

THE WEEKLY LAW REPORTS

Student News & Case Summaries from *The Daily Law Notes* - 16th Edition Spring 2004

Contents

Recent reportable cases selected from *The Daily Law Notes* section of our website www.lawreports.co.uk

Cases appearing in *The Daily Law Notes* are usually fully reported in The Weekly Law Reports which has the fastest and most comprehensive coverage of any series of law reports!

.....1-10

Articles

Suffering from Stress: can an employer be liable?

Harriet Dutton10

Fostering Relational Justice

Jessica Giles12

Architects of Justice

George Edmund Street RA PRIBA (1824-81)

Paul Magrath14

ICLR News & Events

The Weekly Law Reports National Mooting Competition 2003-4 Update16

Specimen Moot Problems16

The Incorporated Council of Law Reporting for England & Wales 2003 Roundup17

The 2004 Annual ICLR Lecture18

The Incorporated Council of Law Reporting Student Quiz18

Useful Website Addresses20

News & Views

Readers' Letters21

Subscriptions

Special Rates for The Industrial Cases Reports ...23

The Weekly law Reports special rates including FREE access to the electronic version24

Newsletter for the Spring Term 2004

Welcome to the latest edition of the ICLR Weekly Law Reports Student Newsletter. I would like to take the opportunity to wish all our readers a happy and successful 2004.

As usual the Spring 2004 newsletter features some of our latest Daily Law Notes, specially selected from those online at www.lawreports.co.uk by our editorial team. I hope that you find them interesting and if you'd like to see more of them don't forget the entire archive is available, free of charge, on our website. Here you can also find our Industrial Cases Reports Express service and all the latest news and events involving ICLR.

While I am on the subject of ICLR news some of you may be interested in our 2004 ICLR Lecture, the third in our annual series. This will be held on the 5th April in Middle Temple Hall in London, and tickets will be free to all students. If you would like to apply for a ticket details can be found on pages 18 & 22.

This issue also features the first in a series of articles by one of our reporters, Paul Magrath, on 'The Architects of Justice' starting with a look at the architect responsible for designing the Royal Courts of Justice. We also have articles looking at the development of Relational Justice and a closer look at a stressful Industrial Cases Report.

Martha Hawting

Correction; In the article 'Positive Discrimination: The Feminist's Dilemma' in issue 15, paragraph 5 line 13 'retributive' should have read 'retaliatory'

'Citation of judgments in Court

3.1 For the avoidance of doubt, it should always be emphasised that both the High Court and the Court of Appeal require that where a case has been reported in the official law reports published by the Incorporated Council of Law Reporting for England and Wales it must be cited from that source. Other series of reports from England and Wales may only be used when a case is not reported in the Law Reports.'

Lord Woolf

Supreme Court Practice Direction [2001] 1 WLR 194



Unique

THE WEEKLY LAW REPORTS
COVERAGE OF THE CASES THAT REALLY MATTER

The Incorporated Council of Law Reporting
for England and Wales, Megarry House,
119 Chancery Lane, London WC2A 1PP

Tel: 020 7242 6471

www.lawreports.co.uk

All cases are selected from

The Daily Law Notes on our website at www.lawreports.co.uk as having a particular relevance for students of law.

Cases reported by us on our website will in due course be reported in full form with a headnote and the full text of the judgment in

The Weekly Law Reports, The Law Reports (also includes reports of the arguments of counsel) or **The Industrial Cases Reports**.

CRIME — *Arson* — *Mens rea* — *Recklessness* — *Obvious risk of damage to property* — *Whether defendant's age and personal characteristics relevant in assessing obviousness of risk* — *Criminal Damage Act 1971, s 1*

R v G and R [2003] UKHL 50

HL: Lord Bingham of Cornhill, Lord Browne-Wilkinson, Lord Steyn, Lord Hutton and Lord Rodger of Earlsferry: 16 October 2003

The test for assessing recklessness in the context of arson contrary to s 1 of the Criminal Damage Act 1971 as formulated by the House of Lords in *R v Caldwell* [1982] AC 341, was wrong and should not be followed. The correct approach was that a person acted recklessly within the meaning of s 1 with respect to (1) a circumstance when he was aware of a risk that it existed or would exist; (2) a result when he was aware of a risk that it would occur; and it was in the circumstances known to him, unreasonable to take the risk.

The House of Lords so held when allowing the appeal of the defendants, G and R, from a dismissal by the Court of Appeal [2003] 3 All ER 206 on 17 July 2002 of the defendants' appeal against their convictions before Judge Maher and a jury at Aylesbury Crown Court on 23 March 2001 of arson contrary to sections 1(1) and (3) of the 1971 Act.

In the early hours of the morning the defendants, aged 11 and 12 respectively, entered the backyard of a shop where they set fire to some newspapers and threw them under a plastic dustbin. After they left the yard the fire spread to the shop and adjoining buildings, causing approximately £1m worth of damage. It was accepted at their trial that neither of them appreciated that there was any risk of the fire spreading. The judge ruled that he was bound by *R v Caldwell* to direct the jury that in the context of recklessness, the question whether there was an obvious risk of property being damaged had to be assessed by reference to the reasonable man and no allowance was to be made for the defendants' youth or lack of maturity.

LORD BINGHAM OF CORNHILL said that in s 1 of the 1971 Act Parliament's intention was to replace the expression "maliciously" which had previously been used with the more familiar expression "reckless". No relevant change in the mens rea necessary for proof

of the offence was intended. Conviction of serious crime should depend on proof not simply that the defendant caused (by act or omission) an injurious result to another but that his state of mind when so acting was culpable. It was clearly blameworthy to take an obvious and significant risk of causing injury to another. But it was not clearly blameworthy to do something involving a risk of injury to another if (for reasons other than self-induced intoxication) one genuinely did not perceive the risk. Such a person might fairly be accused of stupidity or lack of imagination, but neither of those failings should expose him to conviction of serious crime or risk of punishment. The model direction formulated by Lord Diplock in the Caldwell case was capable of leading to obvious unfairness. The sense of fairness of 12 representative citizens sitting as a jury (or of a smaller group sitting as a bench of magistrates) was the bedrock on which the administration of criminal justice was built. A law which ran counter to their sense of fairness must cause concern. The misinterpretation of "reckless" in the Caldwell case was offensive to principle and was apt to cause injustice so that the need to correct the misinterpretation was compelling. It was neither moral nor just to convict a defendant, least of all a child, on the strength of what someone else would have apprehended if the defendant himself had no such apprehension.

LORD BROWNE-WILKINSON agreed.

LORD STEYN and LORD RODGER OF EARLSFERRY agreed and delivered concurring speeches.

LORD HUTTON agreed with LORD BINGHAM and LORD STEYN.

Appearances: *Alan Newman* QC and *Andrew Jefferies* (Pictons, Milton Keynes) for G; *Alan Newman* QC and *Isobel Ascherson* (Borneo Linnells, Milton Keynes) for R; *David Perry* and *Richard Whittam* (Crown Prosecution Service) for the Crown.

Reported by: Shiranikha Herbert, barrister.

CRIME — *Firearms* — *Possession of* — *During course of robbery defendant's pointed fingers under jacket having appearance of firearm— Whether fingers capable of being "imitation firearm"* — *Firearms Act 1968, s 17(2)*

R v Bentham

CA: Kennedy LJ, Curtis and Forbes JJ: 5 December 2003

If, in the course of a robbery, the defendant used his pointed fingers covered by a jacket to give the appearance that he was holding a firearm, a jury would be entitled to find that the offence of possessing an imitation firearm during the course of a robbery was made out.

The Court of Appeal, Criminal Division, so held in dismissing an appeal by Peter Bentham against his conviction on 5 September 2002, at Preston Crown Court on a plea of guilty to possessing an imitation firearm during the course of a robbery, contrary to s 17(2) of the Firearms Act 1968, Judge Bradley having ruled that she would direct the jury that in certain circumstances “fingers inside a jacket” could constitute an imitation firearm for the purposes of s 17(2). The appellant had already pleaded guilty to robbery and doing acts tending and intended to pervert the course of public justice for which he was sentenced to a total of 5 ½ years’ imprisonment.

KENNEDY LJ, giving the judgment of the court, said that very early one morning the defendant went to the house of A, who he believed owed him money. A was still in bed. The defendant pointed his finger, covered by his jacket at A and demanded “every penny in the house”. A handed over a large quantity of money. The defendant was arrested. Before his trial started a ruling was sought from the judge as to whether or not placing fingers inside a jacket could constitute possession of an imitation firearm for the purposes of s 17(2) of the Firearms Act 1968. The judge indicated that she would direct the jury that in certain circumstances it could, so the appellant pleaded guilty to that offence. On appeal against the imitation firearm conviction it was submitted for the defendant that a person could not have with him or be in possession of his own fingers within the meaning of s 17(2) of the 1968 Act. The court was referred to the Canadian decision of *R v Sloan* (1974) 19 CCC (2d) 190 where the court was not satisfied that a “man can be armed with his own finger”. But that case was considered in *R v Morris and King* (1984) 79 Cr App R 104, where, at p 107, Dunn LJ said “In considering whether or not the thing looked like a firearm at that time, the jury are entitled to have regard to the evidence of any witnesses who actually saw the thing at that time, together with their own observation of the thing itself, if they have seen it.” So the objective test was clearly rejected. In their Lordships’ judgment a purposive approach had to be adopted to s17 of the Act which was clearly designed to protect the victim confronted with what he thought was a firearm. It did not matter whether it was a plastic gun or a biro or simply anorak material stiffened by a figure. If it had the appearance of a firearm the jury were entitled to find the offence made out. The trial judge’s ruling was correct.

Appearances: *Charles Lander* (assigned by the Registrar of Criminal Appeals) for the defendant; *Ian Dacre* (Crown Prosecution Service, Preston) for the Crown.

Reported by: Clare Barsby, barrister

NEGLIGENCE – *Duty of care to whom? – Visitor – Independent contractor’s agent injured at club fair while helping at firework display performed by uninsured contractor – Claim against club for failing to ensure contractor covered by public liability insurance – Whether club owing duty of care to contractor’s agent – Occupiers’ Liability Act 1957 (c 31), s 2*

Bottomley v Todmorden Cricket Club (Secretary and Members) and others

CA: (Brooke, Waller and Clarke LJ): 7 November 2003

An occupier of the land owed a duty of care to an employee or agent of an independent contractor to ensure that the contractor invited to carry on a “dangerous activity” over his land had an adequate public liability insurance to cover that activity, so that a cricket club that had allowed firework displays to be performed over its land by uninsured contractors was liable for injuries sustained by the contractor’s helper because of the contractors’ negligent performance of the display.

