailiwicks. In civil cases, appeal lies as of right if the sum in dispute is in excess of £500.²⁵⁵ In any other case, if leave to appeal is refused by the Court of Appeal, then appeal may lie by special leave of the Privy Council or by petition by way of Doleance.²⁵⁶ In criminal cases, by contrast, appeal lies only by special leave.²⁵⁷

§ 1.3(D). The Legal Profession and the Law.

In both Jersey and Guernsey, the legal profession is divided between advocates, who are chiefly litigation lawyers and solicitors.²⁵⁸ This is very similar to the prevailing position on the mainland of the United Kingdom with the solicitor-barrister distinction. Many of the lawyers are trained at the university level in England, as neither of the Channel Islands is large enough to support a full university.²⁵⁹ Nevertheless, it is worth remembering that the law which applies in the Channel Islands is very different from the

English Common Law. Because the Channel Islands were a part of the Duchy of Normandy, the prevailing law, other than enacted law, is derived from the customary law of Normandy (the *Ancienne Coutume de Normandie*).²⁶⁰ It is evolving to a point where the law is becoming more influenced by the English common law, as courts in the Channel Islands have applied concepts of the English law.²⁶¹

§ 1.4. The Channel Islands and the International Community.

The position is somewhat unusual. Like the Isle of Man, the Islands are dependencies of the United Kingdom for whose external relations the United Kingdom is responsible.²⁶² The issue of international relations has been the source of some difficulty in recent years, particularly with the entry of the United Kingdom into the European Community.²⁶³ The problem was to ensure that the interests of the Islands were adequately considered and provided for. The difficulty in achieving this goal was simply a question of negotiation: to ensure that a treaty ratified by the United Kingdom also made provision for the different interests of the British Islands. This concern prompted a declaration, in 1950, that any treaty to which the United Kingdom subsequently became a party would not be applicable to the Channel Islands and the Isle of Man by reason only of its ratification by the United Kingdom.²⁶⁴ This was a departure from the prior position which was that any treaty signed by the United Kingdom was also to apply to the Channel Islands. The problem with the circular was the rule of international law that prevented such a reservation in the absence of an express term in the treaty. This led to a letter, in 1966, sent to Guernsey by the Home Office which stated that the presumption would be that all treaties signed by the United Kingdom would also apply to all territories for whose relations the United Kingdom was internationally responsible.²⁶⁵ This presumption had to be expressly contradicted. This did not present problems until the 1960s when the practice shifted so that treaties silent on the subject of territorial application became the norm. The other factor which tended to create problems was the increasing importance of multilateral treaties.²⁶⁶

The application of these treaties presents two problems. The first is the need for consultation with the Islands' authorities to ensure that domestic legislation, where required, be enacted to implement the treaty.²⁶⁷ The second and more difficult problem is the situation where the United Kingdom wishes to become a party to a treaty but the Islands do not. A prime example of this is the Treaty of Rome.²⁶⁸ In the end, that particular problem was removed by negotiation which modified the Treaty insofar as it applied to the Islands.²⁶⁹

The main difficulty remained, in spite of the resolution of the problem of the Treaty of Rome. The Kilbrandon Report notes the widespread hostility to territorial reservations in the international community.²⁷⁰ Various solutions were proposed by the Islands and put to the Royal Commission on the Constitution in 1970.²⁷¹ These were, in essence, a choice between a new declaration or a formal division of responsibility in international between the Channel Islands and the United Kingdom. Both of these were firmly rejected on the basis that it would be impossible to gain international support.²⁷² Instead, a strengthening of the existing procedures for consultation was recommended.

§ 1.5. The Channel Islands and the United Kingdom.

§ 1.5(A). In Summary.

It will be apparent from the above that the position of the Channel Islands, largely as a result of historical accident, is somewhat unusual. As with the rest of British constitutional practice, it is impossible to look to a single document which defines the respective rights and obligations of the parties. Instead, one must look to present practice in the context of a process of continuous evolution over the course of several hundred years. The problem with this is that it is difficult to determine what current practice is, because what is done, in fact, as opposed to what is written on paper is the key to discovering exactly what the constitutional relationships are. In spite of the complexities of the present position, proposals for change, either to alter or to crystallize existing relationships, have found little favour.²⁷³

§ 1.5(B). Privileges and Franchises.

This is one area where it is possible to find legal definitions of relationships. The monarchs of England have, over the course of the centuries, granted the Islands certain exemptions from the obligations to which the rest of the United Kingdom is subject. Examples of this are charters granted by Elizabeth I in 1559 for Guernsey and 1562 for Jersey.²⁷⁴ These privileges include freedom from customs,²⁷⁵ taxes (of which, more later) and freedom from the process of English courts. These privileges have been reconfirmed by subsequent charters.²⁷⁶ The ancient immunity of the inhabitants from the requirements of military service continues into this century.²⁷⁷ In the case of Jersey, the exemption was coupled with a duty to serve within the Island. History shows the case that was taken to preserve this right.²⁷⁸ Even during this century, conscription for service in the Armed Forces of the Crown was left to the States, rather than being effected by Act of Parliament.²⁷⁹

The exemption from the process of English courts existed prior to the 1562 charter.²⁸⁰ It continues to the present day, since, with special exceptions, all legal disputes fall to be decided by the courts of the Islands, rather than courts on the mainland.²⁸¹ This created difficulties in that service of process of courts outside the Island was not permitted. Finally, a Law was passed in 1960 to make good this deficiency.²⁸²

§ 1.5(C). Administrative Responsibility.**§ 1.5(C) (1). In Summary.**

Part of the administrative responsibility of the United Kingdom has already been discussed in the last section. In this section, I propose to discuss the division of responsibility for the direct government of the Islands. In 1970, the Royal Commission on the Constitution considered the relationship between the United Kingdom and the Islands. Two broad questions were raised in the deliberations. The first question was whether any changes were desirable in respect of the present relationship. The second question was whether it was worth formalizing these relationships by an Act of Parliament.

