Law School Tutors Lecture Series

Sport and the Law

LECTURE ONE : INTRODUCTION TO THE STUDY OF LAW

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by

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INTRODUCTION TO THE STUDY OF LAW

SOME GUIDANCE ON APPROACHING LEGAL PROBLEMS. With all forms of problems, whether essay question or problem question based, it is essential to tailor your answer to the type of question involved - this may sound obvious but this is a common problem. For example, if faced with an essay question, **it is clearly insufficient to simply write all you know about the topic**. A question that asks, for example, "Critically discuss the proposition that the law relating to 'X' is unjust", should not be interpreted to read "Write all you know about the law relating to 'X'". The latter simply does the author no credit. A critical discussion requires you to provide a discussion of the subject matter that, for example, demonstrates problems, difficulties as well as any strengths of the subject matter.

A common feature of either essay or problem questions, is a requirement that you FIRST, identify the issues that the question seeks to draw to your attention. Again, for example, the question may draw your attention to the defense of contributory negligence. It goes without saying that you should not write all you know about ALL of the defenses.

To tackle any question, you must have a good command of the law applicable to the topic. This means thorough preparation beforehand. Have a point of view - say that something is right or wrong if necessary - and don't worry that others (even those with that carry greater legal authority) seem to disagree. Law is primarily about use and interpretation of language and its application. There is room for other interpretations.

Work methodically; tackle points against your view (don't ignore them) and be prepared to justify your opinions by reference to legal principle and/or policy. For example " the court in x case may have suggested y, but it is suggested that this view is wrong because it omitted to consider factors like a,b and c".

Always come to a conclusion either for or against the proposition in the question and ***MAKE SURE YOU HAVE ANSWERED THE QUESTION POSED***.

SOME POINTERS PECULIAR TO PROBLEM QUESTIONS.

- Almost invariably you will be asked to advise one or more parties involved in the facts. Thus an advice may require you to apply your mind to more than one hypothetical defendant/plaintiff - each raising different issues, which will require you to tailor your advice accordingly.
- I**dentify which party(ies) you are asked to advise.**
- **Work logically and methodically by taking one party at a time** (if you are asked to advise more than one) - if you try to do two or more together you will end up confusing both yourself and those you are supposed to advise.
- **What legal issues are raised by the facts applicable to the actors involved?** Having identified them (e.g. by asking what tort is relevant) deal with each in turn. Note; sometimes there may be some aspects common to each party. Don't recite the same arguments - if there is a commonality, refer to the earlier views/principles etc.
- Identify in your mind the relevant facts but **do not set about a verbatim reconstruction of them in your answer.** Remember, you have limited space/time - better to concentrate on a concise, clear answer.
- If for example, you are advising the plaintiff, you should consider what defences or what arguments are available to the defendant(s). This applies equally to an advice tailored to the defendant - what are the strengths of the plaintiff's case. For example, what evidence is there in the facts that would negative an assertion by the plaintiff that the defendant was in breach of his/her duty of care? **It is by assessing the strengths and weaknesses of the other party's case that you can assess the strengths and weaknesses of your own.**

These pointers are of general application only and they are not meant to be a set pattern for each question, but it is hoped that they will get you on the right track.

INTRODUCTION TO THE ENGLISH LEGAL SYSTEM

SOURCES OF LAW, THE COURT STRUCTURE AND PERSONNEL : We will begin our study of this module with some fundamental points and concepts of the English Legal System. First, it is important for us to understand that law is a derivative of a number of sources, and it is a lawyerly tradition to classify things. From this we will be able to understand the distinctions between bringing an action for damages (monetary compensation) for battery (where force is inflicted upon a person) and a criminal prosecution arising out of the same facts for (as criminal lawyers say) assault (again where force is inflicted upon a person - though strictly this is a battery).

CLASSIFICATIONS OF LAW.

Common Law & Statute.

The term common law is given a number of meanings, but for our purposes it is important to recognise that in one sense (the most common) it is a term, which connotes collectively the decisions of the superior appellate courts (see later). It is sometimes used to describe the laws and customs applied by the courts after the Norman Conquest. Remember that in this epoch there was no law making body that was similar to Parliament, as we would recognise it today. Finally it is used to denote the law as appearing in the decisions of the superior appellate courts that are distinct from 'equity' (see later). It is also used to denote those systems of law (like our own) that are distinct from Civil Law systems (like France).