The Court of Appeal so stated when dismissing an appeal of the first defendants, the secretary and members of Todmorden Cricket Club, from the decision of Simon J dated 18 December 2002 who had held that the first defendants and the second and third defendants, Mark Hindle and David Read, were liable for the injuries sustained by the claimant, Michael John Bottomley, when the second and third defendants had been letting off fireworks at the first defendants’ club premises; the second and third defendants had engaged the claimant to help them in the display.

BROOKE LJ said that there might be many occasions when an occupier might be legally liable in negligence in respect of the activities which he permitted or encouraged on his land. That liability stemmed from his “activity duty”. He might also be legally liable for the state of his premises, and that liability stemmed from his “occupancy duty”. The club ought to have taken reasonable care in its selection of a suitable contractor to conduct a dangerous pyrotechnic display on its land, and it failed to do so. The fact that the contractors performed their services for no fee made no difference: the club allowed a dangerous event to take place on its land with no public liability insurances and no written safety plans because it neglected to take the ordinary precautions. Occupiers would usually escape liability in such a case because they could show they had taken reasonable care to select competent and safe contractors, and in those cases an injured employee or agent could look no further than his own employer or principal for redress. But there might be circumstances in which the occupier of the land who wished something dangerous to be done on his land for his



benefit might be liable. The injuries suffered by the claimant were foreseeable if there was no proper safety plan: there was the requisite proximity between the club and the claimant, who was lawfully on their premises that evening; and it was fair, just and reasonable to impose liability on the club because it did not do what it ought to have done before it allowed this dangerous event to take place on its land.

WALLER and CLARKE LJJ agreed.

Appearances: *Philip Havers* QC and *Peter Cowan* (Berrymans Lace Mawer, Liverpool) for the first defendant; *Michael Shorrock* QC and *Richard Pearce* (The Thrasher Walker Partnership, Stockport) for the claimant; the second and third defendants did not appear and were not represented.

Reported by: Ken Mydeen, barrister.

HIRE-PURCHASE — *Hire-purchase agreement — Title to goods — Dealer proposing sale of car to fraudster posing as person named on stolen driving licence — Claimant finance company agreeing purchase after credit check — Defendant purchasing car in good faith from fraudster — Whether acquiring title — Whether fraudster “debtor” under agreement — Hire-Purchase Act 1964 (c 53), ss 27(1)(2), 29(4) (as substituted by Consumer Credit Act 1974 (c 39), s 192(3)(a), Sch 4, para 22)*

Shogun Finance Ltd v Hudson [2003] UKHL 62

HL: Lord Nicholls of Birkenhead, Lord Hobhouse of Woodborough, Lord Millett, Lord Phillips of Worth Matravers and Lord Walker of Gestingthorpe: 19 November 2003

A rogue who had signed a hire-purchase agreement and obtained possession of a car under the pretence that he was the person named on a stolen driving licence had not been the “debtor” under the agreement within the meaning of ss 27(1) and (2) and 29(4) of the Hire-Purchase Act 1964, as substituted, and had not been able to pass title in the car to the defendant to whom he had purported to sell it.

The House of Lords (Lord Nicholls of Birkenhead and Lord Millett dissenting) so held in dismissing an appeal by the defendant, Norman Hudson, from the majority decision of the Court of Appeal (Brooke and Dyson LJJ, Sedley LJ dissenting) [2002] 2 QB 834 dismissing the defendant’s appeal from the judgment of Mr D E B Grant sitting as an assistant recorder at Leicester Crown Court on 13 January 2000 in favour of the claimant hire-purchase company, Shogun Finance Ltd.

LORD NICHOLLS OF BIRKENHEAD said that the

claimant had authorised the dealer to hand the car over to the person in the showroom, the fraudster, and had intended to hire it to that person (see *Phillips v Brooks* [1919] 2 KB 243). Its mistaken belief in the fraudster’s identity had not negated that intention. He would allow the appeal.

LORD HOBHOUSE OF WOODBOROUGH said that the basic principle was “*nemo dat quod non habet*”. A hire-purchaser had no title to the goods and no power to convey title to a third party. The question therefore was whether the fraudster had been a “debtor” under the hire-purchase agreement within the meaning of ss 27(1) and (2) and 29(4) of the 1964 Act. As a matter of construction of the agreement, the sole hirer had been P, the person named on the driving licence. No one else could become the “debtor”. The defendant argued that oral evidence was admissible to show who the parties to an agreement had been and that the hire-purchase agreement had been made with the person in the dealer’s office. Such extrinsic evidence was not, however, admissible where the party was specifically identified in the document: see *Hector v Lyons* (1988) 58 P & CR 156. The appeal should be dismissed.

LORD MILLETT delivered an opinion in favour of allowing the appeal.

LORD PHILLIPS OF WORTH MATRAVERS delivered an opinion concurring in dismissing the appeal.

LORD WALKER OF GESTINGTHORPE delivered an opinion agreeing with Lord Hobhouse of Woodborough in dismissing the appeal.

Appearances: *Jeremy Cousins* QC, *Nicholas George* and *Jeremy Richmond* (Bird Wilford & Sale, Loughborough) for the defendant; *A G Bompas* QC and *Sunil Iyer* (Sechiari Clark & Mitchell, Barnet) for the claimant.

Reported by: Michael Gardner Esq, barrister

CRIME — *Determination of charge within reasonable time — Stay of indictment on ground of delay — Whether necessary to show prejudice arising from delay — When relevant time period commencing*

Attorney General’s Reference No 2 of 2001 [2003] UKHL 68

HL: Lord Bingham of Cornhill, Lord Nicholls of Birkenhead, Lord Steyn, Lord Hoffmann, Lord Hope of Craighead, Lord Hobhouse of Woodborough, Lord Millett, Lord Scott of Foscote and Lord Rodger of Earlsferry: 11 December 2003

Criminal proceedings could be stayed on the ground that there had been a violation of the requirement,

pursuant to art 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, that such proceedings should be heard within a reasonable time only if (a) a fair hearing was no longer possible, or (b) it was for any compelling reason unfair to try the defendant.

The relevant time period commenced at the earliest time at which a defendant was officially alerted to the likelihood of criminal proceedings against him, which in England and Wales would ordinarily be when he was charged or served with a summons.

The House of Lords (Lord Hope of Craighead and Lord Rodger of Earlsferry dissenting on the first point) so held on a reference by the Court of Appeal (Criminal Division) (Lord Woolf CJ, Wright and Grigson JJ) under s 36 of the Criminal Justice Act 1972 following its own determination of a reference by the Attorney General [2001] 1 WLR 1869 arising from the acquittal of a defendant following a delay in bringing his case to trial.

LORD BINGHAM OF CORNHILL said that if, through the action or inaction of a public authority, a criminal charge was not determined at a hearing within a reasonable time, there was necessarily a breach of the defendant's Convention right under art 6(1). For such breach there had to be afforded such remedy as might be just and appropriate: s 8(1) of the Human Rights Act 1998. The appropriate remedy would depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach was established. If the breach was established before the hearing, the appropriate remedy might be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the defendant was in custody, his release on bail. It would not be appropriate to stay or dismiss the proceedings unless (a) there could no longer be a fair hearing or (b) it would otherwise be unfair to try the defendant. The public interest in the final determination of criminal charges required that such a charge should not be stayed or dismissed if any lesser remedy would be just and proportionate in all the circumstances. The prosecutor and the court did not act incompatibly with the defendant's Convention right in continuing to prosecute or entertain proceedings after a breach had been established in a case where neither of conditions (a) or (b) was met, since the breach consisted in the delay which had accrued and not in the prospective hearing. If the breach of the reasonable time requirement was established retrospectively, it would not be appropriate to quash any conviction unless (a) the hearing had been unfair or (b) it had been unfair to try the defendant at all. As a general rule, the relevant time period would begin at the earliest time at which a person was officially alerted to the likelihood of criminal proceedings against him. That period would ordinarily begin when a defendant was formally charged or served with a summons.

LORD NICHOLLS OF BIRKENHEAD, LORD HOBHOUSE OF WOODBOROUGH and LORD MILLETT delivered concurring opinions. LORD STEYN, LORD HOFFMANN and LORD SCOTT OF FOSCOTE agreed. LORD HOPE OF CRAIGHEAD and LORD RODGER OF EARLSFERRY delivered opinions dissenting in part.

Appearances: *Ben Emmerson QC, Tom Watson and Danny Friedman* (Canter Levin & Berg, Liverpool) for the acquitted person. *David Perry and Adina Ezekiel* (Crown Prosecution Service, HQ) for the Attorney General; *Hugo Keith and Clair Dobbin* (Treasury Solicitor) as advocates to the court.

Reported by: BL Scully, barrister.

CRIME — *Drugs* — *Occupier of premises* — *Knowingly permitting premises to be used for the activity of smoking cannabis resin* — *No evidence of drugs having been smoked* — *Whether proof of smoking required* — *Misuse of Drugs Act 1971, s (8)(d)*

R v Auguste

CA: Kay LJ, Douglas Brown J, Sir Michael Wright: 9 December 2003

For the offence of permitting the smoking of cannabis, cannabis resin or prepared opium on premises to be complete, it was necessary to establish that the activity of smoking had taken place and not merely that the permission had been given.

The Court of Appeal, Criminal Division, so held when allowing an appeal by Paul Auguste against his conviction on 17 January 2003 at the Crown Court at Middlesex Guildhall (Judge Matheson QC and a jury) of having permitted his premises to be used for the smoking of cannabis resin for which he had been sentenced to 60 hours' community service.

