

PALGRAVE MACMILLAN
LAW MASTERS

**NINTH
EDITION**

LEGAL METHOD

IAN McLEOD



palgrave macmillan law masters

legal method

Series editor: Marise Cremona

Business Law Stephen Judge

Company Law Janet Dine and Marios Koutsias

Constitutional and Administrative Law John Alder

Contract Law Ewan McKendrick

Criminal Law Jonathan Herring

Employment Law Deborah J. Lockton

Evidence Raymond Emson

Family Law Kate Standley and Paula Davies

Intellectual Property Law Tina Hart, Simon Clark and Linda Fazzani

Land Law Mark Davys

Landlord and Tenant Law Margaret Wilkie, Peter Luxton and Desmond Kilcoyne

Legal Method Ian McLeod

Legal Theory Ian McLeod

Medical Law Jo Samanta and Ash Samanta

Sports Law Mark James

Torts Alastair Mullis and Ken Oliphant

Trusts Law Charlie Webb and Tim Akkouch

If you would like to comment on this book, or on the series generally, please write to lawfeedback@palgrave.com.

palgrave macmillan law masters

legal method

ian mcleod

Visiting Professor of Law
Stirling Law School
University of Stirling

Ninth edition

palgrave
macmillan



© Ian McLeod 1993, 1996, 1999, 2002, 2005, 2007, 2009, 2011 and 2013

All rights reserved. No reproduction, copy or transmission of this publication may be made without written permission.

No portion of this publication may be reproduced, copied or transmitted save with written permission or in accordance with the provisions of the Copyright, Designs and Patents Act 1988, or under the terms of any licence permitting limited copying issued by the Copyright Licensing Agency, Saffron House, 6–10 Kirby Street, London EC1N 8TS.

Any person who does any unauthorized act in relation to this publication may be liable to criminal prosecution and civil claims for damages.

The author has asserted his right to be identified as the author of this work in accordance with the Copyright, Designs and Patents Act 1988.

This edition first published 2013 by PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

Palgrave® and Macmillan® are registered trademarks in the United States, the United Kingdom, Europe and other countries.

ISBN 978-1-137-02768-9 ISBN 978-1-137-12270-4 (eBook)

DOI 10.1007/978-1-137-12270-4

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

10 9 8 7 6 5 4 3 2 1
19 18 17 16 15 14 13 12 11 10

Contents

<i>Preface</i>	xi
<i>Table of cases</i>	xiii
<i>Acknowledgments</i>	xxv

Part I Ideas and institutions 1

1	An introduction to law and legal reasoning	3
1.1	Introduction	3
1.2	Legal method as a creative process	3
1.3	The form of legal reasoning	10
1.4	Propositions and processes: truth and validity	12
1.5	Methods of reasoning: <i>induction</i> , <i>deduction</i> and <i>analogy</i>	13
1.6	Legal practice and legal scholarship	16
1.7	Law and justice	18
1.8	The political element in judicial decision-making	23
2	The classifications of English law	26
2.1	Introduction	26
2.2	The possible meanings of <i>common law</i>	26
2.3	The possible meanings of <i>civil law</i>	32
2.4	Public law and private law	34
2.5	Substantive law and procedural law	35
2.6	Classification by subject matter	36
2.7	The distinction between matters of fact and matters of law	36
3	The jurisdictions of the principal English courts	43
3.1	Introduction	43
3.2	The hierarchy of the courts as a diagram	44
3.3	Magistrates' courts	44
3.4	The Crown Court	45
3.5	County Courts	47
3.6	The High Court	48
3.7	The Court of Appeal	52
3.8	The Judicial Committee of the Privy Council	54
3.9	The Supreme Court	55
3.10	Tribunals and inquiries	58
3.11	Rights of appeal and permission to appeal	59

4	The constitutional context of legal method	61
4.1	Introduction	61
4.2	The rule of law	61
4.3	The legislative supremacy of Parliament	64
4.4	The separation of powers	71
4.5	Balancing the constitutional doctrines	73
5	European Union law and English law	75
5.1	Introduction	75
5.2	From the European <i>Communities</i> to the European <i>Union</i>	75
5.3	The principal European Union institutions	77
5.4	The Enforceability of European Union Law in the United Kingdom	79
5.5	Indirect effect of European Union law	86
5.6	European Union law and national sovereignty	86
6	The protection of human rights and fundamental freedoms	90
6.1	Introduction	90
6.2	The English legal system and the protection of human rights before the Human Rights Act 1998	90
6.3	The European Convention for the Protection of Human Rights and Fundamental Freedoms	92
6.4	The Human Rights Act 1998	99
7	Finding, citing and using the sources of law	106
7.1	Introduction	106
7.2	Conventions in case names	106
7.3	Textbooks and periodicals	107
7.4	Law reports	111
7.5	Statutes	118
7.6	European Union law	119
7.7	Reports of the European Court of Human Rights	120
7.8	Miscellaneous sources	120
7.9	Keeping up-to-date	120

Part II

Case-law and precedent

123

8	An introduction to the doctrine of binding precedent	125
8.1	Introduction	125
8.2	Bindingness, flexibility and the rule of law	125
8.3	A wide view of precedent	126
8.4	A narrow view of precedent: the doctrine of <i>stare decisis</i>	126
8.5	The distinction between binding precedent and <i>res judicata</i>	126
8.6	Retrospectivity and prospectivity in the operation of binding precedent	128
8.7	Are the decisions of the courts actually the law or merely evidence of the law?	139

9	<i>Ratio decidendi</i> and <i>obiter dictum</i>	142
9.1	Introduction	142
9.2	The concept of <i>ratio decidendi</i>	142
9.3	Techniques used in handling <i>ratios</i>	149
9.4	The concept of <i>obiter dictum</i>	153
10	Vertical and horizontal dimensions of precedent	156
10.1	Introduction	156
10.2	The vertical dimension of precedent	156
10.3	The horizontal dimension of precedent	161
10.4	Precedent in relation to the Judicial Committee of the Privy Council	161
11	Does the Supreme Court bind itself?	164
11.1	Introduction	164
11.2	The historical perspective	164
11.3	The position after 1966	165
11.4	Is departure from previous decisions predictable?	181
11.5	Departure from previous decisions without relying on the Practice Statement	182
12	Does the Court of Appeal bind itself?	184
12.1	Introduction	184
12.2	The position in civil cases	184
12.3	The position in criminal cases	187
12.4	Should the Court of Appeal and the Supreme Court apply the same principles?	191
12.5	The relevance of the leapfrog procedure	194
13	Does the High Court bind itself?	196
13.1	Introduction	196
13.2	The first instance jurisdiction	196
13.3	The appellate jurisdiction	196
13.4	The supervisory jurisdiction	197
14	Arguments for and against judicial law-making	199
14.1	Introduction	199
14.2	Perceived strengths of judicial law-making	199
14.3	Perceived weaknesses of judicial law-making	201
14.4	Constitutional constraints on judicial law-making	208
14.5	Conclusion	212
15	Precedent and principle in the European Court of Justice	213
15.1	Introduction	213
15.2	Reading European Court of Justice reports	213
15.3	Precedent in the European Court of Justice	214
15.4	Principles of European Union law	216
15.5	Subsidiarity	221

15.6	To what extent does the Court of Justice differ in practical terms from the English courts with regard to precedent?	222
------	--	-----