Statute law is the collective term for the law produced by parliament i.e. Acts of Parliament (for example, The Offences Against the Person Act 1861) though even this has 2 aspects: primary and secondary legislation. Primary being the Act itself, secondary being law (Statutory Instruments), that is made under powers given by the primary law. This is not a feature of the decisions of the courts and this is an aspect of the superiority of Acts of Parliament.

Common Law & Equity.

The law became administered by the judges, as a matter of delegation from the monarch. This included the courts of Common Bench, Exchequer and Queens/Kings Bench. These courts had power (or jurisdiction) to deal with disputes amongst subjects (like debts etc.,). In early times (from the 13th century onwards) it was necessary to obtain a writ (which sets out the action) and new writs could be devised where there was no precedent or existing writs followed but progressively these writs were exhausted and unless one's action fell within an existing writ, one had no cause of action. It is from these writs that developed the civil actions that in some cases are recognised today (actions for breaches of contract, personal injury cases etc.).

However, there could be injustice where a person had no cause of action recognised by the courts. Pleas could be made direct to the monarch and like any good manager, he/she delegated the responsibility for these pleas - to the Chancellor. This person was at times a cleric and administered this delegated power on conscience rather than on the form of the courts. The net result was that at times an action could be obtained in the courts but the loser petitioned the chancellor who administered his decisions on conscience or fairness - equity - who could then prevent the enforcement of the judgment obtained in the king's courts. Subsequent chancellors developed a rational precedent based system which in effect led to the administration of different laws. The chancellors court (hence Court of Chancery) developed concepts and law unknown to the common law courts (most dramatic being the trust but see also the injunction). These 2 systems could not continue in this form and this sometimes antagonistic relationship culminated in the Judicature Acts 1873-75 which granted the courts the power to administer common law and equity - so for example a 'common law' court hearing a common law dispute, say an action in contract, could provide an equitable remedy. Today, the administration of justice (see courts below) requires actions to be heard by different courts - for example trusts / land law actions would be dealt with by the Chancery Division, actions in tort like negligence heard by the Queens Bench Division - to some extent still reflecting their historical lineage.

Private Law & Public Law.

Private law can be said to be concerned with rights and interests of individuals as against other individuals - like the private interests protected in an action in negligence between 2 parties (say a footballer who carelessly breaks the leg of another player - the interest protected is bodily integrity and financial if there are financial losses as a result).

Public law is difficult to define but it is the law that is concerned with disputes and interests between, for example, a private individual and the state. The most obvious example of public law would be the law relating

to the administration of local authorities - but there is no hard and fast rule because a public (law) body can act in a private capacity. For example, you have private law rights/duties/obligations with the university (contract) but for some purposes the university could be acting in a public law capacity. The relevance of this is that different procedures and remedies would be available if you were to bring an action against the university depending upon the type of function in question. You will see this difficulty later in the course.

Civil Law & Criminal Law

The most obvious distinction is that civil law is administered in civil courts - where the principle remedy would be monetary awards and criminal law administered in criminal courts where the principle remedy is not monetary - though it is not strictly correct to say that criminal court provides a remedy because what the criminal court is doing is administering law that has a wider public interest than simply the parties before it. This is why prosecutions are normally brought in the name of the crown (Regina v X or Rv X) rather than the names of the parties (**Donoghue v Stephenson**). Different procedures and rules apply and different terminology - in civil actions the person bringing the action is a plaintiff, in criminal law it is a prosecutor though the other party is a defendant in both! Civil actions are not said to be prosecuted - so it would be incorrect to say that Fred is prosecuting Jane for breach of contract - Fred would sue Jane.

2. THE COURT STRUCTURE.

Generally the criminal and civil justice systems have different court structures but at times a court can administer both jurisdictions as you will see. The senior appellate courts (that is those courts who have the power to determine appeals from inferior courts) are the courts that we will be principally concerned with as these courts (House of Lords, Court of Appeal and High Court) have the ability to establish and make law (see How judges decide cases later).

CIVIL COURTS.

1. HOUSE OF LORDS

2. COURT OF APPEAL CIVIL DIVISION

3. HIGH COURT

QUEENS BENCH DIVISION ***FAMILY DIVISION*** ***CHANCERY DIVISION***

4. COUNTY COURT

A. The House of Lords Appellate Committee (to give it its full title and to distinguish it from the 2nd chamber of Parliament) is the most senior and final court for appeals though in matters concerning European Union law, it would be the European Court of Justice and you may be familiar with the Court's ruling in the case of **Jean Luc Bosman**. The HL is an appeal court which means that it does not hear trials. It hears appeals from the lower courts (2, 3 & 4) in matters of law of 'general public importance'. This means that there may be a general legal issue involved as well as the issue at stake - say where there is an uncertainty in the law.