KAY LJ, giving the judgment of the court, said that s 8 of the Misuse of Drugs Act 1971 made it an offence when an occupier of premises knowingly permitted or suffered certain activities to take place on those premises including, under s 8(d), the activities of smoking cannabis, cannabis resin or prepared opium. The defendant was the sole tenant and occupier of a flat which was raided by the police who found the defendant along with seven others and a number of potentially significant items. The defendant pleaded guilty to possession of cannabis resin. Amongst other things two hand-rolled cannabis cigarettes which had never been lit were found. On searching the premises the police could detect no smell of cannabis. It was accepted by the Crown that there was no evidence to contradict the suggestion that no smoking had taken place. On appeal the defendant argued that s 8(d)



required the prosecution to establish that smoking had taken place with permission. The court was directed to the wording of the section and told that its opening words made it an offence for a person to permit “any of the following activities” and that therefore one of the activities must have taken place. The defendant submitted, inter alia, that the drugs referred to in s 8(d) were the only drugs which could be taken by being smoked at the time the 1971 Act was drafted and that this was not a matter of coincidence but indicative of the point that the smell of their being smoked would alert a householder to the fact that the activity was taking place. The Crown submitted that the offence was complete the minute the permission had been granted whether or not the smoking then took place, and that subsequent withdrawal of that permission could possibly be mitigation of the offence and nothing more. The submissions advanced for the defendant were cogent and must succeed. The submission that Parliament was intending to deal with a situation where a person would be alerted to the smell of smoke from the activity taking place was the only obvious explanation for Parliament having referred to the particular drugs in question in s 8(d) of the Act. Looking at the section as a whole it made most sense if it was intended as being necessary to establish that the requisite activity had taken place for the offence to be complete. It was common ground that it had not been open to the jury to conclude that smoking had taken place and therefore this was a case where there had been no case to answer and the appeal should succeed.

Appearances: *Tania Panagiotopoulou* (Registrar of Criminal Appeals) for the defendant; *Philip Rueff* QC (Crown Prosecution Service, Ludgate Hill) for the Crown.

Reported by: Elanor Dymott, solicitor

NUISANCE — *Sewerage* — *Failure to abate nuisance* — *Sewerage flooding garden after heavy rain due to inadequate sewerage system inherited by sewerage undertaker—Whether sewerage undertaker liable in nuisance*

Marcic v Thames Water Utilities Ltd [2003] UKHL 66

HL: Lord Nicholls of Birkenhead, Lord Steyn, Lord Hoffmann, Lord Hope of Craighead and Lord Scott of Foscote: 4 December 2003

A person whose property was subject to flooding from overflowing sewers could not bring a claim in nuisance against the sewerage undertaker because such a cause of action would be inconsistent with the statutory scheme for sewerage regulation laid down by Parliament in the Water Industry Act 1991.

The House of Lords so held in allowing an appeal by the defendant, Thames Water Utilities Ltd, against a decision of the Court of Appeal (Lord Phillips of Worth Matravers, MR, Aldous and Ward LJJ) [2002] QB 929 dismissing the defendant's appeal and allowing the cross-appeal of the claimant, Peter Marcic, from a decision of Judge Richard Havery QC sitting in the Technology and Construction Court [2002] QB 929 at a hearing of preliminary issues on liability.

LORD NICHOLLS OF BIRKENHEAD said that sewage disposal and drainage had been the subject of statutory regulation for 500 years. The current legislation comprised the Water Industry Act 1991 which set out the powers and duties of both water undertakers and sewerage undertakers. The exercise of those functions was subject to supervision and control by the Director General of Water Services, the regulator of the water industry in England and Wales. Sections 18 to 22 of the Act made provision for enforcement orders, a means by which the Director General enforced the obligations of a sewerage undertaker including the statutory drainage obligation. The courts had consistently held that Parliament had intended that the enforcement mechanism laid down in the statutory scheme should be the only remedy for breach of the drainage obligation: see *Glossop v Heston and Isleworth Local Board* (1878) 12 Ch D 102; *Hesketh v Birmingham Corpn* [1924] 1 KB 260; *Smeaton v Ilford Corpn* [1954] 1 Ch 450. In the instant case the Court of Appeal had felt able to reach a different conclusion following recent developments in the common law of nuisance: see *Goldman v Hargrave* [1967] 1 AC 645; *Leakey v National Trust for Places of Historic Interest or Natural Beauty* [1980] QB 485. However, although those cases exemplified the standard of conduct expected today of an occupier of land towards his neighbour, the defendant was no ordinary occupier of land. The public sewers were vested in it pursuant to section 179 of the 1991 Act. The defendant's obligations regarding those sewers could not sensibly be considered without regard to the elaborate statutory scheme of which section 179 was only one part. The existence of a parallel common law right, whereby individual householders who suffered sewer flooding might themselves bring court proceedings when no enforcement order had been made, would effectively supplant the regulatory role that the Director General was intended to discharge when questions of sewer flooding arose. For that reason there was no room for a common law cause of action in nuisance. The claimant also claimed that, as a public authority within the meaning of section 6 of the Human Rights Act 1998, the defendant had acted in a way which was incompatible with his rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms. That raised the question of whether the statutory scheme as a whole was Convention-compliant. The scheme entrusted enforcement of the general drainage obligation to an

independent regulator who had regard to all the different interests involved and whose decisions were, of course, subject to an appropriately penetrating degree of judicial review by the courts. The scheme provided a remedy for persons in the claimant's unhappy position, but he had chosen not to avail himself of that remedy. His claim under the Human Rights Act 1998 was ill-founded.

LORD HOFFMANN and LORD HOPE OF CRAIGHEAD delivered concurring judgments. LORD STEYN and LORD SCOTT OF FOSCOTE agreed.

Appearances: *Jonathan Sumption QC, David Pannick QC and Michael Daiches* (Beale & Co for Thames Water Legal Services) for the defendant; *Stephen Hockman QC and Peter Harrison* (South & Co) for the claimant.

Reported by: B L Scully, barrister

EMPLOYMENT — *Unfair dismissal — Retirement — Employee holding unique position in company having contractual agreement to retire at 70 — Employee dismissed before 70 — Whether agreement to retire constituting “normal retirement age” — Whether employee precluded from complaining of unfair dismissal — Employment Rights Act 1996 (c 18), s109(1)(a)*

Wall v British Compressed Air Society

CA: *Simon Brown, Scott Baker LJJ and Evans Lombe J: 10 December 2003*

An employee who held a unique position in an undertaking could have a normal retiring age within the meaning of s 109(1)(a)(i) of the Employment Rights Act 1996.

The Court of Appeal so stated in a reserved judgment, dismissing by a majority (Evans Lombe J dissenting) the appeal of the British Compressed Air Society against a decision of the Employment Appeal Tribunal (Rimer J, Mr B V Fitzgerald and Ms B Switzer) on 7 February 2002 to allow the appeal of Mr R D Wall against a decision of an employment tribunal on a preliminary issue relating to his claim for unfair dismissal. The employment tribunal had held that on the agreed assumption that Mr Wall had a contractual agreement to retire aged 70 and that in his office as director-general he held a unique position, the agreement did not constitute the normal retirement age as set out in s 109(1)(a) of the Employment Rights Act 1996.

SIMON BROWN LJ said that the single critical issue for the appeal was: could an employee who held a unique position within an undertaking have a normal retiring age within the meaning of the 1996 Act? Two earlier decisions, *Age Concern Scotland v Hines* [1983] IRLR 477 and *Dormers Wells Infant School v*

Gill (unreported) 16 July 1999 (EAT), which mistakenly believed that the Court of Appeal had taken a similar approach to that in *Hines* in *Patel v Nagesan* [1995] ICR 988, answered no. The EAT in the present case, by contrast, answered in the affirmative and recognised that the point was of some importance. His Lordship agreed with the EAT that there was no good reason, still less any sound policy consideration, for concluding that the word “normal” in s 109(1)(a)(i) necessarily required the existence of one or more comparators. Nor did the word in the legislation compel it. One could as well ask of a unique employee as of a group of employees what, by reference to their contractual terms, was the age at which they could reasonably expect to be compelled to retire, the ultimate touchstone for determining their normal retiring age as explained in *Waite v Government Communications Headquarters* [1983] 2 AC 714, 723. If one asked whose “normal retiring age” had to be decided for the purpose of applying s 109(1)(a)(i), the answer clearly was: an employee holding the position held by the employee. Plainly the dismissed employee himself held that position. It was, surely, normal not to be compulsorily retired until one had reached one's contractual retirement age, ie the age stipulated for automatic retirement, alternatively the minimum age at which one could be obliged to retire.

It followed that in cases where an employee had a contractual retiring age, there was no need for comparisons to be made with other employees holding the same position before a normal retiring age could be established. The *Age Concern Scotland* and *Dormers Wells Infant School* cases had been wrongly decided. The EAT was right not to have followed them.

SCOTT BAKER LJ agreed.

EVANS LOMBE J gave a dissenting judgment.

Appearances: *Andrew Blake* (Hartley Linfoot & Whitlam, Sheffield) for the company; *Michael Duggan* (Darlingtons, Edgware) for Mr Wall.

Reported by: Alison Sylvester, barrister.

DAMAGES — *Contract — Breach — Mental distress — Claimant retaining solicitors in proceedings relating to children — Claimant fearing removal of children from jurisdiction by husband — Passport agency undertaking not to issue passports in children's names for 12 months — Solicitors failing to renew notice after 12 month period — Father obtaining passport and removing children — Whether solicitor negligent — Whether claimant entitled to damages for distress*

Hamilton Jones v David & Snape

ChD: *Neuberger J: 19 December 2003*

Where a mother successfully brought a claim in contract and tort against her former solicitors alleging that their negligence resulted in her losing custody of



her children she was entitled, pursuant to the contract, to damages for the mental distress she had suffered.

Neuberger J so held in the Chancery Division, Cardiff District Registry, allowing a claim brought by Pamela Hamilton Jones against David & Snape.

The claimant instructed the defendant solicitors in relation to Children Act 1989 proceedings. She told the defendant that she was concerned that her husband, Mr Bougossa, from whom she was separated, would take their daughter and twin sons to Tunisia. A county court issued orders stipulating that the children should live with the claimant and that Mr Bougossa was not to remove the children from the claimant's care. The defendant sent copies of the orders to the United Kingdom Passport Agency in February 1994 and asked them not to issue a passport in the name of Mr Bougossa or that of any of the children. The agency replied that the children's names had been entered onto its records and passport facilities would not be granted for 12 months. The agency added that thereafter it would delete the names from its records unless advised not to. In June 1996 Mr Bougossa obtained a passport to which he added the twins and removed them to Tunisia. The claimant commenced proceedings against the defendant on the ground that they had negligently failed to renew the notice to the passport agency even though they knew that the inhibition imposed on Mr Bougossa would lapse if they failed to serve a further notice. Alternatively, the claimant contended the defendant owed a duty to advise her if at any time they had reason to believe that the children's names were or might be removed from the agency's records. In those circumstances, the claimant sought, inter alia, general damages representing the mental distress she had suffered. Since proceedings were only issued in 2002 the claimant was time-barred from claiming damages for psychiatric harm.