Interestingly, there was a certain amount of disagreement as to the extent of the power of Parliament to legislate for the Islands without their consent. It is with this issue that I will deal first.

§ 1.5(C) (2). Allocation of Responsibility.

The authors of the Kilbrandon Report felt that the simplest way of describing the allocation of responsibility was to indicate the areas in which the United Kingdom had paramount powers.²⁸³ Five broad categories were identified. The first of these is defence, in which it is clearly desirable to ensure uniformity of policy in the United Kingdom generally.²⁸⁴ The second category relates to matters of common interest to British peoples through the world, e.g. Succession to the throne.²⁸⁵ The third category is legislation in the interests of the Islands. The basis for it lies in the ultimate responsibility of the United Kingdom for the good government of the Islands. It was felt that such responsibility implied the ultimate control needed to satisfy it.²⁸⁶ Responsibility for international affairs has already been discussed. The final category is the protection of the United Kingdom's domestic interests.²⁸⁷ It was felt that this last category was unlikely to be important. Such a situation would only arise where practices in the islands threatened the United Kingdom's well-being as a whole. The Kilbrandon Report contemplates that such practices could occur in the commercial field, for example.

In practice, legislation by the United Kingdom has arisen on rather broader bases than the above. The reason for this may be simple convenience. Such matters as extradition,²⁸⁸ fisheries,²⁸⁹ shipping²⁹⁰ and oil pollution²⁹¹ are dealt with under Acts of Parliament. In addition, the nationality laws relating to the Islands originate in the British Parliament, although this is really a reflection of the United Kingdom's responsibility for the international relations of the island.²⁹²

There was some disagreement over the actual extent of Parliament's power to legislate for the Islands. The royal Commission noted that there had been a convention established under which Parliament would not legislate in respect of matters of purely domestic concern to the Islands.²⁹³ The States of Jersey asserted, in their evidence, that it would be unconstitutional for Parliament to legislate in matters of purely domestic concern, otherwise than with the concurrence of the states.²⁹⁴ Various arguments were raised against this; for example, while the United Kingdom had responsibility for the Islands, it was essential for the residual power to legislate on their behalf to be retained.²⁹⁵ The Royal commission concluded that Parliament retained the power to legislate for the Islands:

*"We must face the fact that cases where there is an irreconcilable conflict of view may arise. In such cases we are firmly of the opinion that the United Kingdom Government has, and should retain, the right to decide, and that Parliament has, and should retain, the right in the last resort to legislate for the Islands."*²⁹⁶

§ 1.5(C) (3). Resolution of Disputes.

The primary channel of communication between the Islands and the United Kingdom Government is by way of the Home Office. The aim is primarily to ensure that there is effective consultation of both sides in matter of mutual concern. Proposals for change occurred in the context of wider proposals for the formalization of the existing relationships. So far as formalization was concerned, it was considered and rejected by the Royal Commission for several reasons. The first was the difficulty in securing agreement over what such an Act would contain.²⁹⁷ The second problem is that it is unclear to what extent, if at all, Parliament can bind its successors.²⁹⁸ If these difficulties could be overcome, the idea was that the Judicial Committee of the Privy Council would be a forum for the resolution of disputes about jurisdictional competence.²⁹⁹

The Royal Commission's main proposal was for the formation of a Council for the Islands. This was prompted by the fact that the primary forum was the Privy Council. The difficulty with this lies in the fact that the Committee of the Privy Council which deals with the dispute may consist of the same government Ministers who took the decision leading to the dispute.³⁰⁰ Because it was thought inappropriate to constitute the Privy Council Committee differently, as the United Kingdom government would always have the final say anyway, the Royal Commission suggested the formation of an independent advisory body.³⁰¹ This suggestion has not been implemented.

§ 1.5(D). Legislation.

Legislation originating from the United Kingdom in relation to the Channel Islands is of two kinds. The first is the use of the Prerogative Order in Council. This has a lengthy history, including such landmark documents as the Code of 1771.³⁰² It has fallen into disuse in recent years, and is thus of diminished importance.³⁰³

The other form of legislation is by way of an Act of Parliament. An Act of Parliament will only apply to the Islands automatically if they are named³⁰⁴ therein, or if it must apply by necessary implication.³⁰⁵ Where an Act is to be applicable to the Islands, it is usually registered with the Royal Court. The general view is that this is not a prerequisite to validity of the Act, but is done so that the inhabitants of the Islands may be able to ascertain the laws which apply there.³⁰⁶

Typically,³⁰⁷ an Act of Parliament will provide for the application of the Act to the Islands by way of an Order in Council.³⁰⁸ The object of this procedure is to ensure that the Islands' authorities can be consulted before Acts are applied to the Islands. The other advantage of this approach is that it enables the application of the new Act to be tailored to the legal climate on the Islands.

§ 1.6. Taxation and Finance.

§ 1.6(A). In Summary.

The Channel Islands are known for the low taxation which prevails there. In fact, one of the main concerns of the Islands in relation to the entry of the United Kingdom into the EEC was the effect that this would have on their fiscal structure.³⁰⁹ The Islands are traditionally autonomous in tax matters, and this has led to the low taxation which prevails there.