B. The Court of Appeal is also an appellate court hearing most of the appeals from the other courts (3 & 4 and a number of tribunals not shown) in matters of law.

C. The High Court is both a trial court and an appellate court (from 4 and the magistrates court - not shown - in a limited number of civil issues). It hears trials (generally without a jury) depending upon the value or damages involved - over 50,000 pounds and the work is divided between the divisions shown depending upon the nature of the action - e.g. tort heard in the Queens Bench Division.

D. The County Court is a trial court (or court of first instance for matters below a set monetary level. It does not have all the powers of the other courts and is limited in some cases as to the remedies it can provide.

Note: what is meant by appeal is that there is power (always in statute) to argue an issue of law before a superior court where the contention is that judge in the lower court is in error so that the superior court can then hear and determine the issue of law and if necessary reverse the earlier judge's finding and give its own view.

THE CRIMINAL COURTS.

1. THE HOUSE OF LORDS

2. THE COURT OF APPEAL, CRIMINAL DIVISION

3. THE QUEENS BENCH DIVISION (DIVISIONAL COURT)

4. THE CROWN COURT

5. THE MAGISTRATES COURT

A. The HL is again an appeal court hearing appeals from 2 - 5 (though the procedures for each are different and does not mean that a case in 5 has to go to 4 then 3 then 2).

B. The CA is an appeal court and for criminal law the principal appeal court. It hears appeals (on law) from 3 - 5.

C. The Divisional Court is an appeal court and hears appeals of law under a special procedure from 5 and in some instances from 4.

D. The Crown Court is both a trial and an appeal court. In respect of the former, it will hear (with a jury) offences that are said to be triable on indictment (an indictment is simply a document laying out the charges) - generally the most serious offences - like murder. It hears appeals from 5 on fact and/or law and/or sentence. It has powers in relation to sentences that the Magistrates Court does not possess.

E. The magistrates court is a trial court only. It hears 98% of all criminal offences that are said to be triable summarily (in the magistrates alone - like driving with excess alcohol) or some offences that can be tried in either the Crown Court or the Magistrates Court (so-called either way offences - like theft). It has limits to its sentencing powers - for example it may imprison for up to 6 months only). The magistrates court also has a filtering role for establishing that there is a case to be answered in all cases that are to be heard in the Crown Court.

What both court structures demonstrate is that there is a distinct hierarchy in the court structure. This is important when we look at How Judges decide cases. You will see there that the law seeks to achieve consistency and certainty, one aspect of this is treating like cases alike - using earlier decided cases to establish what the law is - precedent. Precedent becomes binding (in other words a judge in one court must follow the earlier decision) if it is from a court higher in the hierarchy. It is persuasive if from a lower court

3. PERSONNEL.

At one level it is enough to state that the courts are staffed by judges. This hides the fact that there are different types of judge, for example a judge in the Crown Court is not the same (and is not paid the same) as a judge sitting in the Court of Appeal. Judges are the most obvious manifestation of the judiciary.

If we can refer back to the court structure above, starting with the civil courts, the judges would be as follows:

1. Lords of Appeal In Ordinary - or Law Lords (for e.g. Lord Atkin)
2. Lord Justice of Appeal - (e.g. Lord Justice Pill or as it is sometimes referred to Pill L.J.)
3. Justice of the High Court - or *puisne* judge (pronounced puny - referring to junior) - (e.g. Mr Justice Tudor Evans or Tudor Evans J.).
4. Registrar and District Judge.

For the civil courts there are various senior judges who for administrative purposes preside over certain divisions of the High Court for example, but for our purposes it is important to note the Master of the Rolls (e.g. Lord Bingham M.R.) who effectively heads the Court of Appeal Civil Division.

For the criminal courts stages 1 - 3 are the same but:

4. Circuit Judge (referred to as His/Her Honour Judge X - never, for example, Jones J - unless a Justice of the High Court is sitting in the Crown Court as they sometimes do).
5. Magistrates/Justice of the Peace (2 types legally unqualified and part-time (or 'lay') and legally qualified and full-time (Stipendiary).