NEUBERGER J said that the scope of the defendant's retainer included a duty to renew, or advise the renewal of, the entry of the twins onto the agency's register when it was due to expire. Moreover, the defendant's breach of that duty was causative of Mr Bougossa being able to remove, and removing, the twins to Tunisia. In *F v Wirral Metropolitan Borough Council* [1991] Fam 69 the Court of Appeal held that the law did not compensate a person for the loss of the company of a child. The only realistic ground on which that case could be said to be distinguishable was that the instant claim was based in contract (although it was also based in tort) whereas the Wirral case was concerned with claims in tort. Dicta of Ralph Gibson LJ in Wirral indicated that the court could award a claimant damages for deceit which resulted in the claimant losing custody of his or her child; accordingly, there was no reason in principle why such damages could not be awarded for breach of contract. If a head of claim, in a case such as the instant case, was

recoverable in contract, the fact that it might not normally be recoverable in tort should not prevent it from being recoverable in contract. Where a claim was founded in contract, the general rule was that the contract breaker could not be liable for damages for injured feelings or distress: see *Addis v Gramophone Co* [1909] AC 488. However, there was an exception to the rule in Addis's case where "the very object of a contract was to provide pleasure, relaxation, peace of mind or freedom from molestation": see *Watts v Morrow* [1991] 1 WLR 1421, 1445, per Bingham LJ. It was unrealistic to suggest that a significant part of the purpose of the claimant's instructing the defendant, and the defendant accepting the claimant's instructions, was not to protect the claimant's peace of mind in respect of the very event which happened, namely the removal of the twins from this country. In those circumstances, the principle developed in *Watts* and *Farley v Skinner* [2002] 2 AC 732 indicated that the claimant should be entitled to recover £20,000 by way of damages for mental distress.

Appearances: *Jeffrey Littman* (Charles, Crookes & Jones, Cardiff) for the claimant; *Edward Cross* (Morgan Cole, Cardiff) for the defendant.

Reported by: Nick Mercer, barrister

CRIME — *Evidence* — *Character* — *Defendant and co-accused charged and tried jointly for murder* — *Each relying on evidence of other's criminal record to allege propensity of other to commit offence* — *Judge directing jury to regard co-accused's bad character as relevant to credibility only* — *Whether misdirection* — *Whether co-accused's character relevant to fact in issue*

R v Randall [2003] UKHL 69

HL: Lord Bingham of Cornhill, Lord Steyn, Lord Hobhouse of Woodborough, Lord Scott of Foscote and Lord Rodger of Earlsferry: 18 December 2003

Where two defendants were jointly charged with a crime and each blamed the other for its commission one defendant could rely on the criminal propensity of the other so as to suggest that his version of the facts was the more probable.

The House of Lords so held when dismissing an appeal by the prosecutor from the Court of Appeal [2003] 2 Cr App R 442 which had allowed an appeal by the defendant, Edward Randall, quashing his conviction of manslaughter before Judge Colston QC and a jury at St Albans Crown Court and ordering a retrial.

The defendant and G were charged and tried jointly for murder, the prosecution claiming that either independently or together they had attacked and inflicted fatal injuries on the deceased. Each gave

evidence against the other and relied on the other's criminal record to show propensity to violence; the defendant had minor convictions unrelated to violence; G had serious convictions of burglary and had been party to violence. The judge directed the jury that G's bad character was relevant only to his credibility and that convictions and character were irrelevant to the likelihood of his having committed the offence. The jury acquitted G. The Court of Appeal, relying on *Lowery v The Queen* [1974] AC 85, concluded that, although in most cases the general principle in *R v Miller* (1952) 36 Cr App R 169 would apply, evidence of G's bad character was relevant to the issue who, as between himself and G, was more likely to have inflicted serious violence on the deceased.

LORD STEYN said that in *Miller's* case the judge had held that evidence of propensity was normally irrelevant; not that propensity never proved anything. The potential relevance of propensity to the issues in a case was recognised in criminal law and practice. The rationale of the rules relating to similar fact evidence, although not applicable here, illustrated that propensity to commit certain crimes might sometimes be relevant to the fact in issue. *Lowery's* case was high authority directly in point for the view that in the circumstances of the present case the propensity to violence of a co-accused might be relevant to the issues between the Crown and the accused tendering such evidence. It was so here and the Court of Appeal had stated the law correctly.

LORD BINGHAM OF CORNHILL, LORD HOBHOUSE OF WOODBOROUGH, LORD SCOTT OF FOSCOTE and LORD RODGER OF EARLSFERRY agreed with LORD STEYN.

Appearances: *Brian Escott-Cox* QC and *Martyn Bowyer* (Crown Prosecution Service, Headquarters) for the prosecutor; *Robert Marshall-Andrews* QC and *Siza Agha* (Faradays) for the defendant.

Reported by: Diana Procter, barrister

COMPETITION — *Restriction or distortion of competition — Agreement — Acquiescence — One party's unlawful variation of lawful dealership contract — Whether acquiescence by other party — EC Treaty, art 81(1) EC*

Volkswagen AG v Commission of the European Communities (Case T-208/01)

CFI: President of Chamber Tiili, Judges Mengozzi and Vilaras: 3 December 2003

Where a manufacturer and dealers had signed a lawful dealership agreement, the dealers could not be taken to have accepted in advance any subsequent unlawful variation of that agreement, and thereby to

acquiesce in a unilaterally imposed variation that was contrary to Community competition law. Accordingly, in such circumstances there was no anti-competitive "agreement".

The Fourth Chamber of the Court of First Instance of the European Communities so held when annulling a Decision of the Commission of the European Communities that the claimant had infringed art 81(1) EC.

By clause 2 of the standard form agreement between the claimant and its authorised dealers in a system of selective and exclusive distribution, the dealers undertook to "defend and promote in every way the interests of" and to "comply with ... instructions issued by" the claimant, and clause 8 provided that the claimant "will issue non-binding price recommendations concerning retail prices and discounts". After the claimant had sent a number of circulars and letters ("calls") to its German dealers exhorting them to grant no discounts or only limited ones to customers buying the VW Passat, the Commission after an investigation adopted the Decision at issue. The claimant brought an action for annulment of the Decision on the ground that the calls in question had not been the subject of any "agreement" within art 81(1) EC.

Art 81(1) provides: "The following shall be prohibited ...: all agreements between undertakings ... which have as their object or effect the prevention, restriction or distortion of competition ..."

THE COURT said that it was established case law that the essence of "agreement" within art 81(1) was a concurrence of wills between at least two parties, and that while genuinely unilateral conduct by one undertaking did not constitute an agreement, measures and practices which, although apparently imposed unilaterally, had at least the tacit acquiescence of other undertakings were contrary to art 81(1): see eg *Bayer AG v Commission of the European Communities (Case T-41/96)* [2001] ICR 735. In the present case, the evidence was that the dealers did not accede to the claimant's price-fixing calls, but the Commission submitted that a dealer who had signed an agreement which complied with competition law was deemed to have accepted in advance a later unlawful variation of that contract. That was not so. While it could be envisaged that a dealer could be regarded as having accepted in advance a later lawful variation where that was foreseen by the contract or was in accordance with commercial usage or legislation, that could never be the case with an unlawful variation. Similarly, clauses 2 and 8 of the dealership agreement could only be taken as referring to lawful means and instructions. The Commission had therefore not proved a concurrence of wills.

Reported by: Michael Hawkings, barrister

ADOPTION — *Negligence* — *Duty of care* — *Whether adoption agency or its staff owing common law duty of care to prospective adopters* — *Nature and extent of any such duty*

A and another v Essex County Council [2003] EWCA Civ 1848

CA: *Ward, Hale and Scott Baker LJJ: 17 December 2003*

There was in general no duty of care owed by an adoption agency or the staff whom it employed in relation to deciding what information was to be conveyed to prospective adopters.

The Court of Appeal so held in a reserved judgment dismissing both the appeal of the defendant, the adoption agency of Essex County Council, and the cross-appeal of the claimants, prospective adoptive parents, such appeals arising out of Buckley J's decision of 18 December 2002 in the High Court, in which he found that the defendant was liable to the claimants in negligence for failing to take reasonable steps to provide them with all relevant information about the two children they were to adopt or to take such steps to ensure that it was provided; but finding, too, that such liability extended only to injury, loss and damage sustained between the time when the children were placed with the claimants as prospective adopters and the date of the adoption orders. The adoption agency challenged the finding of liability; and the claimants cross-appealed as to the limitation placed upon the extent of such liability.

HALE LJ, giving the judgment of the court, said that it was not fair, just and reasonable to impose upon the professionals involved in compiling reports for adoption agencies a duty of care towards the prospective adopters; and there was in general no duty of care owed by an adoption agency or the staff whom it employed in relation to deciding what information was to be conveyed to prospective adopters, and only if they took a decision which no reasonable agency could take could there be liability. However, once the agency had decided, either in general or in particular, what information should be given, then a duty did arise to take reasonable care to ensure that such information was both given and received. On the facts, there was a breach of the latter, restricted duty, which had caused harm which, applying *Page v Smith* [1996] AC 155, included psychiatric damage; but in looking to the extent of such liability, the judge rightly found there to be a cut-off at the time when the adoption orders were made, by which time enough had happened to enable the claimants to be able to make a decision for themselves. Accordingly, the appeal was dismissed, although the reasoning now relied upon differed from that of the judge below; and the cross-appeal was also to be dismissed.

Appearances: *Edward Faulks* QC and *Andrew Warnock* (Barlow, Lyde & Gilbert) for the local authority; *Gavin Millar* QC and *Carole Parry-Jones* (Fisher Jones Greenwood, Colchester) for the claimants.

Reported by: Matthew Brotherton, barrister

Please visit our website at www.lawreports.co.uk for the latest on *The Daily Law Notes* which are updated every 24 hours.

You'll also be able to access The Industrial Cases Reports *Express* - free previews of The Industrial Cases Reports before they become available in print form

Suffering from stress: can an employer be liable?



Harriet Dutton

Stress - doubtless a major scourge of modern-day living - can affect any one of us in many aspects of our lives and, perhaps, most importantly, when at work.