§ 1.6(B). Income Tax.

Income tax on both the Islands of Jersey and Guernsey has been fixed at 20%, applying to substantially all the income of a person resident in the Island in question.³¹⁰ In the case of Jersey, the basic provisions for income tax are made by the Income Tax (Jersey) Law 1961 (as amended). In Guernsey, the corresponding legislation is the Income Tax (Guernsey) Law 1975.³¹¹

Income tax in Jersey was introduced in 1928 when it stood at the rate of 2.5%. It was raised to its current level in 1940. Administration of Jersey taxation is the responsibility of the Comptroller of Income Tax; income tax is assessed on the basis of income received in each calendar year.³¹² The standard rate is 20%, by art. 2 of the 1961 law. Taxable entities

are all "persons" on the Island including individuals, companies, partnerships, and trusts.³¹³ The system is one of full importation, so that tax is not paid twice on the same income. Thus dividends paid by a company, in effect, are treated as taxed in the hands of the shareholders and are taxed as company profits.³¹⁴ Jersey residents are taxed on their income worldwide, while non-residents are taxed merely on income arising in Jersey.³¹⁵

The standard rate in Guernsey has been 20% since 1960. Responsibility for the administration of income tax rests with the Administrator of Income Tax. The basic provisions of the tax laws are similar to those in Jersey. The year of tax assessment is the calendar year. Since 1980, employers have been responsible for the deduction of income tax due on salaries and wages under a "pay as you earn" system, the Employees Tax Installment Scheme.

§ 1.6(C). Corporation Tax.

On both Islands, Corporation Tax is charged at the rate of £300 per annum.³¹⁶ This tax applies to companies registered in the Channel Islands but which are not subject to income tax there. This means in practice that apart from maintaining its registered office in Jersey or Guernsey, as the case may be, the company does no business at all on the Island.

§ 1.6(D). Others.

In Jersey, there is no capital taxation beyond probate duty and stamp duty on the authorized share capital of companies, both of which run at 1/2%. In Guernsey, the situation is the same, apart from the application of Dwelling Profits Tax. This is essentially a type of capital gains tax, designed to discourage speculative dealing in Guernsey property. It is, in effect, a 100% tax on all the capital gains, less an inflation allowance, arising from transactions which involve residential property. It is not applicable if the vendor has resided in the property for a period of one year, or has owned it for five years.³¹⁷ In general, it is also worth noting that there is no specific trust law in Jersey. Although trusts have been set up there, it is still unclear to what extent they are recognized by the Jersey court.

§ 1.6(E). The Channel Islands as Financial Centres.

In 1970, the Kilbrandon Report noted that the Channel Islands were increasingly being used as tax havens.³¹⁸ This was not seen as a cause for alarm, and no change in the autonomy of the Islands in tax matters was then, or has been since, recommended. The rise of the Islands as financial centres was given a big boost after the Second World War. They were attractive to people wishing to accumulate capital free of the taxes prevalent in the United Kingdom. However, the lack of space to cope with a flood of immigration led to the decision by Jersey to try to attract international loan business. This decision provided a focus to Jersey's development as an offshore finance centre.³¹⁹ Likewise, Guernsey has expanded its financial presence considerably in the 1960's and 1970's. Assuming that there is no change in the relationship of the Islands and the United Kingdom, this growth should continue.

FOOTNOTES

1. 72,532 at the last census, in 1971.
2. 94,380 at the last census, in 1975.
3. The last census for Alderney and Sark was in 1975.
4. Most evidently in the legal structure of the Islands. See text at n. 232, *infra*.
5. The islets of the Mingines and Ecrehos were the subject of adjudication by the International Court of Justice in 1953, which confirmed British sovereignty over the islets: I.C.J. Reports 1953, p. 47.
6. See below, text at n. 273, *infra*.
7. Which, being uninhabited, have no separate constitution.
8. Alderney and Sark do possess separate administrations which are dealt with below.
9. For a detailed discussion of the constitution for Jersey, see F. de L. Bois, "A Constitutional History of Jersey" (1981). The following description is derived from that discussion.
10. The first mention of the States was apparently made in 1497. See Bois, n. 9, *supra*, 91 6/1, p. 53. The States of Jersey Law 1966 Art. 1 lists the persons who shall be members of the States. Art. 2 lists the officers of the States.
 11. Bois, 91 2/6, p. 5.
 12. *Id.*, 91 2/30, p. 9.
 13. *Id.*, 91 2/33 - 91 2/36, pp. 9-10.
 14. Rider to 1854, the Governor was entrusted with the charge and government of the Islands. Since there has been no governor since 1854, it will be appreciated that the functions of the Governor have been performed by the Lieutenant Governor since that time. *Id.* 91 5/2, p. 20; 91 5/17, p. 23.
 15. *Id.*, 91 5/13, p. 22.
 16. States of Jersey Law 1966, Art. 23.
 17. Bois, *supra*, n. 9, 91 5/3, p. 20.
 18. See Royal Court (Jersey) Law, 1948 Art., 5(2), 11, 13 and the States of Jersey Law 1966, Art. 1.
 19. Bois, *supra* n. 9, 91 5/26, p. 26.
 20. *Id.*, 91 5/26, p. 26.
 21. *Id.*, 91 5/21, p. 25. Bois notes that it is rare for this to apply, to holders of high judicial office, such as the Bailiff and Deputy Bailiffs in the Commonwealth.
 22. Lieutenant Bailiffs may exercise all functions of the Bailiff except those of appointment. *Id.*, 5/27, p.
27. For long periods the functions of the Bailiff were in fact exercised by the Lieutenant Bailiff.
 23. States of Jersey Law 1966, Art. 3.
 24. See Bois, 91 5/33-91, 5/34, p. 29. The office was created in 1958.
 25. *Id.*, 91 2/2, p. 9.
 26. *Id.*
 27. Royal Court (Jersey) Law 1948 at Art. 5; States of Jersey Law 1966, Art. 1. He is also the current holder of the office of Receiver General, being responsible for the collection of Crown revenues.
 28. Bois, 91 5/49, p. 33.
 29. States of Jersey Law 1966, Art. 1.
 30. *Ordres du Conseil (OdC.)* vol. 3, p. 329 (a publication of the States). This Order in Council was made in 1749, on 23rd November. The Attorney General was formerly known as the Procureur.
 31. Bois, 91 5/90, p. 33.
 32. *Recueil des Lois (RdL)* Tome 1963, p. 556.
 33. States of Jersey Law 1966, Art. 2.
 34. Bois, 91 2/4, p. 5.
 35. *Id.*, 91 5/59, p. 36.
 36. *RdL* Tome 7, p. 101; Bois, 91 5/43, p. 31.
 37. Bois, 91 5/28, p. 27 (Banht); 91 5/43, p. 32 (Law Officers); 91 5/58, p. 36 (Viscount).
 38. Typically the fee became payable to the states and was replaced with a salary. See references to n. 37, *supra*.
 39. Bois, 91 91 85, p. 44; *RdL*. Tome VII, pp. 109 e 122.
 40. *Id.*
 41. *Id.*, 91 5/87, p. 44.
 42. *Id.*, 91 5/104, p. 51.
 43. States of Jersey Law 1966, Art. 4(1),