Part III **Legislation and legislative interpretation** **225**

16	An introduction to statute law and statutory interpretation	227
16.1	Introduction	227
16.2	Drafting, interpretation and communication	227
16.3	The classification of Acts of Parliament	228
16.4	Precedent in relation to decisions on statutory interpretation	229
17	Statutory drafting	233
17.1	Introduction	233
17.2	The modern Office of the Parliamentary Counsel	235
17.3	The drafting process	239
17.4	Consolidation and statute law revision	242
17.5	<i>Tilling's Rules</i> for the drafting of legislation	243
18	Plain meanings, mischiefs, purposes and legislative intention	246
18.1	Introduction	246
18.2	Simple literalism in practice	248
18.3	The mischief rule	252
18.4	The purposive approach to interpretation	254
18.5	Legislative intention	259
18.6	The problem of errors and statutory nonsense	261
18.7	Are there any 'rules' of interpretation?	263
19	Modern statutory interpretation in practice	265
19.1	Introduction	265
19.2	The basic rule of interpretation	265
19.3	Ordinary and technical meanings	266
19.4	Analysing the context: matters of language	267
19.5	Analysing the context: matters of law	271
19.6	Presumptions	285
19.7	The Interpretative Obligation under s. 3, Human Rights Act 1998	302
19.8	Change of meaning with the passage of time	305
20	Legislative interpretation in the European Court of Justice	315
20.1	Introduction	315
20.2	Characteristics of European Union law which are relevant to its interpretation	315
20.3	The teleological approach to interpretation	317
20.4	Literal meaning, clear meaning and legal meaning	319
20.5	Retrospectivity	320
	Appendices	
1	Law reports and journals (some useful references)	322
2	Extracts from the Interpretation Act 1978	325

3	Articles 2–12 and 14 of, and Articles 1–3 of the First Protocol and Articles 1 & 2 of the Sixth Protocol to, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950	329
	Selected further reading	335
	Index	337

Preface

This book continues to provide an introduction to the techniques of handling legal sources. Some comment on the nature of introductions may therefore be useful.

Introductions may appear to be simple but they must not be simplistic: 'With all its surface simplicity, an introduction must cut as deep as its author has wit and strength to see the way. It must cut for that deepest simplicity which is true meaning'. (Karl Llewellyn, *The Bramble Bush*, revised edn, 1950, p. 7.) One important consequence of this is that I have been unable to avoid the fact that legal method is open-ended, which means that on many occasions I have been unable to offer the comfort of neat conclusions and reliable rules.

Except when writing about the European Union, in which context it often seems most natural to think in terms of 'Britain' or the 'United Kingdom', I have generally written in terms of 'England' and 'English' law and practice. In doing so, I have intended to include 'Wales' and 'Welsh'. Some of what I have written may also apply in Scotland and Northern Ireland, but how much and to what extent is beyond my knowledge. It follows that readers in those jurisdictions should proceed with caution.

I continue to agree with Lord Goodman (the late senior partner of Messrs Goodman Derrick & Co, the London solicitors) that 'a lawyer who is only a lawyer isn't much of a lawyer', and therefore I continue to urge students to read widely. In the much-quoted words of Sir Walter Scott, 'a lawyer without history or literature is a mechanic, a mere working mason: if he possesses some knowledge of these, he may venture to call himself an architect' (*Guy Mannering*). Furthermore, possession of a well-furnished mind may minimize the truth of the old gibe that 'the study of law sharpens the mind by narrowing it'.

As always, it has been a struggle to update and improve the text without increasing the length of the book to any significant extent. All I can say is that I have done my best, bearing in mind the simple fact that neither students nor their teachers have any more time at their disposal now than they had when the first edition of this book appeared in 1993. (Indeed, the extent to which many students have to take on paid work probably means that they have less time now than their predecessors had then.)

I remain indebted to the many friends, colleagues and students who have, in varying ways, had their impact on this book. In general terms, it would be impossible to name them all and invidious to name only some. However, I feel bound to express particular thanks to Baroness Hale of Richmond for kindly providing me with a copy of the text of her lecture on *Leadership in the Law*:

What is a Supreme Court For? to which I refer in Chapter 1. The University of Durham has very kindly allowed me to use its library, for which I am truly grateful. I am also grateful to Ian Kingston for whom this is the nineteenth time in sixteen years that he has copy-edited and type-set one of my books. Finally, and above all, I am indebted to my wife, Jacqui, who is always willing to function as an editorial assistant and to read drafts and proofs as occasion requires. Her patient good humour continues to amaze me.

I have tried to be up to date to 4 October 2012.

Ian McLeod
October 2012

Table of cases

- A v Hoare* [2008] UKHL 6, [2008] 2 All ER 1, 175, 176
- Actavis UK Ltd v Merck & Co Inc* [2008] EWCA Civ 444, [2009] 1 All ER 196, 187
- Adams v Bracknell Forest Borough Council* [2004] UKHL 29, [2004] 3 All ER 897, 40
- Addie (Robert) & Sons (Collieries) Ltd v Dumbreck* [1929] AC 358, 171, 172
- Aden Refinery Co Ltd v Ugland Management Co* [1986] 3 All ER 737, 117
- Aello, The* [1960] 2 All ER 578, 172
- Agnew v Commissioners of Inland Revenue* [2001] UKPC 28; [2001] 2 AC 710, 161, 162
- Ainsbury v Millington* [1987] 1 All ER 929, 22
- Air Canada v Secretary of State for Trade (No 2)* [1983] 1 All ER 910, 20, 201
- Amministrazione delle Finanze dello Stato* [1981] ECR 2735, 217
- Anderson (W B) & Sons Ltd v Rhodes* [1967] 2 All ER 850, 135, 154
- Anderton v Ryan* [1985] 2 All ER 355, 111, 179, 180
- Anns v Merton London Borough Council* [1977] 2 All ER 492, 143, 177
- Antonelli v Secretary of State for Trade and Industry* [1998] 1 All ER 997, 288
- Arcaro* [1997] 1 CMLR 179, 86
- Arrowsmith v Jenkins* [1963] 2 QB 561, 292
- Arthur JS Hall & Co (a firm) v Simons, Barratt v Ansell (t/a Woolf Seddon (a firm)), Harris v Scholfield Roberts & Hill (a firm)* [2000] 3 All ER 673, 136
- Artico v Italy* (1980) 3 EHRR 1, 93
- Assam Railways and Trading Co v Commissioners of Inland Revenue* [1935] AC 445, 276
- Aswan Engineering Establishment Co v Lupdine Ltd (Thurgar Bolle Ltd, Third Party)* [1987] 1 All ER 135, 202
- Atalanta* [1979] ECR 2137, 216
- Athlumney, Re* [1898] 2 QB 547, 286
- Attorney-General v Butterworth* [1962] 3 All ER 326, 139
- Attorney-General v Lamplough* (1878) 3 ExD 214, 270, 274
- Attorney-General v Prince Ernest Augustus of Hanover* [1957] 1 All ER 49, 247, 271
- Attorney-General's Reference (No 1 of 1988), Re* [1989] 1 AC 971, 267
- Attorney-General's Reference (No 3 of 1994), Re* [1997] 3 All ER 936, 53
- Attorney-General's Reference (No 5 of 1980), Re* [1980] 3 All ER 816, 308
- Attorney-General for Hong Kong v Reid* [1994] 1 AC 324, 161
- Attorney-General for Jersey v Holley* [2005] UKPC 23, [2005] 3 All ER 371, 162, 163, 290
- Austin v Southwark London Borough Council* [2010] UKSC 28, [2010] 4 All ER 16, 164
- Australian Consolidated Press Ltd v Uren* [1967] 3 All ER 523, 163
- Automatic Telephone and Electric Co Ltd's Agreement, Re* [1965] 1 All ER 206, 117, 129
- B (A Minor) v Director of Public Prosecutions* [2000] 1 All ER 833, 295
- B (children) (sexual abuse: standard of proof), Re* [2008] UKHL 35, [2008] 4 All ER 1 41
- Baker v Willoughby* [1970] AC 467, 150
- Bakhshuwen v Bakhshuwen* [1952] AC 1, 163