There is, it has been said, no such thing as a pressure-free job, every one bringing with it its own tasks, responsibilities and problems. The many and frequent demands placed on us are an unavoidable part of working life. We are, of course, paid to work and to accept the corresponding pressures. In some circumstances pressure can be a good thing but not everybody's ability to cope is limitless. It is commonly known that workplace pressures that are excessive can be harmful and can lead to breakdown, depression and other psychiatric illness. They can damage a person's work performance and undermine the health of his employer's whole workforce.

Can there be any redress for a person becoming so stricken by stress that he finds himself unable to continue with his career? Recently the courts have had to consider a number of cases of claims for recompense against employers for injuries, both psychiatric and physical, resulting from failure to prevent work-related stress. But to apply the standard duty of care test - that an employer has to take

appropriate steps to safeguard his employees from harm - does little more than beg the question. Thus the courts have had to consider difficult issues of foreseeability and causation. How is the employer's duty to be defined? What is the appropriate standard of care? And in what circumstances is the test of foreseeability met?

The Court of Appeal endeavoured to provide answers to those questions, and more, in its judgment in *Hatton v Sutherland* [2002] ICR 613. The court was there deciding appeals brought by employers from decisions made in the county court in four separate actions by employees who were all seeking to recover damages for psychiatric injuries. The appeal court's decisions relied in part on a quotation from the judgment of Lord Justice Simon Brown in *Garrett v Camden London Borough Council* [2001] EWCA Civ 395, that unless there was "a real risk of breakdown which the claimant's employers ought reasonably to have foreseen and which they ought properly to have averted, there can be no liability". Applying that test the court concluded that out of the four individual cases in only one of them was the "Garrett" test met so as to justify the county court's award against an employer of damages of £157,000.

In that one successful case it was shown that the employer knew of the excessive demands being placed on the employee, that the employee had made formal complaints that she was suffering thus making the injury to her health foreseeable, and that it was not difficult to identify what the employer could have done to prevent the injury. Thus the county court judge had been entitled to conclude that the employer's failure to act caused the employee's breakdown for which he was to be held liable.

In July 2003 the judgment in the *Hatton* case was subjected to analysis by a differently constituted appeal court in the case of *Pratley v Surrey County Council* - a report of the case is soon to be published in the Industrial Cases Reports.

Mrs Pratley was a qualified nurse employed by a local council as a care manager responsible for the elderly. Lack of funding resulted in her workload becoming intolerable and she had complained about it to her immediate superior. But Mrs Pratley was a robust, conscientious and stoical person who was not accustomed to making a fuss. She never admitted to the hours of overtime she worked nor that her health was suffering as a consequence. But before going on her summer holiday she had again mentioned her work overload and had been promised that a system of "stacking" new cases would be introduced to alleviate her situation. Three weeks later she returned to work, found the promised system had not been put in place and suffered a breakdown. She left work and, unable to resume her employment, was eventually dismissed by the council. Her appeal against the

dismissal of her claim for damages for stress-related injury failed on the ground that the risk of her health breaking down was not reasonably foreseeable by her employer. Giving his judgment Lord Justice Mance said that the case raised questions as to the nature of the risk and the type of injury foreseeable. Was it a general risk of illness at some or any time? Or was it a risk of illness arising through continuing work overload over a longer future term, as distinct from any risk of immediate collapse which could include collapse following the disappointment of a "cherished idea".

The judge, in providing his answers, said a distinction had to be made between the risk of injury arising at some future date from a continuing work overload and the risk of a collapse in the short term arising from the employer's failure to implement the promised new system of allocating work. Thus, while expressing sympathy for Mrs Pratley, the judge held that her claim had to fail. For although she had established that there was a foreseeable risk, of which her employer should have been aware, of her health breaking down in the future if nothing was done to alleviate her situation, the injury she suffered - her collapse within days of returning from her holiday - was injury of a different type that was neither foreseen nor foreseeable by her employer.

The conclusion must be that, although possible, it is neither easy nor straightforward to bring a successful claim. The employee's task may be simplified if he can show his employer to be an unyielding slave master who shuts his eyes to the well being of an overworked staff. But even that may not suffice. For the employer may well be justified in assuming - unless made aware of some particular problem or vulnerability - that the employee is up to the normal pressures of his job.

An employer will only be liable if the employee can show a real risk of breakdown which the employer ought to have foreseen and should have averted. And so it will be for the employee to establish that there has been a breach by his employer of the duty to take reasonable care. What is reasonable has to depend on the foreseeability of harm, the magnitude of the risk of that harm occurring, the gravity of that harm and the cost and practicability of preventing it. Lastly, if, and only if, the employer's breach of duty can be shown to have made a material contribution in causing the injury then the employee's claim may be successful.

Harriet Dutton



If you would like a free sample copy of **The Weekly Law Reports**, please e-mail ClaireK@iclr.co.uk with your request and details of a postal address.

Fostering Relational Justice



Jessica Giles

The forming and maintaining of relationships is of vital importance to society for the proper functioning of that society and the law as we create and apply it can be used positively to foster and encourage the forming of relationships. Why are relationships so important?

Phillip Newell in his excellent book "*Shakespeare and the Human Mystery*"¹

explores what it means to be human. He describes how there is in each of us many different archetypes of the soul, which are the expressions of what is deepest in us, the imprint of different characteristics. He suggests that in order to experience life to the full we should seek to develop these characteristics. In his book Newell cleverly explores the nature of some of these archetypes as portrayed by Shakespearean characters. One of these is the lover and the friend. He writes that the act of truly loving renews what is at the heart of our being. "Deepest in our nature is the longing to give and receive in relationships. The extent to which we deny these longings is the extent to which we become unnatural."² So relationships are vital to us as individuals.

The importance of relationships for society has been recognised by the pioneering work of the Relationships Foundation. The Foundation, a charity, was set up in 1994 by the Jubilee Centre, a Christian think-tank, to help build relationships in public and private life. The Relationships Foundation is rooted in the Judeo-Christian tradition but seeks to work with people of all faiths and backgrounds to make society more relationships centred. Its agenda includes public services, family policy, health care, business and organisational practices and criminal justice. It has also set up an international wing (Concordis International) a groundbreaking conflict transformation initiative that has so far worked in South Africa, Rwanda and Sudan.

The theory behind the work of the Relationships Foundation is that relationships underpin almost every aspect of our lives. They influence our personal happiness, the efficient working of the economy, the effective delivery of public services and the solidarity of the social fabric.

The Foundation has developed a 'relationships auditing tool' that measures the quality of relationships

within and between organisations and highlights where improvement can be made. It first developed the tool for the Scottish prison service and piloted it in several prisons in Scotland and England to help improve relationships between prison officers and prisoners. The audit has since been used successfully in a variety of other organisations, in the private, public and not-for-profit sectors.

The Foundation has also developed a methodology that would enable government departments to carry out relational impact assessments for all proposed new legislation. (The government already routinely assesses the effect of legislative proposals on public spending, employment and the private sector).

The Foundation's first program was the Relational Justice Program which was started in 1991 in response to concern over the effectiveness of increasing the use of custodial sentences. Relational Justice offers an alternative policy framework for reforming the criminal justice system. It views crimes as an offence against people (the victim, the victims family, offenders family, and wider community) rather than as solely an offence against the state. The focus of the criminal justice system therefore becomes that of restoring the relationships damaged by crime.

The concept of Relational Justice is explored in the book '*Relational Justice: Repairing the Breach*'³, with a foreword by Lord Woolf. The book contains a number of contributions from academics and practitioners prominent in the field of criminal justice. It is an excellent and thought provoking read and includes the following: an explanation of the concept of relational justice; an examination of the link between levels of crime and the standards of relationships in society; a consideration of the inherent tension within the concept of Relational Justice in that justice can be seen as the mechanical application of rules whereas relationships involve human dynamics; an exploration of the meaning of justice; the importance of relational justice for today's criminal justice system; the work of mediation and reparation in understanding and responding to crime; the importance of justice being done locally within the community; the working of the Family Group Conference, a relational method used in New Zealand to deal with young offenders; the importance of keeping young offenders within their community wherever possible; the innocent and often forgotten victims of crime, the prisoners' children; the importance of building relationships in prison; the concept of justice within the Christian, Jewish and Muslim faiths and whether a consensus can be found between them; the wider implications of relational justice, looking beyond issues of crime and criminal justice.

¹Shakespeare and the Human Mystery, Phillip Newell, Azure, London, 2003

²Newell page 53

³Relational Justice: Repairing the Breach. Edited by Dr Jonathan Burnside and Nicola Baker: Waterside Press, Winchester, reprint due early 2004 with a new preface by Dr Michael Schluter and Dr Jonathan Burnside.

The Foundation followed its Relational Justice book with a booklet entitled '*Relational Justice: A reform Dynamic for Criminal Justice*'. This puts forward ten specific implications of a relational justice approach for public policy. These include 1) supporting parenting 2) rebuilding a sense of community 3) initiating local partnerships 4) involving victims 5) defending local justice 6) punishing in the community 7) maintaining the relational focus of probation 8) building community prisons 9) developing constructive prison regimes 10) commissioning further research.

The Foundation also publishes an eight page Relational Justice Bulletin three times a year. It promotes discussion of the ideas at the heart of Relational Justice and offers a forum to exchange best practice, connecting academics, policy-makers, practitioners and lay people interested or involved in justice issues, and is available free by post or email. (To receive a sample copy, contact Bénédicte Scholefield on 01223 341 277 or at b.scholefield@relationshipsfoundation.org.)

The fundamental concept of the Foundation's work is based on the importance of relationships and community in the functioning not only of our criminal justice system but also of society generally. This leads to the important issue of how one fosters community. Community tends to be fostered by religion, be it Christian, Jewish, Muslim or any other. Is the ultimate success of the Foundations work therefore dependent on government encouraging the practice of religion? Or can one enforce community and relationships as a good in itself independent of faith? Given the European dimensions to the United Kingdoms criminal justice policy (it is a matter of common interest upon which intergovernmental co-operation takes place between member states under the third pillar of the Treaty of Maastricht 1992 (in force November 1993), Title VI co-operation in respect of justice and home affairs, as amended by the Treaties of Amsterdam and Nice) and given the need for co-operation with other member states of the European Union in increasing areas of policy making what are the implications of the religious element of relational justice? Religion has become a very private matter in society generally and in France, for example, public religion is actively discouraged (the recent banning of the Muslim veil in schools is an example of this). Would this hinder the development of a community wide relational justice program? Relational Justice is a vital concept for our legal system and the implications of that concept within the soon to be enlarged European Union merit careful consideration.