44. *Id.*, Art. 5(1).
45. *Id.*, Art. 4(2) and Sch. 1.
46. Prior to its use to designate members of the states, the term "Deputy" was used to describe a person deputed to represent the States in London. Bois, 91 5/105, p. 52.
47. *Id.*, 91 5/106, p. 52.
48. *Id.*, 91 5/107, p. 52.
49. States of Jersey Law 1966, Art. 1(1).
50. *Id.* See also Bois, 91 2/30, p. 9.
51. Bois, 91 5/91, p. 45.
52. *Id.*, 91 5/92, p. 45.
53. States of Jersey Law 1966, Art. 17(1). The member of the honorary police thus designated is entitled to act in the place of the Constable at that meeting. By Art. 17(2), preference in the designation is to be given trust according to rank and secondly according to their length of service in the Parish.
54. This dates from a Charter of Henry VII, in 1495, in the case of Constables, and from an Order in Council of 26th April 1817, in the case of Centeniers. Bois, 91 5/93 and 5/95, pp. 46-47. Elections of Constables and Centeniers are ordered by the Royal Court, and the Constable or Centenier remains in office until his successor is sworn in. *Id.*, 91 5/99, p. 48.
55. Bois, 91 5/103, p. 50. The Vingtaines are still responsible for the election of the Constable's officers.
56. *Id.*, 91 2/30, p. 9; and 91 2/30, p. 5.
57. *Id.*, 91 5/103, p. 50.
58. *Id.*
59. *Id.*, 91 5/69, p. 39; Royal Court (Jersey) Law 1948, Art. 10(1).
60. 1948 Law, Art. 3(1); a person is barred from holding office as a Jurat if he falls within Art. 4 of the 1948 Law.
61. 1948 Law, Art. 5. The Lieutenant Governor, Dean, Attorney General and Solicitor General are entitled to be present, but are not entitled to vote or to propose on second candidates: Art. 9(4). The Viscount is responsible for keeping a register of the members of the college: Art. 9(5).
62. 1948 Law, Art. 5(5).
63. Judicial and Legislative Functions (Separation) Law 1951, Art. 1.
64. Royal Court (Jersey) Law 1948, Art. 10(1).
65. Bois, 91 5/70, p. 39.
66. Bois, 91 5/84, p. 43; RdL Tomes IV-VI, p. 141.
67. Bois, 91 5/84, p. 43; RdL Tome 1968, p. 83. These rules apply to the elections of Senators, Constables, Deputies, and Centeniers.
68. See text at n. 10, *supra*.
69. Bois, 91 6/2, p. 53.
70. *Id.*, 91 6/5, p. 54.
71. States of Jersey Law 1966, Art. 23. The Bailiff is also entitled to dissent; if he does the resolution remains in suspension until it is ratified by Order in Council: Art. 22.
72. Bois, 91 6/11-91 6/16, pp. 57-60. This Order in Council is known as the Code of 1771.
73. Bois, 91 6/28-91 6/30, pp. 63-68. This Order in Council also confirmed the Bailiff's power of dissent (n. 71, *supra*). The Bailiff, in convening the states, was acting as His Majesty's executive substitute, and could be obliged to summon the States by the Governor or the Jurats. The States could not be summoned at the instance of its members, and there was no provision for regular meetings.
74. Bois, 91 6/33, p. 69.
75. *Id.*
76. 1955 Law, Art. 18.
77. *Id.*, Art. 19(1).
78. *Id.*, Art. 19(2).
79. Bois, 91 6/24 and 6/25, pp. 61-62.
80. Bois, 91 6/40, p. 73; OdC Vol. 4, p. 514.
81. Bois, 91 6/40, p. 73. Failure to attend by reason of sickness is still required to be certified on oath, whereas absence from the Island is not: *Id.* 91 6/41.
82. *Id.*, 91 6/42 and 6/43, p. 74. The fine was originally 2 but was reduced to 1, in 1897, its current level.
83. *Id.*, 91 6/45, p. 74.
84. *Id.*, 91 6/46, p. 76.