- Bank of England *v* Vagliano Brothers [1891] AC 107, 298
- Barker *v* Wilson [1980] 2 All ER 647, 308
- Barretto, Re [1994] 1 All ER 447, 289
- Bastin *v* Davies [1950] 1 All ER 1095, 110
- Beamish *v* Beamish (1861) 11 ER 735, 147, 164
- Behrens *v* Bertram Mills Circus Ltd [1957] 1 All ER 583, 146
- Bellinger *v* Bellinger [2003] UKHL 21, [2003] 2 All ER 593, 304
- Berkeley *v* Berkeley [1946] AC 555, 128
- Berkovits *v* Grinberg (Attorney-General Intervening) [1995] 2 All ER 681, 283
- Beswick *v* Beswick [1967] 2 All ER 1197, 280, 297
- Birtwistle *v* Tweedale [1953] 2 All ER 1598, 115
- Black-Clawson International Ltd *v* Papierwerke Waldhof-Aschaffenburg AG [1975] 1 All ER 810, 254, 259, 260, 272, 276, 277, 279
- Boaler, Re [1915] 1 KB 21, 272
- Bokhari *v* Mahmood (1988, unreported), 185
- Bolton Metropolitan District Council *v* Secretary of State for the Environment [1995] 1 WLR 1176, 207
- Bombay Province *v* Bombay Municipal Corporation [1947] AC 58, 301
- Bonham's Case (1610) 8 Co Rep 114, 66
- Bourne *v* Keane [1919] AC 815, 143
- Bourne (Inspector of Taxes) *v* Norwich Crematorium Ltd [1967] 1 All ER 576, 4, 246
- Bowman *v* Fels [2005] EWCA Civ 226, [2005] 4 All ER 609, 23
- Boys *v* Chaplin [1968] 1 All ER 283, 186
- Bracegirdle *v* Oxley [1947] 1 All ER 126, 38
- Brasserie du Pêcheur *v* Germany [1996] 2 WLR 506, 85
- Bremer Vulkan, The [1981] AC 909, 172, 173, 177
- Brennwein Case – *see* Germany *v* Commission
- Brentnall & Cleland Limited *v* London County Council [1945] 1 KB 115, 113
- Brickman's Settlement, Re [1982] 1 All ER 336, 269
- Bridges *v* Hawkesworth (1851) LJ 21 QB 75, 150
- Bridlington Relay Ltd *v* Yorkshire Electricity Board [1965] 1 All ER 264, 40
- Bright *v* Hutton (1852) 3 HLC 341, 164
- Brightlife, Re [1986] 3 All ER 673, 211
- Brind *v* Secretary of State for the Home Department [1991] 1 All ER 720, 95, 98, 211, 280
- British Launderers' Research Association *v* Central Middlesex Assessment Committee and Borough of Hendon Rating Authority [1949] 1 All ER 21, 37, 40
- British Leyland Corporation *v* Armstrong Patents Co Ltd [1986] 1 All ER 850, 277
- British Railways Board *v* Herrington [1972] 1 All ER 749, 171, 172, 206
- British Railways Board *v* Pickin [1974] 1 All ER 609, 70, 228
- Britt *v* Buckinghamshire County Council [1964] 1 QB 77, 110
- Broekmeulen [1981] ECR 2311, 318
- Broome *v* Cassell & Co Ltd [1971] 2 All ER 187, 157
- Brutus *v* Cozens [1972] 2 All ER 1297, 36, 37, 39, 227, 229
- Buchanan (James) & Co Ltd *v* Babco Forwarding and Shipping (UK) Ltd [1977] 3 All ER 1048, 298
- Bulmer (HP) Ltd *v* Bollinger SA [1974] 2 All ER 1226, 315
- Burgess *v* McCracken (1986) 150 JP 529, 230, 267
- Burmah Oil Ltd *v* Lord Advocate [1964] 2 All ER 348, 70
- C, Re [1937] 3 All ER 783, [1938] Ch 121, 116
- C (A Minor) *v* Director of Public Prosecutions [1995] 2 All ER 43, 209
- C R *v* United Kingdom *see* S W *v* United Kingdom, 132
- Carter *v* Bradbeer [1975] 3 All ER 158, 230, 254
- Cartledge *v* Jopling and Sons Ltd [1963] 1 All ER 341, 175
- Case of Proclamations (1611) 12 Co Rep 74, 66

- Casher *v* Holmes (1831) 109 ER 1263, 269
- Cassell & Co Ltd *v* Broome [1972] 1 All ER 801, 30, 157
- Castioni, *In re* [1891] 1 QB 149, 240, 241
- Celtic, The – *see* Ellerman Lines Ltd *v* Murray
- Chancery Lane Safe Deposit Co Ltd *v* Inland Revenue Commissioners [1966] 1 All ER 1, 170
- Chaplin *v* Hicks [1911–13] All ER Rep 224, 28
- Chief Adjudication Officer *v* Foster [1993] 1 All ER 705, 207, 283
- Church of Scientology *v* Johnson-Smith [1972] 1 All ER 378, 280
- CILFIT *v* Ministry of Health [1982] ECR 3415, 214, 316
- City of London Corporation *v* Bovis (1988) 153 LG Rev 166; [1992] 3 All ER 697, 118
- Colchester Estates (Cardiff) Ltd *v* Carlton Industries plc [1984] 2 All ER 601, 187, 196
- Coltman *v* Bibby Tankers Ltd [1987] 3 All ER 1068, 285
- Commission for the New Towns *v* Cooper (GB) Ltd [1995] 2 All ER 929, 110, 119, 270
- Congreve *v* Inland Revenue Commissioners [1948] 1 All ER 948, 171
- Consolidated Criminal Practice Direction 2006 [2006] 1 WLR 2011, 47, 114, 207, 289
- Conway *v* Rimmer [1967] 2 All ER 1260, 156, 157, 168, 169, 191
- Cooke *v* Adatia and Others (1989) 153 JP 129, 115
- Cooper *v* Hawkins [1904] 2 KB 164, 301
- Copeland *v* Smith [2000] 1 All ER 457, 120
- Cordell *v* Second Clanfield Properties [1968] 3 All ER 746, 109
- Cossey *v* United Kingdom (1990) 13 EHRR 622, 94
- Cotterill *v* Penn [1936] 1 KB 53, 292
- Council of Civil Service Unions *v* Minister for the Civil Service [1984] 3 All ER 935, 69
- Courtauld *v* Legh (1869) LR 4 Exch 126, 270
- Cremin *v* Thomson (1941) 71 Ll Rep 1 and *see* Thomson *v* Cremin, 118
- Crosley *v* Arkwright (1788) 100 ER 325, 231
- Croxtheth Hall The; Celtic, The – *see* Ellerman Lines Ltd *v* Murray
- Customs & Excise Commissioners *v* Top Ten Promotions Ltd [1969] 1 WLR 1163, 267
- Da Costa [1963] ECR 31, 214
- Daraydan Holdings Ltd *v* Solland International Ltd [2004] EWHC 622 (Ch), [2005] Ch 119, 161
- Davis *v* Johnson [1978] 1 All ER 1132, 192, 193
- de Freitas *v* Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing [1999] 1 AC 69, 95
- Defrenne *v* Sabena (No 2) [1976] 2 CMLR 82, 83, 217
- Derby & Co Ltd *v* Weldon (No 3) [1989] 3 All ER 118, 159
- Derbyshire County Council *v* Times Newspapers Ltd [1993] 1 All ER 1011, 98
- Deuka [1975] 2 CMLR 28, 216
- Dickenson *v* Fletcher (1873) LR 9 CP 1, 290
- Dillenkofer *v* Germany [1996] 3 CMLR 469, 85
- Director of Public Prosecutions *v* Merriman [1972] 3 All ER 42, 188, 191
- Director of Public Prosecutions *v* Schildkamp [1969] 3 All ER 1640, 273
- Donoghue *v* Stevenson [1932] AC 562, 135
- Doody *v* Secretary of State for the Home Department [1993] 3 All ER 92, 145, 146
- Doughty *v* Rolls-Royce plc [1992] IRLR 126, 84
- Douglas *v* Hello Ltd (No 3) [2005] EWCA Civ 596, [2005] 4 All ER 128, 105
- Dowling, Re [1967] AC 725, 169
- Dudgeon *v* United Kingdom (1982) 4 EHRR 149, 94
- Duke *v* Reliance Systems Ltd [1987] 2 All ER 858, 151
- Duncan *v* Cammell Laird & Co Ltd [1942] 1 All ER 587, 156, 168, 191
- Duport Steels Ltd *v* Sirs [1980] 1 All ER 529, 208