To find out more about the work of the Foundation and its parent body the Jubilee Centre you can find them on www.relationshipsfoundation.org and www.jubilee-centre.org

Jessica Giles



Unique

In addition to **THE WEEKLY LAW REPORTS** the ICLR also publishes **THE LAW REPORTS**, the only series with the edited argument of counsel which must always be cited in preference, **THE STATUTES & PUBLIC GENERAL ACTS**, a companion to The Law Reports, **THE INDUSTRIAL CASES REPORTS**, covering cases heard in the House of Lords, the Court of Appeal, the Employment Appeal Tribunal and the European Court of Justice, and **THE CONSOLIDATED INDEX**, a cumulative index to cases reported by ICLR plus those in The All England Law Reports, Lloyd's Law Reports, Road Traffic Reports, Criminal Appeal Reports, Local Government Reports, Reports of Tax Cases and Simon's Tax Cases.

The ICLR prides itself on the legal knowledge, experience and dedication of its editorial department, who use new and advanced systems to track cases from hearing to publication, ensuring the speediest appearance of the reports whilst maintaining the high standards of publication for which it is renowned. All reporters are either barristers or solicitors and the ICLR has more reporters covering the courts than any other publisher ensuring the most comprehensive coverage of the cases that matter.

Visit www.lawreports.co.uk where you will also find our free on line law reporting services, *The Daily Law Notes* – summaries of reportable cases within 24 hours of judgment, and *The Industrial Cases Reports Express* – previews of forthcoming Industrial Cases Reports.

Architects of Justice...

The first in a new occasional series of articles examining the history of some of our most famous legal landmarks.

George Edmund Street RA PRIBA (1824-1881)



Paul Magrath

With its turrets and towers, its yearning spires, barbed pinnacles, yawning entrance and gargoyled defences, the Royal Courts of Justice in the Strand looks, architecturally, like a bit of everything from a medieval cathedral to a mad prince's fairytale castle. It is certainly eye-catching, if not always eye-pleasing. To its admirers it is "the last great

Gothic public building in London" and "one of the chief architectural pleasures of the Strand"; to its detractors, "a ludicrous Disney confection." It is also a kind of icon, regularly appearing in the news as the backdrop to some tale of litigious woe or criminal vindication.

Whatever one's personal view, the RCJ is undeniably a great building, impressive in all sorts of ways that are not immediately apparent to its many casual visitors. The "sense of entrance", as you pass through its arched portals, is terrific. The sensation of grandeur is confirmed when you find yourself in a vast cathedral-like hall, 250 feet long, with a vaulted ceiling over 80 feet high above its marble and mosaic floor. It has been called "one of the most impressive Gothic spaces in London" (John Julius Norwich, *The Architecture of Southern England*). You are meant to be humbled, if not before your God, at least before that tutelary deity, Justitia.

Suitably belittled, you make your way up one of the narrow stone stairways to the courts, which are ranged like side chapels along hidden aisles. Entering one of the original courtrooms, you find yourself humbled once again beneath high ceilings lit by narrow windows and a grimy lantern of daylight, with iron chandeliers offering a supplemental glow against the year-round gloom. The judge sits on a high "Bench", before whom solicitors, barristers and silken-tongued QCs are ranked in hierarchical pews, with the gawping public relegated to the rear.

What you may not be aware of is one of the building's most impressive architectural features: "Never the twain shall meet." Judges have their own VIP access



The Royal Courts of Justice as they look today

from a designated car park. Criminals brought in for appeals have another, from a different quadrangle where only prison transits park. Tried and trier reach the court through a network of isolated corridors, never crossing paths with each other, or with the public and lawyers who use the main entrance. The judge steps into court at the top, like a talk show guest (but without the big band fanfare). The prisoner is conjured up out of the bowels of the building like a freak show exhibit or stage devil. Only then can the ceremony begin.

The effect all this generates is not universally admired. "The visual impact of colossal empty spaces is overwhelming, justice being flattened in the process, and law lost in the maze of perspectives. If Dickens had chosen to illustrate *Bleak House* with a set of law courts designed specifically to embody the endless duration and complexity of *Jarndyce v Jarndyce*, he could have done no better than to choose this monstrosity." That comment, by the historian Paul Johnson, was directed towards the Palais de Justice in Brussels, designed (in a style that could be described as "freemasonic hyper-baroque") by Joseph Poelaert (1817-1879) and completed in 1883, but it could be applied as forcefully to the almost exactly

Lectures & Seminars

The ICLR would like to make available to Colleges of Law, and Student Law Societies, lectures on law reporting and its role within our legal system.

Talks can be given at Megarry House by our reporters, all of whom are qualified barristers or solicitors.

If you are interested in organising a talk please contact MarthaH@iclr.co.uk More information can be found on our website www.lawreports.co.uk



George Edmund Street After an Unknown Artist.
National Portrait Gallery, London.

contemporaneous RCJ complex.

If not Dickensian, there is certainly something Kafkaesque, Gormenghastly, even Orwellian, about the endless corridors, the nameless rooms and offices, identified only by a number, the proliferating staircases, lifts, iron gateways and crypt-like dead-ends to which one comes, time and again, after taking some unthinking wrong turn in the labyrinth. No wonder litigants in person go mad sometimes, seizing hostages and throwing roof slates at the judges' cars.

So who was the architect responsible for this pseudo-medieval judicatoria? George Edmund Street was born in Woodford in Essex, in June 1824. He was, appropriately enough, the son of a London solicitor, Thomas Street, and was educated to follow in his father's footsteps. But in 1840, with his late father hardly cold in his grave, he switched to his true vocation, becoming articled to a Winchester architect, Owen Browne Carter. Four years later he joined the practice of George Gilbert Scott, one of the leading lights of the Gothic revival in England. In 1849 Street set up his own office, accepting the usual mix of domestic and institutional commissions, and rapidly building up a major reputation. He eventually designed some 260 buildings, the vast majority of which were for ecclesiastical use.

His many church designs are notable for their visually imaginative use of traditional materials (iron, brick, stone) while taking advantage of modern technology to create wider internal spaces and more daring

perspectives than the narrow Gothic originals whose style he revived. His design for the reconstruction of St Paul's church in Herne Hill was much praised by Ruskin and his church of St John the Divine in Lambeth is described in *Pevsner, The Buildings of England (London 2: South)* as "one of the best Victorian churches in London."

Not everyone is quite so admiring. His innovative use of layered stone for the church of St Philip and James in Oxford was dismissed by one writer as a stodgy "muscular Christian" version of Gothic, and his controversial "restoration" of the medieval Christ Church cathedral in Dublin in the 1870s was seen by some as a "traumatic" alteration of its whole appearance.

Street was also an inspiring teacher, becoming Professor of Architecture at the Royal Academy in 1879, and an influential author, most notably for his books *Brick and Marble in the Middle Ages: Notes on a Tour in Northern Italy* (1855) and *Some Account of Gothic Architecture in Spain* (1865) which, as a brilliant draughtsman, he illustrated himself. In 1881 he was made President of the Royal Institute of British Architects.

In 1866 a competition was held to design a building to accommodate all the superior non-criminal courts of justice — in effect the Supreme Court, comprising the various divisions of the High Court and the civil Court of Appeal, which Parliament was shortly to create through the Judicature Act 1873. The 5.25 acre site, previously occupied by some particularly insalubrious slums, had been purchased by the Crown for £1.5m. At first the judges wanted Street to do the exterior only, leaving the interior to Charles Barry (who had been responsible, with Augustus Welby Pugin, for the Palace of Westminster), while a committee of lawyers preferred the designs of Alfred Waterhouse (who'd just done the Natural History Museum in London). But in 1868 Street was announced the sole winner. Work did not begin until 1874 and the completed building, using some 35m bricks, was finally opened by Queen Victoria in 1882.

Sadly, Street died (some say of nervous exhaustion) the previous year and it was his son who oversaw the completion of this epic monument to his vision, ambition and (whether you like it or not) genius. A statue by Henry Armstead in the Great Hall shows Street with one of the 3,000 drawings he made for the project, above a frieze depicting some of the hundreds of masons, carpenters and smiths employed to carry it out. Street now lies buried in the (suitably Gothic) nave of Westminster Abbey.

Paul Magrath



ICLR News & Events

The Weekly Law Reports National Mooting Competition 2003-4 Update...

The competition is heating up with a record number of teams taking part in the initial rounds. The original 32 teams have now been whittled down to four. Having successfully competed in the first three rounds, which took place all over the country, the remaining teams have reached the semi finals to be held in Gray's Inn in London on the evening of the 4th of March. These will be judged by The Rt Hon Lord Justice Dyson and the winners of each semi final will go on to take part in the Final to be held at The Law Society on the evening of April 1st.

They are competing for top prizes donated by Cavendish Publishing Ltd and Context Ltd as well as free subscriptions to titles from The Incorporated Council of Law Reporting for England & Wales, and the ICLR Shield.

The 2004-5 competition will be launched over the summer to coincide with the start of the 2004-5 Academic Year. Entry details will be made available as soon as they have been finalised and will be posted on our website at www.lawreports.co.uk/mooting

To inspire you here are two of the moot problems previously used in the competition.

Specimen Moot Problems

Cinders v Commissioner Of Police Of The Metropolis

Torch, a rich young man of liberal sympathies but unstable disposition, delivered a letter to a national newspaper which detailed his plan to stage what he described as a 'spectacular protest' outside the House of Commons against the government's policy on the Middle East. The letter was immediately passed to the Metropolitan Police who decided to take no action.

Two days later before a large crowd of sightseers gathered for the state opening of Parliament, Torch doused himself in petrol and set fire to his clothes. Despite the intervention of onlookers and emergency treatment in a nearby intensive care unit, he died subsequently of his injuries.