For the criminal courts the most senior judge (strictly the 2nd most senior judge in England & Wales) - who heads the Court of Appeal Criminal Division is the Lord Chief Justice.
The most senior judge in England & Wales, who is head of the judiciary is the Lord Chancellor (e.g Lord Irvine of Lairg LC).

There are a number of Law Officers (either as a member of the government - The Attorney General , or as is sometimes reported 'A-G') or as a civil servant - The Director of Public Prosecutions (DPP) who is head of the Crown Prosecution Service (CPS).

There are of course the members of the legal professions - Barristers & Solicitors.

WHAT DO YOU THINK IS THE DIFFERENCE BETWEEN THE 2 PROFESSIONS?

Finally there are the law enforcement agencies - primarily of course the police.

4. LEGISLATION.

Statute, or Acts of Parliament are, in English law the primary source of law (this of course is subject to legislation promulgated by the EU) and in this sense, the courts are bound to follow the will of parliament as expressed in the text of the Act. This is not to deny the judges a creative role in law though, because judges are the sole and authoritative means of interpretation of and Act. An Act is divided up into numbered sections and subsections so that lawyers would refer to, for example., 'section 1 of X Act'. A body of case law can build up around an Act where, for example a case or cases examine what is meant by a word or phrase in an Act. This is not as straight forward as it sounds at times.

CAN YOU THINK OF A COMMON WORD THAT HAS MORE THAN ONE MEANING?

The judges have built up a number of rules relating to interpreting statutes (known as canons of construction) and these are designed to assist in interpretation. Parliament has assisted this task by providing interpreting statutes (Interpretation Act). Some areas of law are more dependent upon statute than others. For example, Parliament is the provider of almost all criminal offences whereas negligence has very few relevant statutes and depends upon case or common law.

Finally, Acts can give persons (mainly government ministers) power to make law - this is known as secondary legislation (Statutory Instruments and Orders in Council). The courts can attack these if the power given is not adhered to by the minister (ultra vires).

5. HOW JUDGES DECIDE CASES

Judges have the task of not only deciding what the law is in trials (as in the criminal court) but in some instances deciding also what the facts are. For our purposes, we have concentrated upon the senior appellate courts. It is in these courts that judges are at their most creative in establishing not only what the law is but also making new law. Lawyers would recognise this as PRECEDENT.

What this tells us is that if a case (factually and/or legally) is similar or the same in many relevant respects, it should be decided in the same way as the earlier case. In this way the earlier case is fundamental to deciding how the later case should be decided - in other words the earlier case sets a precedent. We have already seen that the precedent (i.e. the decision) must or may be followed dependent upon which court made the decision. For example, the magistrates court or the crown court cannot set a precedent that MUST be followed by the High Court, CA or HL. Similarly, a decision of the HL MUST be followed by all the other courts as this is (in relation to domestic law) the most senior appellate court. So at the 'higher' levels of the court structure, the judges can make law.

However, this does not mean that judges automatically follow earlier cases as this is to deny the judges any creativity. Also, no 2 cases very rarely have exactly the same facts. This allows the judges to choose between any one of a number of precedents that they feel represents the law as they see it. If the precedents are all from a lower court, they can, as an option, say that all these are wrong and should be overruled. So deciding cases is not as easy as it appears.

Consider the following examples and indicate whether the decision of the court in example A, should followed in example B. If so why, if not why not? Which example, A , B or both is relevant to C

Example A.

A woman has purchased for her a bottle of ginger beer in a cafe. She drinks some of the beer. When she pours some more out, some impurities are discovered. To her they look like the remains of a decomposing snail. As a result she suffers stomach upset and a nervous disorder.

She sues the manufacturer of the ginger beer and the courts determine that the woman should (in law) be owed a duty (a legal obligation) by the manufacturer that he will take care in the preparation. of his products (this he appears not to have done).

Example B.

A man is the owner of a yacht which is moored in a harbour. Near the harbour is a young offenders' institute. As part of the rehabilitation of the inmates, they are allowed to go camping on an island in the harbour, as long as they are supervised by prison officers. One night on the island the supervising prison officers go to bed early, leaving the inmates to their own devices. The inmates swim to the yacht as part of an escape attempt and when they attempt to sail away, being inexperienced sailors, they crash and damage the yacht. The yacht owner wishes to sue the officers.

Does A apply?

Example C.

A man is injured when he falls down some steps at his friends house. The steps are unlit and dangerous but his friend did nothing to lessen the danger or warn him. The man wishes to claim against his friend.