- Dyson Holdings Ltd v Fox* [1975] 3 All ER 1031, 308
- Eastman Photographic Materials Co Ltd v Comptroller of Patents* [1898] AC 571, 276
- Edwards v Bairstow* [1955] 3 All ER 48, 38, 39
- Ellerman Lines Ltd v Murray* [1930] All ER Rep 503, 107, 298
- Elliott v C (A Minor)* [1983] 2 All ER 1005, 145
- Energy Conversion Devices Incorporated's Applications* [1982] FSR 544, 37, 228
- Evans v Amicus Healthcare Ltd* [2004] EWCA 727, [2004] 3 All ER 1025, 97
- Export Credits Guarantee Department v Universal Oil Products Co* [1983] 2 All ER 205, 113
- Faccini Dori v Recreb srl* [1994] ECR I-3325, 215
- Factortame Ltd v Secretary of State for Transport (No 2)* [1991] 1 All ER 70, 87, 227
- Farrell v Alexander* [1976] 2 All ER 721, 297
- Fellinger* [1980] ECR 535, 319
- Firstpost Homes Ltd v Johnson* [1995] 4 All ER 355, 272
- Fisher v Bell* [1960] 3 All ER 731, 253, 254
- Fitzleet Estates Ltd v Cherry* [1977] 3 All ER 996, 170, 171, 173
- Fitzpatrick v Sterling Housing Association* [1997] 4 All ER 991 (CA); [1999] 4 All ER 705 (HL), 91, 306, 307
- Food Corporation of India v Anticlizo Shipping Corporation* [1988] 2 All ER 513, 177
- Foster v British Gas plc* [1991] 2 WLR 258, 84
- Foster v Diphwys Casson Slate Co* (1887) 18 QBD 428, 268
- Fothergill v Monarch Airlines Ltd* [1980] 2 All ER 696, 298, 299
- Fowler v Padget* (1798) 101 ER 1103, 297
- Francovich v Italian State* [1991] IRLR 84, 82, 84, 86, 215, 217
- Gallie v Lee* [1969] 1 All ER 1062, 192, 193
- Galloway v Galloway* [1954] P 312, 147
- Gammans v Ekins* [1950] 2 KB 307, 308
- Gammon (Hong Kong) Ltd v Attorney-General for Hong Kong* [1984] 2 All ER 503, 293
- Garland v British Rail Engineering Ltd* [1982] 2 All ER 402, 299
- Germany v Commission* [1963] ECR 63, 317
- Ghaidan v Mendoza* [2004] UKHL 30, [2004] 3 All ER 411, 92, 102, 302, 303, 304
- Gill v Lewis* [1956] 1 All ER 844, 31
- Godden v Hales* (1686) 11 St Tr 1165, 67, 68
- Gold v Essex County Council* [1942] 1 KB 293, 147
- Goudrand Frères* [1981] ECR 1931, 216
- Gough and Another v Chief Constable of Derbyshire* [2001] 4 All ER 289, 101
- Gouriet v Union of Post Office Workers* [1977] 3 All ER 70, 201
- Grad v Finanzamt Traustein* [1971] CMLR 1, 83, 85
- Grant v Australian Knitting Mills* [1936] AC 85, 146
- Greenlands (Limited) v Wilmshurst and Others* (1913) 29 TLR 685, 108
- Grocock v Grocock* [1920] 1 KB 1, 148
- H and Others (Minors), Re* [1996] 1 All ER 1, 41
- Hadmor Productions Ltd v Hamilton* [1982] 1 All ER 1042, 202, 203, 280
- Halford v Brookes* [1991] The Independent, 1 October, 41
- Handyside v United Kingdom* (1979–80) 1 EHRR 737, 94, 96, 97
- Hanfstaengl v W H Smith & Sons* (1905) 92 LT 676, 29
- Hannah Blumenthal, The* [1983] 1 All ER 34, 172
- Hart v Riversdale Mill Ltd* [1928] 1 KB 176, 147
- Hawes v Evendon* [1953] 1 WLR 1169, 308
- Hazell v Hammersmith & Fulham London Borough Council* [1991] 1 All ER 545, 129
- Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1963] 2 All ER 575, 146, 153, 204
- Henty v Wrey* (1882) 21 ChD 332, 110
- Hetherington, Re* [1989] 2 All ER 129, 143
- Heydon's Case* (1584) 76 ER 637, 252, 253, 254
- Hilder v Dexter* [1902] AC 474, 259
- Hill v East & West India Dock Co* (1884) 9 App Cas 448, 249

- Hillsdown Holdings plc *v* Pensions
Ombudsman [1997] 1 All ER 862, 283
- Holmes and Bradbury *v* Bradford
Metropolitan City Council (1994) 158 LG
Rev 561, 111
- Home Office *v* Dorset Yacht Co Ltd [1970] 2
All ER 294, 14
- Hornigold *v* Chief Constable of Lancashire
[1985] Crim LR 792, 197
- Horton *v* Sadler [2006] UKHL 27, [2006] 2
WLR 1346, 166
- Housden *v* Conservators of Wimbledon and
Putney Commons [2008] EWCA Civ 200,
[2008] 3 All ER 1038, 204
- Howard de Walden Estates Ltd *v* Aggio
[2007] EWCA Civ 499, [2007] 3 WLR 542,
160
- Inco Europe Ltd *v* First Choice Distribution (a
Firm) and Others [2000] 2 All ER 109, 262
- Inland Revenue Commissioners *v* Hinchy
[1960] 1 All ER 505, 251, 252
- Inland Revenue Commissioners *v* Plummer
[1979] 3 All ER 775, 182
- Internationale Handelsgesellschaft mbH
[1974] 2 CMLR 540, 87, 216
- J S (A Minor), Re [1980] 1 All ER 1061, 107
- Jacobs *v* Booth's Distillery Co (1901) 85 LT
262, 167
- Jobling *v* Associated Dairies Ltd [1981] 2 All
ER 752, 150
- Johanna Oldendorff, The [1974] AC 479, 166,
172
- Johnstone *v* Sutton (1784) 99 ER 1225, 40
- Jones *v* Conway & Colwyn Bay Joint Water
Supply Board [1893] 2 Ch 603, 286
- Jones *v* Department of Employment [1988] 1
All ER 725, 159
- Jones *v* Secretary of State for Social Services
[1972] 1 All ER 145, 135, 169, 1171, 172
- Jones *v* Tower Boot Co Ltd [1997] 2 All ER
406, 231
- Kammins Ballrooms Co Ltd *v* Zenith
Investments Ltd [1970] 2 All ER 871, 35,
255, 256
- Kay *v* Lambeth London Borough Council
[2006] UKHL 10, [2006] 4 All ER 128, 101
- Keck [1993] ECR I-6097, 214
- Kleinwort Benson Ltd *v* Lincoln City Council
[1998] 4 All ER 513, 129, 135
- Knocker *v* Youle [1986] 2 All ER 914, 266
- Langley *v* North West Water Authority [1991]
3 All ER 610, 186
- Latless *v* Holmes (1792) 100 ER 1230, 200,
275
- Leader *v* Duffy (1888) 13 App Cas 294, 257
- Letang *v* Cooper [1964] 2 All ER 929, 276
- Lim Chin Aik *v* R [1963] 1 All ER 223, 292
- Lister & Co *v* Stubbs (1890) 45 ChD 1, 161
- Livingstone *v* Rawyards Coal Co (1880) 5
App Cas 25, 28
- Lloyd *v* McMahon [1987] 1 All ER 1118, 270
- L'Office Cherifien des Phosphates and
Another *v* Yamashita-Shinnihon
Steamship Co Ltd: The Boucraa [1994] 1
All ER 20, 288
- London, Chatham and Dover Railway Co *v*
South Eastern Railway Co [1893] AC 429,
177, 178
- London County Council *v* Central Land
Board [1958] 3 All ER 676, 285
- London Street Tramways Ltd *v* London
County Council [1898] AC 375, 164
- Lord Advocate *v* Dumbarton District Council
and Another [1990] 1 All ER 1, 301
- Louca *v* Office of Public Prosecutor Bielefeld,
Germany [2008] EWHC Admin 2907,
[2009] 2 All ER 719; aff'd on appeal [2009]
UKSC 4, 138
- Lyde *v* Barnard [1835–42] All ER Rep 690, 261
- Lynch *v* Director of Public Prosecutions for
Northern Ireland [1975] 1 All ER 913, 180
- Magnhild SS *v* McIntyre Bros & Co [1921] 2
KB 97, 268
- Magor & St Mellons Rural District Council
v Newport Corporation [1951] 2 All ER
839, 250
- Malone *v* Metropolitan Police Commissioner
(No 2) [1979] 2 All ER 620, 90
- Manuel *v* Attorney-General [1982] 3 All ER
822, 65
- Marleasing SA *v* La Comercial Internacional
de Alimentacion SA [1992] 1 CMLR 305,
86, 299