THE WEEKLY LAW REPORTS
Mooting Competition 2003/4

Organised and Sponsored by

ICLR
THE INCORPORATED COUNCIL OF LAW REPORTING
FOR ENGLAND & WALES

The Incorporated Council of Law Reporting for England & Wales
Megarry House
119 Chancery Lane
London WC2A 1PP
Publishers of

The Law Reports, The Weekly Law Reports, & The Industrial Cases Reports

with generous assistance and support from

CAVENDISHpublishing Context

Brian Cinders, Torch's father and the executor of his estate, sat by his son's bedside throughout the protracted efforts to save Torch. He now suffers from clinically diagnosed morbid depression that has disabled him from working. He brought this High Court action in negligence against the police authority claiming (i) damages on behalf of the estate and (ii) damages on his own behalf in respect of his psychiatric injuries.

Held by Justice J.

(i) The action on behalf of the state must fail. Apart from a limited category of special relationships, of which this was not one, nobody owes a duty to go to the aid of a stranger so as to save them from themselves. There was no proximity between the deceased and the defendant, whose responsibilities for public safety created no special duties of affirmative action. *Hill v Chief Constable of West Yorkshire* [1989] AC 53 applied, *Reeves v Commissioner of Police of the Metropolis* [2000] 1 AC 360 distinguished.

(ii) The personal claim for damages for psychiatric injuries must also fail. Even on the assumption that the 'no duty' finding in (i) above was wrong and that the

police as 'professional rescuers' do owe a duty to those known to be at risk of grave physical harm, such duty does not extend to mere secondary parties, such as the claimant, who suffer 'nervous shock'. Since the claimant could not have sued his son or the estate, see *Greatorex v Greatorex* [2000] 1 WLR 1970, it was not 'fair, just and reasonable' that he should be able to recover damages from more distant parties who did not create the hazard merely because they might have saved Torch by the exercise of reasonable care.

The claimant now appeals to the Court of Appeal.

Moot set by Kevin Williams, Sheffield Hallam University.

In the House of Lords

Dairyman v Techsanto Ltd

Due to the recent large scale effect of global warming, scientists have recorded a sudden and dramatic rise in the number of bugs that adversely affect all types of crop. Techsanto Ltd is a biotechnology company specialising in the development and production of pesticides and other chemical solvents that are commonly used by farmers to combat parasites.

Techsanto Ltd has for a long time been trying to invent a more efficient bug killer and now found itself on the brink of a new development in the industry. It has produced a special chemical component (PestControl Super X) that could be sprayed over a field of crops with a devastating effect. To work out the right quantity of the chemical needed per gallon of water the company has been engaged in numerous experiments spraying the substance on to its own test fields from a low altitude plane. Mr Dairyman's farm lies in direct proximity to Techsanto's land and has mainly been used for milk production. He often allowed his cows to graze on the field adjacent to the area where the experiments were being conducted by Techsanto Ltd.

After a while, it emerged that Mr Dairyman's cows could no longer produce milk with high fat content, which was essential for his contract with a firm of cheese makers that specialise in marketing a particular brand of cheese. As a result he has been unable to supply them with milk that would meet their refined quality standards. An independent examination revealed that the cause of the decrease in the intensity of the cows' output of milk fat was the presence of small quantities of PestControl Super X in the grass that they had been fed. Techsanto Ltd accepts that the chemical came from their land but denies any liability towards Mr Dairyman.

The Court of Appeal upheld the judgment of Acidous J at first instance in agreeing that:

1. The use of land by Techsanto Ltd was not, according to the rule in *Rylands v Fletcher*, unnatural to make them liable to the appellant under his claim.

2. The loss in question can only be classified as pure economic loss since the milk itself is still drinkable and continues to be aesthetically pleasing to consumers. Furthermore, irrespective of the actual affect of the chemical component on the milk, it can still be processed for other types of dairy produce and is not dangerous for human or animal consumption.

Mr Dairyman now appeals to the House of Lords on both grounds.

Set by The London School of Economics

In addition to running The Weekly Law Reports National Mooting Competition The Incorporated Council of Law Reporting is pleased to be able to provide sponsorship for Mooting Competitions at Universities and Law Colleges. The ICLR can offer yearly subscriptions to either The Weekly Law Reports or The Industrial Cases Reports to the winners of your Moot. If you are interested in taking advantage of this sponsorship offer please contact The ICLR at mooting@iclr.co.uk

In certain areas The ICLR may be able to provide a judge for your Moot, and we are happy to give assistance in other ways if it should be appropriate.

If you would like to publicise your Moot via our website or Student Newsletter please send details (no more than 500 words) via e-mail to [The ICLR at mooting@iclr.co.uk](mailto:mooting@iclr.co.uk) We will also publish your Moot Problem, but please remember to include the name(s) of the Problem Setter(s) and the name of the Institution to which they are affiliated.

The Incorporated Council of Law Reporting for England & Wales 2003 Roundup

2003 was a fantastic year for ICLR. While maintaining the highest levels of accuracy The Law Reports, The Weekly Law Reports and The Industrial Cases Reports improved dramatically in coverage of cases and speed of reporting.

The Weekly Law Reports covered a record 366 cases



in 2003, 100 more than were covered by our nearest weekly competitor. In addition The Weekly Law Reports averaged only 129 days from judgment to publication against 142.

The Law Reports improved in turn with cases from The Weekly Law Reports going on faster than ever before to receive a fuller treatment in The Law Reports.

The Industrial Cases Reports also improved with a record coverage of 114 cases in 14 parts and the time between judgment and publication was cut from 208 days to 166.

This was all achieved while maintaining low, not-for-profit, prices. ICLR aim to improve on this record performance throughout 2004 to ensure we maintain our position at the head of the field of Law Reporting, as publisher of the official and most authoritative law reports in the UK.

The 2004 Annual ICLR Lecture

Details of the third in our series of annual lectures have now been finalised. Following on from successful lectures in 2002 by Professor Brian Simpson and 2003 by Sir Sydney Kentridge QC the 2004 lecture will be given by Mr Tom Winsor the Rail Regulator. Entitled "*The relationship between the Government and the private sector: Winsor v Bloom in context*" it will concern the case of *Winsor v Bloom In re Railtrack plc (in railway administration)* [2002] EWCA Civ 955

Tom Winsor attended the University of Edinburgh, where he graduated with a LL.B. (Scots Law) in 1979. In the course of his legal career he specialised first in UK and international oil and gas law, and later in electricity, regulation, railways and public law. From 1991, as a partner of Denton Hall, London, he was responsible for the legal work on the design and implementation of the regulatory regime for the electricity industry in Northern Ireland.

From 1993 he was seconded to the Office of the Rail Regulator as Chief Legal Adviser and later as General Counsel to the first Rail Regulator. He returned to his partnership at Denton Hall in 1995 as head of the railways department, part of the firm's energy and infrastructure practice.

He was appointed Rail Regulator and International Rail Regulator for five years with effect from 5 July 1999. The Rail Regulator is an independent statutory office holder appointed by Government under the Railways Act 1993. He heads the ORR, a small, non-ministerial government department staffed by civil servants and is assisted by a board of executive and

non-executive directors.

The Regulator aims, through independent, fair and effective regulation, to achieve the continuous improvement of a safe, well-maintained and efficient railway which meets the needs of its users and to facilitate investment in capacity to satisfy the demands of growth in passenger and freight traffic at the time it is needed.

The Regulator's principal function is to regulate Network Rail's stewardship of the national rail network infrastructure (track, signalling, bridges, tunnels, stations and depots). The Regulator receives general guidance from the Secretary of State for Transport under section 4(5)(a) of the Railways Act 1993. The Secretary of State sets the overall policy for Britain's railways, setting it within a wider transport context.

The lecture will be held in Middle Temple Hall, London, from 18:00 on the evening of Monday April 5th and will be followed by a short drinks reception. Entrance is by ticket only and numbers are strictly limited. It is free of charge for all law students, pupils and trainees, all others £5.00.

Further details can be found on page 22 of this newsletter. To find out more or to request tickets email MarthaH@iclr.co.uk or call on 020 7242 6471.

The Incorporated Council of Law Reporting Student Quiz



First Prize

Free Subscription to The Weekly Law Reports 2004.

Second Prize

Weekly Law Reports Computer Bag, Clock and Chrome Pen.

20 Runners up will each receive an ICLR pen.

Please send your answers, along with your name and address details to;

**Martha Hawting, Student Newsletter Competition,
The Incorporated Council of Law Reporting,
Megarry House, 119 Chancery Lane, London,
WC2A 1PP**

Answers must be received by Friday 16 April 2004 when the draw will take place. The Judge's decision is final and no correspondence will be entered into. Answers will be printed in the next issue.

Spring 2004 Quiz Questions

1. Which case overruled Caldwell in terms that the word “reckless” under s.1 of the Criminal Damage Act 1971 should be assessed subjectively?
2. What was the name of the first woman solicitor admitted in 1922?
3. On which date did The Employment Equality (Sexual Orientation) Regulations 2003 (SI 2003/1661) come into force?
4. Who is undertaking the full-scale review of the regulation of legal services?
5. Which QC’s new book is entitled “The Home Lawyer: a family guide to Lawyers and the Law”?
6. On which date did The Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660) come into force?
7. Dame Brenda Hale is the first woman to be appointed to the Appellate Committee of the House of Lords, but which Law Lord does she succeed?
8. In which year was the Law Society Gazette founded?
9. On the 14th October 2003 Mohammed Dica was convicted on two counts of unlawfully and maliciously inflicting biological grievous bodily harm, contrary to s.20 of the Offences Against the Person Act 1861. What sentence did he receive?
10. Which judge is the current Chairman of the Judicial Studies Board?
11. Who wrote the book “The Discipline of Law”?
12. Who succeeded John Wadham as the director of Liberty?
13. With relation to child and family law, the acronym “CAFCASS” stands for what?
14. In which book would the Chancery case of Jarndyce and Jarndyce be found?
15. In the new series of “Judge John Deed”, the presider is Sir Monty Everard - what was the name of Sir Monty’s predecessor?