You have been party to exactly the same process as judges. If A is good law how can it apply to B - a different set of facts. The answer depends upon what level of generality or specificity you act at.

If the fact that in A the transaction took place in a cafe and involved an item of food or drink is vital, then the law from that case can never apply to B or C. If the only thing that is relevant is that the relationship between the people (manuf and woman) is one which requires parties to take care not to cause harm to each other - then this can apply to both B & C. Both A & B are based on decisions of the courts where the law from A was held to be applicable to B.

You should not have the impression that judges make up the law as they wish - because precedent is vital to the English Legal System. It is, however, an example of how lawyers - for want of a better phrase - play with words. Being dependent upon language, law allows for different interpretations. This is obvious from the fact that 2 parties to an action will have different views of the law.

The proposition of law derived from a case is know as a *Ratio Decidendi (or Rationes Decidendi)*. Propositions of law not central to the decision in a case are known as *Obiter dictum (or Obiter Dicta)*. These latter propositions can be persuasive.

So a judge will try to determine what the *ratio* of the earlier case is. He/she might determine that it is X. Any other propositions of law (say Y & Z) which were not central to the decision in the case would be *obiter*. Thus a judge in a higher court (say HL) could determine that the ratio of a CA decision is X, but he feels that this proposition is wrong. He might find that an *obiter* statement is correct and be persuaded by it.

Judges also have to interpret Acts of Parliament as we have seen. Again, an earlier case deciding that a particular word has a particular meaning is relevant to determining whether the same word (even in a different Act) should be given the same meaning. The following example from my book will illustrate this point:

However, sometimes it may be necessary to give a word or phrase a different meaning because a modern society may require a different meaning.

WHAT MIGHT THE WORD 'VEHICLE' INCLUDE IN 1897 AND WHAT MIGHT IT INCLUDE IN 1998?

SPORT & THE LAW - SELF ASSESSMENT 1

Assistance can be gained from any introductory work on the English legal system (e.g. Smith & Bailey; The Modern English Legal System). Chapters 1, 2, 3 &4.

Consider the following questions:

1. Which court is the most senior appellate court in England & Wales?
2. Which courts have the ability to make law?
3. Is the decision of a judge in the county court is superior to an Act of Parliament? Explain
4. Are Common Law & Equity the same? Explain.
5. What is a judge in the Court of Appeal referred to a.) a magistrate; b). a registrar; or, c). a Lord Justice of Appeal?
6. Is the Director of Public Prosecutions is a judge who hears criminal trials? Explain.
7. The High Court and the Magistrates Court have the same powers. True or False? Give reasons for your view.
8. Are Criminal Appeals from the Crown Court heard directly in the House of Lords? Explain.
9. The Attorney General is a judge. True or False? Give reasons for your answer.
10. Are Criminal trials heard in the Magistrates Court? Give reasons for your answer.
11. A Justice of the High Court sits as a judge in the Crown Court. True r False? Give reasons for your answer.
12. The most senior judge in England & Wales is: a). Law Lord; b). a the Lord Chief Justice; or, c). The Lord Chancellor?
13. What does it mean when a court is described as an appellate court? Is the power to hear appeals statutory based or based on inherent jurisdiction?
14. In which court are the most serious criminal offences tried: a). the magistrates court; or, b). the Crown Court? Give reasons for your answer.
15. A civil action for damages can be tried in the High Court. True or False? Give reasons for your answer.
16. A barrister is more qualified than a solicitor to advise on the law. True or False?

SPORT & THE LAW – SELF ASSESSMENT 2.

How judges decide cases.

Reading - lecture notes. Relevant section in either Learning Legal Rules or The Modern English Legal System (3rd Ed.) (by Smith & Bailey) Chapter 7.

1. What is the central proposition of law from a case called?
2. What are propositions of law that are not central to a case referred to?
3. Give an example from your reading of a decision of a court that has been applied to a later case with entirely different facts.
4. Explain how the example in 3 worked.
5. Give an example of a word or phrase from a statute that has been judicially interpreted.
6. What was the case and the statute relevant to 5?
7. What was the decision or interpretation of the word in the above? Did it require a ‘strained’ or natural meaning?
8. Can you find an example of a word that has been interpreted by the courts to mean something completely different from everyday language?
9. Why do you think the court gave an interpretation that was ‘un-natural’?
10. Did this interpretation make sense to you or did you feel that the court’s view was unnecessary?