85. *Id.*, 91 6/47, p. 76.
86. States of Jersey Law 1966, Arts. 38-40. A stranger is anyone other than "the Deputy Bailiff or member or officer of the States": Art. 59.
87. Bois, 91 6/90, p. 76.
88. States of Jersey Law 1966, Art. 16.
89. Bois, 91 6/57, p. 79.
90. *Id.*, 91 6/58.
91. *Id.*, 91 6/61-6/68, pp. 80-81. See also the Kilbrandon Report, 91 1354, p. 409: "The chairman of these committees form the closest thing there is to a government, though they have no collective responsibility.
92. *Id.*
93. Proceedings of the committees are governed by Part III of the States of Jersey Law 1966, which provides only that a quorum shall be a majority of the members of the Committee: Art. 36(1).
94. The practice is to appoint seven members to each Committee: Bois, 91 6/68. Only members of the States may serve on a committee: 1966 Law, at 28(1).
95. States of Jersey Law 1966, Art. 1(2).
96. *Id.*
97. 1966 Law, Art. 21(2).
98. The Royal Court lost its legislative power under the 1771 Code, see n. 72, *supra*.
99. Bois, 91 2/26-2/29, pp. 8-9. Under the presidency of the Rector the body is also known as the Ecclesiastical Assembly.
100. *Id.*, 91 2/29.
101. *Id.*, 91 2/31 and 2/32, p. 8.
102. *Id.*, s. 3, pp. 12-13.
103. See below, text at n. 283, *infra*, and at n. 308 *infra*.
104. Bois, p. 13.
105. All Acts and Petitions from the Channel Islands are dealt with by the Privy Council Committee for the Affairs of Jersey and Guernsey: Malsburg's Laws of England (4th ed.-1974; Supp. 1985), vol. 692 873, n. 5; pp. 374. "It is the practice at the beginning of each reign to appoint Committees of the Privy Council to deal with petitions from the Channel Islands and the Isle of Man respectively." Report of the Royal Commission on the Constitution (The Kilbrandon Report) 1973, Cmnd. 5460, 913361, p. 4103.
106. Until 28th March 1771 the Royal Court and the States had unfettered power to legislate on any matter. Bois, 91 11/47, p. 190. The 1771 Code is set out in *Recueil des Loi de Jersey 1771-1881* (1969) at p. I (RdL).
107. States of Jersey Law 1966, Art. 21(1).
108. 1966 Law, Art. 24(1). Until such a proposition has been lodged for at least fourteen days it may not be debated or passed by the States; at 24(4). The purpose of this process is to ensure publicity for new legislation.
109. *Id.*, Art. 24(1) (a).
110. The Kilbrandon Report, 91 1361, p. 410.
111. Bois, 91 11/134 - 91 11/135, pp. 211-212.
112. *Id.* The process usually takes four months.
113. RdL., Tomes IV-VI, 1887-1928 (1964), p. 46.
114. *Id.*
115. Bois, 91 11/139, p. 212.
116. *Id.*, 91 3/2 (vi), p. 13.
117. States of Jersey Law 1966, at 24(1) (b).
118. Bois, 91 11/139, p. 212.
119. 1966 Law, at 24(1) (b).
120. Bois, 91 3/2, p. 13; 91 11/139, p. 212.
121. Loveridge, *The Constitution and Law of Guernsey* ("Loveridge"), p. 7.
122. *Id.*
123. *Id.*
124. *Id.*, p. 8.
125. *Id.*, p. 9.
126. *Id.*
127. *Id.*
128. Unlike Jersey where the functions are separated. See text at n. 39, *supra*.