Questions set by Darren Sylvester, barrister

Answers to the Autumn 2003 Quiz

1. Which firm of solicitors only scored 55 points against members of the clergy on University Challenge?
Messrs Addleshaw Goddard
2. Who is the Deputy Chief Justice?
Sir Igor Judge (Lord Justice Judge)
3. In which Inn would the Supreme Court Costs Office (SCCO) be found?
Clifford’s Inn
4. Who will supersede Sir David Calvert-Smith Q.C. as Director for Public Prosecutions?
Ken Macdonald Q.C.
5. One solicitor took silk in 2003, what was his name?
Geoffrey Williams
6. In the hierarchy of judicial order, Sir Robert Andrew Morritt CVO holds which position?
The Vice-Chancellor
7. Which barrister, and later Lord Chancellor, when informed by a judge “I have read your case, Mr _____, and I am no wiser now than when I started” replied, “Probably not, my Lord, but far better informed”.?
F.E. Smith, later Lord Birkenhead
8. In which year was the Law Commission established?
1965
9. Which judge, in his 1992 book, is quoted to have said: “It would be wrong to condemn all solicitors as I have obviously not met all 56,000 in England and Wales”.?
Judge James Pickles, Judge for Yourself
10. The 13th October 2003 will see the Land Registration Act 1925 repealed – but what is the name and year of the Act that will take its place?
Land Registration Act 2002
11. On the 1st April 2001 the community sentence known as the “probation order” was re-named – what was it re-named to?
Community Rehabilitation Order (as amended by the Criminal Justice and Court Services Act 2000, s.43)
12. An appeal from the Solicitors’ Disciplinary Tribunal would go to which court?
The Queen’s Bench Division of the High Court



The Weekly Law Reports

page 20

13. The full title of the Review Body which makes, amongst other things, recommendations about the pay of the judiciary, is known as what?

Senior Salaries Review Body (SSRB)

14. Whose autobiography is entitled "BENCHMARK - Life, Laughter and the Law"?

Sir Oliver Popplewell's

15. What is the name of the case which created the proposition whereby acceptance is deemed to have taken place when a letter of acceptance is posted by the offeree?

Adams v. Lindsell (1818) 1 B & Ald 681

Darren Sylvester, barrister

The winner of the ICLR Autumn 2003 student quiz was R W Stephens of The Open University and The College of Law. Second Prize went to Paulinus Barnes.

Useful Website Addresses

www.lawreports.co.uk

includes The Daily Law Notes and The Industrial Cases Reports Express

www.justis.com

Context Ltd. Electronic legal publishing including The Weekly Law Reports

www.cavendishpublishing.com

Specialist Student Law Publisher

www.lawsoc.org.uk

The Law Society

www.sahca.org

The Solicitors' Association of Higher Court Advocates

www.mootingnet.org.uk

Online Mooting Information

www.probonogroup.org.uk

Solicitors Pro Bono Group

www.smithbernal.com

Transcripts

www.venables.co.uk

Legal Resources in the UK and Ireland

www.ukc.ac.uk/library/lawlinks

legal information on the internet

www.bailii.org

British and Irish Legal Information Institute

www.courtservice.gov.uk

The Court Service

www.open.gov.uk

A-Z index for Government departments

www.echr.coe.int

European Court of Human Rights

www.parliament.the-stationery-office.co.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm

The text of decisions in the House of Lords

www.thetimes.co.uk

Times Law Reports

www.lawstudents.org.uk

aimed at helping people access relevant legal links and information

ICLR
THE INCORPORATED COUNCIL OF LAW REPORTING
FOR ENGLAND & WALES

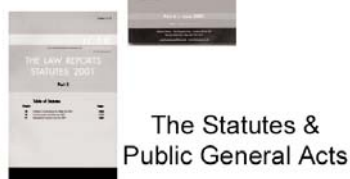


The Weekly Law Reports

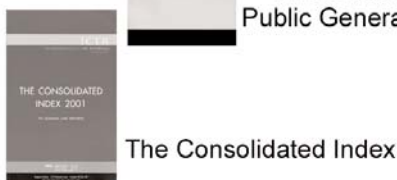


The Law Reports

The Industrial Cases Reports



The Statutes & Public General Acts



The Consolidated Index



Bound Volumes of The Law Reports

News and Views... News and Views... News and Views



This is the section of the newsletter in which we would like to provide a forum for your letters and views on all aspects of life as student lawyers and on The ICLR Student Newsletter. If you have any news of competitions where you study, or would like to share your views on any recent developments in law please feel free to write in to us at;

The ICLR Student Newsletter
Megarry House
119 Chancery Lane
London WC2A 1PP
or email
MarthaH@iclr.co.uk



All articles and letters printed will receive a free student pack.

It is my pleasure to be given an opportunity to air my view in this section of the ICLR Student Newsletter, thank you. I am a law student studying in the university of Benin, which is one of the best in Nigeria. I would like to let you know that everything the ICLR is doing is appreciated by the few of us who are privilege to know about the council. I hereby on behalf of millions of law students that have gained directly or indirectly from your reports but due to one reason or the other could not show appreciation say a big 'thank you'.

Considering the fact that Nigeria, as a former British colony, with similar legal system by virtue of the statutes of general application that were in force on 1 January 1900 that received British laws into Nigeria, I would like to ask two favours. With due respect the first favour is for the council to extend The Student Quiz Competition to students abroad as well as within the UK so as to help give interested students like me vast knowledge of the law?

Secondly I was wondering if there is any way interested students like me could take part in the Mooting competition? I would be grateful though it will be an arduous task but nothing is impossible with strong will and determination thanks for your understanding

Rotimi Obasuyi

On your first point the student quiz competition is open to all students whether from within the UK or abroad. On the second I am afraid, as the Mooting competition takes place over the course of the academic year and requires participants to be prepared to travel to venues at the host institutions, I do not think it would be possible to make it international. Perhaps if we printed some

of the problems submitted this would be of use for others to be able to gain practice of mooting? See page 16

Let me commence by thanking you first for producing such a great law report magazine, which is of so much benefit to us students and is provided free for all of us. It is the first time I have read it and will continue to do so, since it is very educational.



I wanted to share some information with everyone that I would appreciate being printed in your publication. In 'The Student Law Review 2003' vol 4, by Cavendish Publishing, there was an article about disability discrimination: the theories and the reality. It discusses that although we have a disability discrimination act, even those who are involved in the legal process are discriminating against the disabled. In august 2003, the RNID achieved a land mark result: where the Lord Chancellor's department admitted liability in a disability discrimination claim bought by a deaf man.

I am a deaf student, at the University of Essex studying for law llb. Unfortunately, coming from an uneducated background I was never aware of my situation and my rights. My parents simply took me to the Doctors, received medical help (hearing aids, etc) but were never told or asked about any of my rights.

However, now that I am at Essex, the student support team have asked me about my hearing situation, investigated my rights and informed me that I am, and have long been, entitled to various benefits. Had my parents been educated or informed about these benefits by the NHS I would not have suffered all these years without various pieces of equipment.

I feel there should be a rule incorporated into the Disability Act stating that when a patient is admitted to a health institution suffering from some form of impairment they should automatically be sent for a test for eligibility so that they may be made aware if they are disabled according to the law. This will ensure that those entitled to the benefits receive them rather than the current situation where the patients must themselves apply to the government and then be kept waiting.

I look forward to reading more of your publications.

Best Regards
Samia Khanam





*The Chairman and Members of
The Incorporated Council of Law Reporting
For England & Wales
have pleasure in presenting
The 2004 ICLR annual lecture
in conjunction with
THE LAW REPORTS & THE WEEKLY LAW REPORTS*

“The relationship between the Government and the private sector: Winsor v Bloom in context”

A lecture by Mr Tom Winsor on the case of
Winsor v Bloom In re Railtrack plc (in railway administration) [2002] EWCA Civ 955

Monday April 5th 2004

Lecture 18:00 - 19:00

Drinks 19:00 – 19:30

Middle Temple Hall, Middle Temple Lane, London EC4Y 9AT

**FREE for all law students, pupils and trainees
all others £5.00**

Entrance is by ticket only and numbers are strictly limited. Cheques should be made payable to
the “Council of Law Reporting”.

Please enclose a stamped addressed envelope for your tickets.

Tickets are available from;

**The Incorporated Council of Law Reporting
For England and Wales
Megarry House
119 Chancery Lane
London, WC2A 1PP**

**For more information contact Martha Hawting on
020 7242 6471, MarthaH@iclr.co.uk**

Great Savings on Subscriptions to The Industrial Cases Reports 2004

Students, trainee solicitors, pupil barristers and law lecturers are entitled to reductions of 50% or more on subscriptions to The Industrial Cases Reports.

For law students, trainee solicitors & pupil barristers

£80

(Saving £240)

For law lecturers

£160

(Saving £160)



The definitive series on employment and industrial relations law.

If you would like to take out a 2004 subscription at these great rates please mark your selection below, fill in the application form and return it with a cheque for the correct amount made out to the 'Council of Law Reporting', Megarry House, 119 Chancery Lane, London WC2A 1PP. Alternatively we can accept payment by Mastercard/Visa/Switch/Amex:-

I would like to take out a 2004 subscription to The Industrial Cases Reports at £80/£160

NAME: ADDRESS:

POSTCODE: TELEPHONE:

E-MAIL:

UNIVERSITY/COLLEGE

MASTERCARD/VISA/SWITCH/AMEXCARD (please circle)

CARD NUMBER SECURITY NUMBER

EXPIRY DATE ISSUE NUMBER (SWITCH ONLY)

ICLR

THE INCORPORATED COUNCIL OF LAW REPORTING

FOR ENGLAND & WALES

The Weekly Law Reports

The most comprehensive coverage of the cases that matter

With FREE access to The Weekly Law Reports Online!

Special Offer for Law Students & Newly Qualified Subscribers.
In addition to paper based reports at up to 50% off the full price, subscribers at the reduced rate will be offered the bonus of **FREE** access throughout 2004 to the electronic version.

£85 UK/ £93 Overseas (Saving at least £255)



More cases than any other series - over 300 every year

Fastest coverage of cases

Cited in preference over other series

Greater accuracy

Unique cumulative index to all leading series of law reports

Lower 'not for profit' prices

If you would like to take advantage of this WLR Offer which combines the usual paper based reports with FREE access throughout 2004 to the electronic version of The Weekly Law Reports please fill in the application form below and return it with a cheque for £85 UK or £93 Overseas to the 'Council of Law Reporting', Megarry House, 119 Chancery Lane, London WC2A 1PP and complete the following address details.

Alternatively we can accept payment by Mastercard/Visa/Switch/Amex:-

THE WEEKLY LAW REPORTS 2004 OFFER. NAME:

ADDRESS:

.....POSTCODE:

TELEPHONE:E-MAIL:

UNIVERSITY/COLLEGE

MASTERCARD/VISA/SWITCH/AMEXCARD (please circle)

CARD NUMBERSECURITY NUMBER

EXPIRY DATEISSUE NUMBER (SWITCH ONLY)