- Marshall *v* Southampton & South West Hampshire Area Health Authority [1986] 1 CMLR 688, 84
- Marshall *v* Southampton & South West Hampshire Area Health Authority (No 2) [1993] 3 CMLR 293, 217
- Maunsell *v* Olins [1975] 1 All ER 16, 252, 263, 266
- Melluish *v* BMI (No 3) Ltd [1995] 4 All ER 453, 283
- Meroni & Co [1957–58] ECR 157, 319
- Miliangos *v* George Frank (Textiles) Ltd [1975] 3 All ER 801, 135, 151, 152, 158, 159, 167, 174, 199, 200, 206
- Miller *v* Minister of Pensions [1947] 2 All ER 372, 40
- Milton *v* DPP [2007] EWHC Admin 532, [2007] 4 All ER 1026, 278
- Moir *v* Williams [1892] 1 QB 264, 247
- Moodie *v* Inland Revenue Commissioners [1993] 2 All ER 49, 182
- Morelle *v* Wakeling [1955] 1 All ER 708, 185
- Morgans *v* Launchbury [1972] 2 All ER 606, 207
- Mostyn, The [1928] AC 57, 149
- Murphy *v* Brentwood District Council [1990] 2 All ER 908, 143, 177, 200
- Myles *v* Director of Public Prosecutions [2004] EWHC 594 (Admin), [2004] 2 All ER 902, 101
- Nash *v* Tamplin & Sons Brewery (Brighton) Ltd [1951] 2 All ER 869, 149
- Netherlands *v* Commission [1979] ECR 245, 320
- New Bullas Trading, Re [1994] 1 BCLC 485, 162
- Newman *v* Lipman [1950] 2 All ER 832, 30, 267
- Nold *v* Commission [1974] 2 CMLR 338, 218
- Nye *v* Niblett [1918] 1 KB 23, 40
- Office of Public Prosecutor of Hamburg, *v* Hughes [2009] EWHC 279 (Admin), 138
- Olsson *v* Sweden (1988) 11 EHRR 259, 94
- O'Reilly *v* Mackman [1982] 3 All ER 1124, 34
- Osborne to Rowlett (1880) 13 ChD 774, 144
- O'Sullivan *v* Herdmans Ltd [1987] 3 All ER 129, 16
- Parliament *v* Council (Chernobyl) [1990] ECR I-2041, 215
- Parliament *v* Council (Comitology) [1988] ECR 5615, 215
- Patel *v* Secretary of State for the Home Department [2012] EWCA Civ 741, [2012] 4 All ER 94, 187
- Paton *v* British Pregnancy Advisory Service [1978] 2 All ER 987, 30
- Pepper *v* Hart [1993] 1 All ER 42, 103, 207, 277, 281, 282, 293, 284
- Percy *v* Hall [1996] QB 924, 130
- Petch *v* Gurney [1994] 3 All ER 731, 283
- Pharmaceutical Society of Great Britain *v* Storkwain Ltd [1986] 2 All ER 635, 294
- Pickstone *v* Freemans plc [1988] 2 All ER 803, 280, 284
- Pierce *v* Bemis [1986] 1 All ER 1011, 280
- Pirelli General Cable Works Ltd *v* Oscar Faber and Partners [1983] 1 All ER 65, 175, 200
- Pittalis *v* Grant [1989] 2 All ER 622, 158, 159
- Podbery *v* Peake [1981] 1 All ER 699, 185
- Police Authority for Huddersfield *v* Watson [1947] 1 KB 842, 160, 196
- Polydor *v* Harlequin Records [1982] ECR 329, 319
- Poole Borough Council *v* B&Q (Retail) Ltd [1983] The Times, 29 January, 196
- Powell *v* Cleland [1947] 2 All ER 672, 231
- Practice Direction (Citation of Authorities (2012)) [2012] 2 All ER 255, 116
- Practice Direction (Court of Appeal: Procedure) [1995] 3 All ER 850, 207
- Practice Direction (House of Lords: Preparation of Case) [1971] 2 All ER 159, 166
- Practice Direction (Judgments: Form and Citation (Supreme Court)) [2001] 1 WLR 194, 114
- Practice Direction (Judgments: Neutral Citation) [2002] 1 WLR 346, 114
- Practice Note [1995] 1 All ER 234, 284
- Practice Note [1997] 4 All ER 830, 207
- Practice Statement (Judicial Precedent) [1966] 3 All ER 77, 150, 156, 165, 167, 191

- Prescott *v* Birmingham Corporation [1954] 3 All ER 698, 199
 President of India *v* La Pintada Compania Navigacion SA [1984] 2 All ER 773, 177, 178
 Prophet *v* Platt Brothers & Co Ltd [1961] 2 All ER 644, 266
 Prudential Assurance Co Ltd *v* London Residuary Body [1992] 3 All ER 504, 132, 133
 Pyx Granite Co Ltd *v* Ministry of Housing and Local Government [1959] 3 All ER 1, 229
 Qualcast (Wolverhampton) Ltd *v* Haynes [1959] 2 All ER 38, 36
 Quillotex Co Ltd *v* Minister of Housing and Local Government [1965] 2 All ER 913, 230
 Quinn *v* Leatham [1901] AC 495, 144
 R *v* A (No 2) [2001] UKHL 25, [2001] 2 WLR 1546, 102, 104, 284, 302, 303
 R *v* Allen (1872) LR 1 CCR 367, 270
 R *v* Allen [1985] 2 All ER 641, 277
 R *v* Bow Street Metropolitan Stipendiary Magistrate *ex parte* Pinochet Ugarte (No 2) [1999] 1 All ER 577, 182
 R *v* Broadcasting Complaints Commission *ex parte* British Broadcasting Corporation (1995) 7 Admin LR 575, 277
 R *v* Broadcasting Complaints Commission *ex parte* Owen [1985] 2 All ER 522, 256
 R *v* Brown [1993] 2 All ER 75, 210
 R *v* Browne [1970] 3 All ER 455, 190
 R *v* C [2004] 3 All ER 3, 132, 166
 R *v* Caldwell [1981] 1 All ER 961, 180
 R *v* Cambridge Health Authority *ex parte* B [1995] 2 All ER 129, 72
 R *v* Clegg [1995] 1 All ER 334, 209
 R *v* Cleveland County Council *ex parte* Cleveland Care Homes Association [1994] COD 221, 198
 R *v* Colyer [1974] Crim LR 243, 160
 R *v* Commissioner Rowe QC (Mr) *ex parte* Mainwaring [1992] 4 All ER 821, 41
 R *v* Cook (1995, unreported), 189
 R *v* Cunningham [1981] 2 All ER 863, 179, 209
 R *v* Customs and Excise Commissioners *ex parte* EMU Tabac srl [1998] QB 791, 316
 R *v* Cuthbertson [1980] 2 All ER 401, 269, 319
 R *v* G [2003] 4 All ER 765, 180
 R *v* Galvin [1987] 2 All ER 851, 272
 R *v* Gould [1968] 1 All ER 849, 188, 191
 R *v* Governor of Her Majesty's Prison, Brockhill *ex parte* Evans (No 2) [1998] 4 All ER 993; on appeal [2000] 4 All ER 15, 130, 136
 R *v* Governors of Haberdasher Aske's Hatcham Schools *ex parte* Inner London Education Authority (1989) 153 LG Rev 809, 281
 R *v* Greater Manchester Coroner *ex parte* Tal [1984] 3 All ER 240, 197
 R *v* Greater Manchester North District Coroner *ex parte* Worch [1987] 3 All ER 661, 270
 R *v* Green [2008] UKHL 30, [2008] 4 All ER 119, 299
 R *v* Hampden (1637) 3 St Tr 825, 66, 67
 R *v* Her Majesty's Treasury *ex parte* British Telecommunications plc [1996] 2 CMLR 217, 85
 R *v* Higher Education Funding Council *ex parte* Institute of Dental Surgery [1994] 1 All ER 651, 92
 R *v* Horseferry Road Metropolitan Stipendiary Magistrate *ex parte* Siadatan [1991] 1 All ER 324, 277
 R *v* Howe [1987] 1 All ER 771, 180
 R *v* James [2006] EWCA Crim 16, [2006] 1 All ER 759, 162, 163, 290
 R *v* Judge of the City of London Court [1892] 1 QB 273, 249
 R *v* K [2001] 3 All ER 897, 295
 R *v* Kansal (No 2) [2002] 1 All ER 257, 93, 170
 R *v* Khan [1997] AC 558, 208
 R *v* Knuller [1972] 3 WLR 143, 178, 179
 R *v* Kuxhaus and Others [1988] 2 All ER 75, 203, 204
 R *v* Lambert [2001] 3 WLR 206, 99, 104
 R *v* Leaney [1995] Crim LR 669, 188, 189, 191
 R *v* London Boroughs Transport Committee *ex parte* Freight Transport Association Ltd and Others [1991] 3 All ER 916, 84
 R *v* Lord Chancellor *ex parte* Witham [1997] 2 All ER 779, 90
 R *v* M [2007] EWCA Crim 218, [2007] All ER (D) 87 (Feb) and [2007] EWCA Crim 970, [2007] 3 All ER 36, 190