129. Loveridge, p. 10.
130. *Id.*
131. *Id.*
132. For the implications of this see n. 21 and the accompanying text, *supra*.
133. The States of Election are thus equivalent to the Electoral College in Jersey. See text at n. 61, *supra*.
134. The Reform (Guernsey) Law 1948, Art. 4(1). A quorum is constituted by the President and sixty other members: Art. 6(1).
135. 1948 Law, Art. S(2) (a); each member has one vote: Art. 4(5) (b).
136. *Id.* Conseillers are eligible for re-election and may vote in the Electoral College or the occasion of their re-election. Art. 11.
137. See text at n. 59, *supra*.
138. 1948 Law, Art. 10.
139. 1948 Law, Arts. 12(1) and 4(1)/
140. *Id.*, Art. 14(1).
141. *Id.*, Art. 15(1).
142. This is made plain in Art. 16 of the 1948 Law which states that a Douzaine Representative "shall be free on all occasions to vote in accordance with his Conscience."
143. First Schedule to the 1948 Law.
144. Arts. 1(1) and 4(1) of the 1948 Law.
145. *Id.*, at 8.
146. *Id.*, at 51. They are, in addition required to be, and to remain while in office, residents of the Parish.
147. This is the effect of Art. 2 of the 1948 Law. Thus a Douzaine may be a People's Deputy, and a Jurat likewise; no Conseiller or Douzaine Representative may be a People's Deputy.
- 148., 1948 Law, Art. 17.
149. *Id.*, Art. 27.
150. *Id.*, Art. 46(1), which imposes an obligation on those supervising the ballot to maintain its secrecy.
151. *Id.*, at 38.
152. *Id.*, Art. 52. Electors to the offices of Constable and Douzainer are dealt with in Part V of the 1948 Law.
153. *Id.*, Art. 59(1).
154. *Id.*, Art 1(1) (a).
155. *Id.*, Art. 1(1).
156. If the Bailiff is not present the Deputy Bailiff acts as President; if neither is present, then the member of the States who is most senior in order of appointment acts as President: 1948 Law, Art. 1(2).
157. *Id.*, Art. 1(5).
158. *Id.*, Art. 3. The President or Acting President does not count for these purposes. Art. 3(2). Where a vote is ineffective the President may bring the matter before a simple quorum, of twenty or more, on a subsequent day; the matter may then be disposed of by a simple majority: Art. 3(3).
159. Loveridge, p. 18.
160. *Id.*, p. 17.
161. *Id.*
162. *Id.*
163. See text at n. 61, *supra*.
164. Loveridge, p. 17.
165. Part VI of the Reform (Guernsey) Law transferred all of the legislative functions of the Royal Court to the States of Deliberation.
166. Loveridge, p. 18.
167. The Kilbrandon Report, 91, p.
168. An example of the latter kind is the States Legislation Committee, which was set up by the 1948 Law: Art. 69(1). Its function is to review all new legislation which is proposed: Art. 66(1) (2).
169. Loveridge, p. 18. Unlike Jersey, it seems that in Guernsey, members of the Committees need not be members of the States: see Art. 18 of the 1948 Law.
170. Loveridge, p. 17.
171. Orders in Council are another, but are rarely used in modern times: Loveridge, p. 2.
172. Memorandum by the States of Guernsey to the Royal Commission on the Constitution, 1970: "Constitutional Relationships with the United Kingdom." p. 8.

173. *Id.*
174. Loveridge, p. 5. The date of registration is the date from which the Law comes into force, unless the Law itself fixes another date.
175. Memorandum, *supra* n. 172, p. 9.
176. The power to make Ordinances is expressly transferred under Art. 63. The Royal Court retains the power to make and alter Rules of Procedure for itself and any court subordinate to it: Art. 64(1) (b).
177. 1948 Law, Art. 66(3).
178. Loveridge, p. 5.
179. 1948 Law, Art. 67.
180. Blaustein and Blaustein, "Constitutions of Dependencies and Special Sovereignities." Vol. II, Alderney: "The Island Constitution," p. 2 (1981).
181. *Id.*,
182. *Id.* To be eligible for the Office of Jurat a person was required to own property assessed for wheat-rent in excess of 400. Iwats served until they reached the age of seventy. Electors were ratepayers, and males older than twenty, or females older than twenty-one.
183. Government of Alderney Law 1948, Art. 11.
184. *Id.*, at 66(1).
185. 1948, Art. 32, as amended by the Government of Alderney (Amendment) Law 1971, Art. 1(d). The reason for the increase was the rise in the workload of the States, members of which are not paid for their efforts: Blaustein and Blaustein, Alderney, *supra* n. 180, p. 3.
186. 1971 Law, Art. 1(d).
187. 1948 Law, Art. 36(3).
188. *Id.*, Art. 33: for the purposes of this election, Alderney is taken as one constituency.
189. *Id.*, Art. 39(1).
190. *Id.*, Art. 52.
191. *Id.*, Art. 54(1); But the Finance Committee, which is governed by Part VIII of the Law, has functions which are taxed by the Law and which may not be altered by the States: Art. 54(1) (i). Further, appointment of a Finance Committee is mandatory: Art. 47(1) (b) (i). There are now some nine Committees, usually consisting of four members: Blaustein and Blaustein, *supra* n. 180, p. 4.
192. *Id.*, Art. 94(4).
193. *Id.*, Art. 96(1).
194. *Id.*, Art. 47(1) (4) (ii).
195. *Id.*, Art. 12(1).
196. *Id.*, Art. 15.
197. *Id.*, Art. 16.
198. *Id.*, Art. 24.
199. *Id.*, Art. 19.
200. *Id.*, Art. 20(2); this is because these sentences are the highest which the court has jurisdiction to impose. Art. 20(1).
201. *Id.*, Art. 21. The Royal Court is also empowered to make certain rules of procedure for the court of Alderney: see Art. 23.
202. Loveridge, p. 21.
203. Memorandum by the States of Alderney to the Royal Commission on the Constitution, 1970, p. 5.
204. *Id.*; See also The Alderney (Application of Legislators Law 1948) (Guernsey) Art. 2 of this Law enables the States of Guernsey to impose taxes on Alderney.
205. Memorandum, n. 203, *supra*, p. 6.
206. *Id.*, p. 7.
207. Halsbury's Laws, *supra* n. 105, 981 876, p. 375.
208. Seigneur is the male title; women occupying their position are known as the Dame.
209. Reform (Sark) Law 1951, Art. 1(1).
210. This power is somewhat limited: 1951 Law, Art. 8(2) (4).
211. Among other things the Seigneur is the only one on the Island to be allowed to grind corn for profit, to raise doves, and to keep unspayed bitches: Newsweek, Nov. 18, 1985.
212. 1951 Law, Art. 22(1).
213. *Id.*, Art. 3(1).
214. *Id.*, Art. 22(1). The Seneschal may be reappointed and is not subject to removal except at his own request or at the direction of the Crown.