- R v M [2009] EWCA Crim 2615, [2010] 4 All ER 51, 291, 294
- R v McFarlane [1994] 2 WLR 494, 203
- R v Ministry of Defence *ex parte* Smith [1996] 1 All ER 257, 95, 96
- R v Montila [2005] UKHL 50, [2005] 1 All ER 113, 273
- R v Newcastle-upon-Tyne City Council *ex parte* Dixon [1994] COD 217, 197
- R v Newcastle-upon-Tyne Justices *ex parte* Skinner [1987] 1 All ER 349, 231
- R v Newsome – *see* R v Browne
- R v Oakes [1959] 2 All ER 92, 296
- R v Oxford Crown Court and Another *ex parte* Smith (1990) 2 Admin LR 395, 110
- R v Palmer (1785) 168 ER 279, 230
- R v Parole Board and Another *ex parte* Wilson (1992) 4 Admin LR 525, 73, 98, 186, 187
- R v Pigg [1983] 1 All ER 56, 255, 256
- R v Preddy [1996] 3 All ER 481, 199
- R v R (Rape: Marital Exemption) [1991] 4 All ER 481, 8, 130, 131
- R v Registrar-General *ex parte* Smith [1991] 2 All ER 88, 301
- R v Reynolds [1981] 3 All ER 849, 256
- R v Rowe [2007] EWCA Crim 635, [2007] QB 975, 190
- R v St Margaret's Trust Ltd [1958] 2 All ER 289, 293
- R v Secretary of State for Foreign and Commonwealth Affairs *ex parte* Rees-Mogg [1994] 1 All ER 457, 283
- R v Secretary of State for Social Security *ex parte* B and Another [1996] 4 All ER 385, 91
- R v Secretary of State for the Environment, Transport and the Regions *ex parte* Spath Holme Ltd [2001] 2 AC 349, 261
- R v Secretary of State for the Home Department and Another *ex parte* Norney and Others (1995) 7 Admin LR 861, 98
- R v Secretary of State for the Home Department *ex parte* Al-Mehdawi [1989] 1 All ER 777; [1989] 3 All ER 843, 186
- R v Secretary of State for the Home Department *ex parte* Brind – *see* Brind v Secretary of State for the Home Department
- R v Secretary of State for the Home Department *ex parte* Cheblak [1991] 2 All ER 319, 20, 21
- R v Secretary of State for the Home Department *ex parte* Chinoy [1992] 1 All ER 317, 51
- R v Secretary of State for the Home Department *ex parte* Fire Brigades Union and Others (1995) 7 Admin LR 473, 275
- R v Secretary of State for the Home Department *ex parte* Gunnell (1984, unreported), 187
- R v Secretary of State for the Home Department *ex parte* Khawaja [1983] 1 All ER 765, 174, 181
- R v Secretary of State for the Home Department *ex parte* Salem [1999] 2 All ER 42, 22
- R v Secretary of State for the Home Department *ex parte* Zamir [1980] 2 All ER 768, 174, 175
- R v Secretary of State for Trade and Industry *ex parte* Anderson Strathclyde plc [1983] 2 All ER 233, 280
- R v Secretary of State for Transport *ex parte* Factortame Ltd (No 4) [1996] 2 WLR 506, 85
- R v Sheppard [1980] 3 All ER 899, 293
- R v Shivpuri [1986] 2 All ER 334, 109, 111, 179, 180
- R v Shoult [1996] RTR 298, 189, 191
- R v Simpson [2003] EWCA Crim 1499, [2003] 3 All ER 531, 151, 190, 191
- R v Smith (Morgan) [2004] 4 All ER 289, 162, 290
- R v Spencer [1985] 1 All ER 673, 188, 189, 191, 192
- R v Spens [1991] 4 All ER 421, 37
- R v Taylor [1950] 2 All ER 170, 188, 191
- R v Terry [1983] RTR 321, 184
- R v W (1991, Crown Court, unreported), 130, 131
- R v Walsall Justices *ex parte* W [1989] 3 All ER 460, 73
- R v Wandsworth London Borough Council *ex parte* Beckwith [1996] 1 All ER 129, 285
- R v Warner [1968] 2 All ER 356, 280, 282
- R v Wells Street Magistrate *ex parte* Westminster City Council [1986] 3 All ER 4, 294
- R v West Dorset District Council *ex parte*

- Poupard (1987) 19 HLR 254; on appeal (1988) 20 HLR 295, 5, 285
- R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2001] 2 WLR 1389, 101
- R (Anderson) v Secretary of State for the Home Department [2002] UKHL 46, [2002] 4 All ER 1089, 101, 303
- R (Daly) v Secretary of State for the Home Department [2001] 2 WLR 1622, 96
- R (Ghai) v Newcastle City Council [2010] EWCA Civ 59, [2010] 3 All ER 380, 246
- R (Gillan) v Metropolitan Police Commissioner [2005] EWCA Civ 1067, [2005] 1 All ER 970, 40
- R (Jackson) v Attorney-General [2005] UKHL 56, [2005] 4 All ER 1253, 71
- R (Lord Chancellor) v Chief Land Registrar (Barking and Dagenham London Borough Council, interested party) [2005] EWHC 1706, [2005] 4 All ER 643, 268
- R (Quintavalle) v Secretary of State for Health [2003] UKHL 13, [2003] 2 All ER 113, 306
- R (S) v Chief Constable of South Yorkshire [2004] UKHL 39, [2004] 4 All ER 193, 279
- Rakhit v Carty [1990] 2 All ER 202, 151, 152
- Radmacher v Granatino [2010] UKSC 42, [2011] 1 All ER 373, 6
- Ramsay (W T) Ltd v Inland Revenue Commissioners [1981] 1 All ER 865, 182
- Read v Joannon (1890) 25 QBD 300, 160
- Rees v United Kingdom (1987) 9 EHRR 56, 94
- Reid v Metropolitan Police Commissioner [1973] 2 All ER 97, 108
- Restick v Crickmore [1994] 2 All ER 112, 283
- Richardson v Pitt-Stanley [1995] 1 All ER 460, 283
- Rickards v Rickards [1989] 3 All ER 193, 185, 186
- Ridgeway Motors (Isleworth) Ltd v ALTS Ltd [2005] EWCA Civ 92, [2005] 2 All ER 304, 208
- River Wear Commissioners v Adamson (1877) 2 App Cas 743, 248
- Roberts Petroleum Ltd v Bernard Kenny Ltd [1983] 1 All ER 564, 118
- Robinson v Barton-Eccles Local Board (1883) 8 App Cas 798, 275
- Rookes v Barnard [1964] 1 All ER 367, 157
- Rosgill Group Ltd v Commissioners of Customs & Excise [1997] 3 All ER 1012, 316
- Royal College of Nursing v Department of Health and Social Security [1981] 1 All ER 545, 309
- Royal Scholten-Honig Holdings Ltd [1979] 1 CMLR 675, 218
- Ruse v Read [1949] 1 KB 370, 160
- Ruther v Harris (1876) 1 ExD 97, 249
- S (Minors) (Children: Implementation of Care Plan), Re [2002] UKHL 10, [2002] 2 All ER 192, 303
- S W v United Kingdom and C R v United Kingdom (1995) 21 EHRR 363, 132
- Salomon v Commissioners of Customs and Excise [1966] 3 All ER 871, 298
- Saunders v Anglia Building Society [1970] 3 All ER 961, 148
- Scherer v Counting Instruments Ltd [1986] 2 All ER 529, 117
- Schorsh Meier GmbH v Henning [1975] 1 All ER 152, 157, 158
- Schweppes Ltd's Agreement, Re [1965] 1 All ER 195, 117, 129
- Scruttons Ltd v Midland Silicones Ltd [1962] 1 All ER 1, 146
- Secretary of State for Social Services v Tunncliffe [1991] 2 All ER 712, 217, 287
- Sempra Metals Ltd v Inland Revenue Commissioners [2007] UKHL 34, [2007] 4 All ER 657, 176, 177
- Shaw v Director of Public Prosecutions [1961] 2 All ER 446, 178
- Sherras v de Rutzen [1895] 1 QB 918, 291, 292
- Shipmoney Case – see R v Hampden
- Shylock v Antonio, William Shakespeare, The Merchant of Venice, Act IV, Sc 1, 269
- Siebe Gorman & Co Ltd v Barclays Bank Ltd [1979] 2 Lloyd's Rep 142, 136, 161, 162
- Sigsworth, Re [1934] All ER Rep 113, 300
- Simon v Court of Justice [1961] ECR 115, 320
- Simpson v Edinburgh Corporation 1961 SLT 17, 101
- Siu Yin Kwan v Eastern Insurance Co Ltd [1994] 1 All ER 213, 271
- Smith v Baker & Sons [1891–94] All ER Rep 69, 159
- Smith v Hughes [1960] 1 WLR 830, 253, 254

- Solicitor's Clerk, *Re A* [1957] 3 All ER 617, 287, 288
- South Staffordshire Water Company *v* Sharwood [1896] 2 QB 44, 150
- South Staffordshire Waterworks Co *v* Barrow (1896–97) 13 TLR 549, 228
- Southern Pacific Co *v* Jensen (1917) 244 US 205, 91
- Spectrum Plus Ltd, *Re*, National Westminster Bank plc *v* Spectrum Plus Ltd [2005] UKHL 41, [2005] 4 All ER 209, 134, 136, 137, 138, 161, 162
- Spiliada Maritime Corporation *v* Cansulex Ltd [1987] AC 460, 110
- Stanley *v* International Harvester Co Ltd [1983] The Times, 7 February, 118
- Stauder *v* City of Ulm [1969] ECR 419, 218, 315
- Stephens *v* Cuckfield RDC [1960] 2 QB 373, 273
- Stock *v* Frank Jones (Tipton) Ltd [1978] 1 All ER 948, 259
- Stockport Ragged, Industrial and Reformatory Schools, *Re* [1898] 2 Ch 687, 268
- Stokes *v* Sayers [1987] The Times, 16 March, 120
- Sudbrook *v* Eggleston [1982] 3 All ER 1, 133
- Stubblings *v* Webb [1993] 1 All ER 322, 175, 176
- Sun Life Assurance Co of Canada *v* Jervis [1944] 1 All ER 469, 22, 178
- Sussex Peerage Case (1884) 8 ER 1034, 248, 257
- Sweet *v* Parsley [1969] 1 All ER 347, 291, 292, 294, 295
- Taylor, *In Re* (A Bankrupt) [2006] EWHC Ch 3029, [2007] 2 WLR 148, 196
- Thoburn *v* Sunderland City Council [2002] 3 WLR 247, 64
- Thomson *v* Cremin [1953] 2 All ER 1185, and *see* Cremin *v* Thomson, 118
- Three Rivers District Council *v* Bank of England [1996] 2 All ER 363, 284
- Town Investments Ltd *v* Department of the Environment [1977] 1 All ER 813, 301
- Transocean Marine Paint Association *v* Commission [1979] 2 CMLR 459, 221
- UNETEF *v* Heylens [1987] ECR 4097, 221
- United Railways of Havana and Regla Warehouses Ltd, *Re* [1960] 2 All ER 332, 157, 158, 174
- van Gend en Loos *v* Nederlandse Administratie der Belastingen [1963] ECR 1, 82, 87, 214, 318
- Vera Cruz, The (1880) 9 PD 96, 147
- Vestey *v* Inland Revenue Commissioners (Nos 1 & 2) [1979] 3 All ER 976, 171
- von Colson *v* Land Nordrhein-Westfalen [1986] 2 CMLR 702, 86
- W (A Minor) (Adoption: Homosexual Adopter), *Re* [1997] 3 All ER 620, 210
- Wagner Miret [1995] 2 CMLR 469, 86
- Walkley *v* Precision Forgings Ltd [1979] 2 All ER 548, 166
- Walter Rau [1987] ECR 2289, 218
- Ward *v* Holman [1964] 2 All ER 729, 272
- Ward *v* James [1965] 1 All ER 563, 14, 17
- Waring, Westminster Bank *v* Awdrey and Others, *Re* [1942] Ch 425, 128
- Waring, Westminster Bank *v* Burton-Butler, *Re* [1948] 1 Ch 221, 128
- Watkins *v* Secretary of State for the Home Department [2006] UKHL 17, [2006] 2 All ER 353, 64
- Watson *v* Lucas [1980] 3 All ER 647, 308
- Watson *v* Thomas S Witney & Co Ltd [1966] 1 All ER 122, 110
- Wellingborough Borough Council *v* Gordon (1991) 155 JP 494, 115
- Wemhoff *v* Federal Republic of Germany (1979–80) 1 EHRR 55, 93
- Whiteley *v* Chappell (1868–69) LR 4 QB 147, 248
- Williams *v* Fawcett [1985] 1 All ER 787, 185
- Willis *v* Baddeley [1892] 2 QB 324, 140
- Wings Ltd *v* Ellis [1984] 3 All ER 577, 293
- Wood *v* Commissioner of Police for the Metropolis [1986] 2 All ER 570, 268
- Woolwich Equitable Building Society *v* Inland Revenue Commissioners [1992] 3 All ER 737, 176, 200
- X (A Minor) (Adoption Details: Disclosure), *Re* [1994] 3 All ER 372, 256

Yemshaw v Hounslow Borough Council
[2011] UKSC 3, [2011] 1 All ER 912, 306

Yew Bon Tew v Kenderaan Bas Mara [1982] 3
All ER 833, 287

Yorke Motors v Edwards [1982] 1 All ER 1024,
167, 207

Young v Bristol Aeroplane Co Ltd [1944] 2 All
ER 293, 184, 185, 186, 187, 188, 192, 193, 196

Acknowledgments

The author and publishers wish to thank the following for permission to use copyright material: Institute of Advanced Legal Studies for extracts from *British and French Statutory Drafting* (1987); Oxford University Press for extracts from Engle, *Bills are Made to Pass as Razors are Made to Sell*, which appeared in the *Statute Law Review* (1983), pp. 7, 9, 12, 13–14, 15.