215. Loveridge, p. 22.
216. Memorandum, *supra* n. 203, p. 1; Loveridge, p. 22. To dispose of a tenement the consent of Her Majesty in Council is required.
217. 1951 Law, Art. 5.
218. *Id.*, Art. 7. Full age means twenty years or more: Loveridge, p. 22.
219. *Id.*, Art. 13(2).
220. *Id.*, Art. 1(1) (d).
221. Loveridge, p. 22.
222. Reform (Sark) Law 1951, Art. 8(1).
223. *Id.*, Art. 9 and Art. 11.
224. *Id.*, Art. 23(1), which left the jurisdiction unaltered.
225. Loveridge, p. 22.
226. Art. 23(1). The Court of the Seneschal (Increase of Jurisdiction and Transfer of Prisoners) Law 1971, by Art. 1, amended Art. 23(1) of the 1951 Law so as to increase the amount of the fine from 2 to 50.
227. 1991 Law, Art. 23(2).
228. *Id.*, Art. 23(1).
229. Loveridge, p. 22; Blaustein and Blaustein, *supra* n. 180, "Sark," p. iv.
230. Loveridge, p. 22.
231. Source: Newsweek, 18th November 1985.
232. Loveridge, p. 16.
233. Royal Court of Guernsey (Miscellaneous Reform Provisions) Law 1990, Art. 6(2) (a). Delegates of the Bailiff include the Deputy Bailiff and the Lieutenant Bailiffs.
234. See n. 165, *supra*.
235. Loveridge, p. 12.
236. *Id.*
237. Halsberg's Laws, *supra* n. 105, 91 878, p. 376.
238. Court of Appeal (Guernsey) Law 1961.
239. Loveridge, p. 17.
240. *Id.*
241. *Id.*, p. 18. The Limits are seven days imprisonment and/or a fine of 2.
242. *Godfrey v. Earle Island Constables* (1902) A.C. 534 (P.C.) Reform (Sark) Law 1951, Art. 23; Court of the Seneschal (Increase of Jurisdiction Law 19540.
243. Halsbury's Laws, *supra* n. 237; Loveridge, p. 18.
244. *Supra*, n. 232. Appeal lies to the Ordinary Court.
245. Such as the registration of Patents, Wills and Companies.
246. Matrimonial Causes Law (Guernsey) 1939.
247. Ordinary judges are Crown appointees, and must have been in practice for at least ten years at the Bar in Jersey, Guernsey, England and Wales,otland or Northern Ireland; Arts. 2, 3, 4(1), 8 of the 1961 Law.
248. *Id.*, Art. 13(1).
249. Bois, 91 2/34-2/38, p. 10. .
250. Court of Appeal (Jersey) Law 1961, Art. 24.
251. *Id.*, Art. 12(1) in relation to decisions of the Inferior Number; Art. 12(2) in relation to the Superior Number. In criminal cases, appeal lies from conviction or sentence imposed by the Superior Number.
252. Aubin, "Recent Constructional Changes in Jersey." (1952) in 1 Int. and Comp. Law. Q. 491, 496. Aubin notes that there was pressure to do away with the office of Jurat altogether. *Id.*, at 497.
253. Farran, "Judicial Machinery in the Channel Islands," (1955), 4 ICLQ 46, 47.
254. Aubin p. 503.
255. Court of Appeal (Jersey) Law 1961, Art. 14; Court of Appeal (Guernsey) Law 1961, Art. 16.
256. Doleance is in effect a complaint against the court for negligence or misconduct in refusing an appeal. A doloance is not allowed if the matter could be disposed of by an ordinary appeal, be it by special leave or otherwise. See *Credit Foncier of England v. Amy* (1874), L.R. 6 P.C. 146 at 155.
257. *Renouf v. A-G for Jersey* [1936] A.C. 445; [1936] IAU E.R. 936, P.C.
258. See, e.g. the Royal Court (Jersey) Law 1948, Art. 5(2) (e) (f). Solicitors are also known as "Ecrivains."
259. Some members of the Bar were trained in France, Farran, *supra* n. 253, 47.
260. Which was superseded in France by the Code Napoleon.
261. See Loveridge, p. 19. The influence of the old Norman law in real property is particularly strong, although in Sark the position differs because of the presence of the tenements, which are indivisible.

262. "In international law the United Kingdom Government is responsible for the Islands' international relations. If in the practice for the insular authorities to be consulted before an international agreement is reached which would apply to them." The Kilbrandon Report, 91 1363, p. 411.

263. See Simmonds, "The British Islands and the Community: I-Jersey," 6 Common Mkt. L. Rev. (1968) 156.

264. Foreign Office Circular No. 0118, "Position of the Channel Islands and the Isle of Man in Relation to Treaties and International Agreements."

265. Kilbrandon Report, 91 1382, p. 417.

266. It is not possible to deviate this difficulty by way of a unilateral observation because the Vienna Convention of 1969, by Art. 20(2), may act to prevent such a course.

267. With the great number of treaties to which the United Kingdom is a party it is clearly difficult to the Islands' governments to be considered in full in respect of all of them. See the Kilbrandon Report 91 1401, p. 423.

268. See Simmonds, *supra* n. 263; Kilbrandon Report, 91 1530, p. 462. Article 227(4) of the Treaty of Rome applies the treaty to all European territories to whose international relations member states are responsible. The Islands were particularly concerned that they would suffer grave economic harm if the Treaty were to fully apply.

269. See the Act of Accession, Arts. 25-27; Protocol No. 3 of the Channel Islands and the Isle of Man.

270. The Kilbrandon Report, 91 1388, p. 419.

271. *Id.*, 92 1393 - 91 1398, pp. 420-421.

272. *Id.*, 91 1401-1403, pp. 423-424; 91 1539, p. 465.

273. "Indeed, if only the constitutional relationships could remain as they were in recent years . . . everybody would be happy, and our task would disappear. If there are difficult problems, it is solely because of the impact of external events, and the rapidly changing nature of the relationships between sovereign states," Kilbrandon Report, 91 1460, p. 441.

274. Loveridge, p. 2; Bois, 91 8/16, p. 118. The Charter of 1962, repeating and entrenching prior Charters, exempted Jersey and its inhabitants from customs charter, from other taxes from "warlike expectations," and from the jurisdictions of the English courts; *Id.*

275. *Ibid.*

276. See generally, Bois, chapter 8.

277. In the case of military service, the exemption of the Island of Guernsey was recognized in a 1916 Order in Council and again in the Preamble to the National Service (Guernsey) Law 1954.

278. *Id.*, 91 8/101 et. seq. p. 142 et. seq.

279. *Id.*, 91 8/121, p. 146.

280. *Id.*, 91 8/96.

281. See generally Chapter 3, *supra*; Halsbury's Laws, 91 1202, p. 997: "The English common law does not extend to the Channel Islands." Thus rather the courts with jurisdiction, nor the applicable law, are English.

282. Bois, 91 8/98, p. 142.

283. The Kilbrandon Report, 91 1499, p. 493.

284. Examples of legislation relating to defence are the Army Act 1959, s. 216; Air Force Act 1955, s. 214; Army and Air Force Act 1961, s. 30. In recognition of the exemption of the Islands from defence generally, parts of these Acts (e.g. Part IV of the 1955 Acts does not extend to the Islands).

285. Kilbrandon Report, 91 1901, p. 453.

286. *Id.*, 91 1502, p. 454. It must be said that this is unlikely to be important in practice. The Report concluded that such powers would only be exercised in the event of grave civil unrest, a possibility which seems remote: *Id.* It was further stated that, "the United Kingdom Government and Parliament ought to be very slow to seek to impose their will on the Islands merely on the grounds that they know better than the Islands what is good for them."

287. *Id.*, 91 1505, p. 455.

288. See, e.g., Fugitive Offenders Act 1963, s. 16; Aviation Security Act 1982, s. 39(3); and the Suppression of Terrorism Act 1978, s. 7.

289. E.g., Sea Fisheries Act 1968, s. 22, Sch. 2, Part II.

290. Merchant Shipping Act 1894, s. 669; Carriage of Goods by Sea Act 1971, s. S(1).

291. Prevention of Oil Pollution Act 1971, ss. 25(1), 33(1) (2).

292. See now the British Nationality Act 1981, s. 53(5).

293. Kilbrandon Report, 91 1468, p. 444.

294. The Kilbrandon Report, 91 1371, p. 413.

295. *Id.*, 91 1433, p. 433.
296. *Id.*, 91 1913, p. 457.
297. *Id.*, 91 1482-1485, p. 449.
298. See, e.g. Allott, *The Courts and Parliament — Who Whom?* [1979] C.L.J. 79.
299. *The Kilbrandon Report*, 91 1437, p. 434.
300. This had already happened in relation to a dispute in 1967 involving the extension to the Isle of Man of the Broadcasting (offences) Act: *Id.*, 91 1438, p. 435.
301. *Id.*, 91 1520, p. 459.
302. *Bois*, Ch. 11.
303. *Loveridge*, p. 2; *Bois*, Ch. 11; *The Kilbrandon Report* 91 1371, p. 412.
304. See the Interpretation Act 1978, Sch. 1, Sch. 2., para 4(1): the Channel Islands are comprehended by the expressions "British Islands" and "British Possessions."
305. *Loveridge*, p. 3; *Bois* 91 9/4, p. 151.
306. *Loveridge*, p. 3; *Bois*, 91 9/6, p. 151.
307. E.g., *Carriage of Goods by Sea Act 1971*, s. 5(1) (b).
308. Such an order is subordinate to the Act pursuant to which it is made, and is therefore to be distinguished from prerogative Orders in Council. As to Orders in Council generally, see: *Wade and Phillips, Constitutional and Administrative Law* (Longman - 1977), pp. 230-1.
309. *Simmonds*, *supra* n. 263, at 163.
310. This description is only intended as a broad overview of taxation in the Channel Islands. Anyone who requires more detailed information should consult, e.g., the latest edition of *Tolley's Taxation in the Channel Islands and the Isle of Man*.
311. Alderney and Herm are within the tax administration of Jersey; Sark is not.
312. *Tolley*, *supra* n. 310, p. 69. (1980 ed.).
313. Trustees are not subject to income tax in practice if all the income of the trust arises overseas and all beneficiaries are foreign residents: *Id.*, p. 85.
314. *Id.*, p. 78.
315. *Id.*, p. 85. 1961 Law, Arts. 61, 62.
316. In Jersey the applicable legislation consists of the Corporation Tax (Jersey) Law 1956; and the Finance (Jersey) Law 1974, Art. 135 in Guernsey the rules are provided by the Corporation Tax (Guernsey) Law 1950 and the Corporation Tax (Guernsey) Ordinance 1973.
317. See the Dwelling Profits Tax (Guernsey) Law 1975.
318. 91 1534-91 1539, pp. 463-6.
319. For a history and explanation of the Channel Islands' financial growth see Johns, "Tax Havens and Offshore Finance, a Study of Transnational Economic Development." (*Pinter-1983*), pp. 74-184.