Every effort has been made to trace all copyright holders, but if any have been inadvertently overlooked the publishers will be pleased to make the necessary arrangements at the first opportunity.

Part I

Ideas and institutions

Having read this Part you should understand the nature of legal reasoning and have a basic knowledge of the structure of the English and European Union legal systems, as well as appreciating the importance of human rights in English legal method. You should also know how to find, cite and use the principal sources of law.

Chapter 1

An introduction to law and legal reasoning

1.1 Introduction

This book is about the techniques that are available to lawyers when they are handling the law. In broad terms, the law itself may be found easily enough in *Acts of Parliament* (otherwise known as *statutes*), which are *primary legislation*; certain things done under the authority of Acts of Parliament, which are *secondary* (or *delegated* or *subordinate*) *legislation*; the decisions of the courts themselves, which collectively make up the common law; the system of European Union (previously known as European Community) law; and, increasingly, the law developed in the European Court of Human Rights. However, the underlying theme of this book is that, whatever sources of law are being used, legal method, when properly understood, is a creative process. More particularly, legal method provides a stimulating mixture of relatively abstract reasoning and the use of language in order to achieve practical results.

1.2 Legal method as a creative process

If legal method involved nothing more sophisticated than finding the right page of the right textbook in order to apply the rule to the facts, there would be no disputes beyond those as to what the facts were in each case. Plainly, however, arguments as to the law are commonplace. (Indeed, if they were not, no one would need to learn the skills of legal argument, and books such as this one would be neither written nor read.)

The scope for creativity in legal argument is neatly illustrated by the story of someone who wanted to know the result of adding 1.111 and 8.888. She began by asking a mathematician, who said: 'The answer is obvious. It is 9.999'. She then asked an engineer who said: 'Well, strictly speaking the answer is 9.999; but engineering is a practical subject and for all practical purposes the answer is 10'. Finally, she asked a lawyer, who replied with a question: 'What do you want it to be?'.

While it is, of course, obvious that many important aspects of legal argument centre on the detailed words of specific legal texts (legislation, cases, and so on), it is also true that legal argument may sometimes go beyond the texts themselves and include a variety of extrinsic materials. (See, in particular, page 276 in relation to English legislative interpretation.) Furthermore, it is also true, and no less important, that legal reasoning may, in practice, also depend upon other factors

which lie beyond the scope of what most people would consider to be law at all. A brief consideration of the views of two legal theorists will illustrate the point.

Oliver Wendell Holmes (1841–1935) was one of the founders of the school of thought known as American Realism, the central tenet of which is that what actually happens in the courts is what really matters. Placing the emphasis on ‘law in action’ rather than ‘law in books’, Holmes says, ‘the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law’. (*The Path of the Law* (1897) 10 Harv LR 457.)

Furthermore, having stated what is probably his most famous maxim (‘the life of the law has not been logic, it has been experience’, which is found on the first page of his textbook *The Common Law*, published in 1881), he puts the relationship between logic and experience thus:

‘The training of lawyers is a training in logic... The language of judicial decision is mainly the language of logic. And the logical method and form flatter that longing for certainty and for repose which is in every human mind. But certainty generally is an illusion, and repose is not the destiny of man. *Behind the logical form* lies a judgment as to the relative worth and importance of competing legislative grounds, often an inarticulate and unconscious judgment it is true, and yet the very root and nerve of the whole proceeding. *You can give any conclusion a logical form.*’ (Emphasis added. *The Path of the Law* (1897) 10 Harv LR 461.)

In other words, behind any *explicit* formulation of judicial reasoning there lies an *implicit* attitude on the part of the judge. For reasons which will become apparent when you have read pages 11 and 12, this implicit attitude may be called the *inarticulate major premise*. The difficulty in identifying inarticulate major premises is simply that they are inarticulate, and therefore their precise formulation involves guesswork. Nevertheless, there are cases in which the judges have obligingly articulated that which could easily have remained inarticulate. Two cases are instructive.

In *Bourne (Inspector of Taxes) v Norwich Crematorium Ltd* [1967] 1 All ER 576, the issue was whether expenditure on a furnace chamber and chimney tower built by the crematorium company qualified for a tax allowance. This depended upon whether it was ‘an industrial building or structure’ for the purposes of the Income Tax Act 1952, and this in turn depended upon whether it was used

‘for a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process.’

Stamp J said:

‘I would say at once that my mind recoils as much from the description of the bodies of the dead as “goods or materials” as it does from the idea that what is done in a crematorium can be described as “the subjection of” the human corpse to a “process”. Nevertheless, the taxpayer so contends and I must examine that contention.’

Given this as the judge's starting point, it is not surprising that the taxpayer lost.

In *R v West Dorset District Council ex parte Poupard* (1987) 19 HLR 254, Mr and Mrs Poupard had capital assets, but they were meeting their weekly living expenses by drawing on an overdrawn bank account. They applied to the council for housing benefit. This benefit was subject to a means test, and therefore the question arose as to whether the drawings were 'income'. If they were, the amounts involved were sufficient to disqualify the applicants from receiving assistance under the relevant Regulations. The council's Housing Review Board concluded that the drawings were income.

The High Court held that in each case it was a question of *fact* whether specific sums of money were 'income', and that this question was to be decided on the basis of all that the council and their Review Board knew of the sources from which an applicant for benefit was maintaining himself and paying his bills. The conclusion was that on the present facts the local authority and their Review Board had made no error of *law*, and had acted reasonably in reaching their decision.

In reaching his decision, Macpherson J, adopting an argument advanced by counsel for the local authority, said:

'The scheme [of Housing Benefit] is intended to help those who do not have the weekly resources to meet their bills, or their rent, and it is not intended to help comparatively better-off people (in capital terms) to venture into unsuccessful business and not to bring into account moneys which are regularly available for day-to-day spending, albeit that the use of moneys depletes their capital.'

Although the Court of Appeal upheld this decision (see (1988) 20 HLR 295), it will nevertheless be apparent that a court with different sympathies could have upheld, with equal or greater logic, the argument that the weekly drawings were outgoings, rather than income, because each drawing increased the drawer's indebtedness to the bank.

As the two cases we have just noticed demonstrate, there can be no doubt that, in at least some cases, judges are influenced by their individual values and preferences. The fact that they rarely acknowledge this fact explicitly makes the following comments of Lady Hale (contained in a lecture given at City University on 30 April 2008, under the title of *Leadership in the Law: What is a Supreme Court For?*) all the more worthy of note. Having commented that the House of Lords usually functioned through panels of five members (although it is worth interpolating that panels of seven and – occasionally even nine – were not unknown, and petitions for leave to appeal were heard by panels of three), Lady Hale (who despite her sex was referred to as a Law Lord) said:

'Many, perhaps most, other Supreme Courts sit *en banc*. That is, all the judges sit on all the cases. This eliminates the risk that the selection of the particular panel to hear the case may affect the result. *We can all think of cases in which the result would probably have been different if the panel had been different*, although that raises interesting questions about how predictable the decision of any

particular judge either is or should be. The listing is done in the judicial office and the allocation of judges to the panels is agreed with the two senior law lords in what is known as the 'horses for courses' meeting. The aim is to have those with the most relevant expertise together with some generalists. I cannot think that either the judicial office or the two seniors give any thought to the likely outcome of the case if X sits instead of Y. But even without sinister intent, the selection may affect the outcome.

'This is solved by having us all sit. But it would halve the number of cases we could take. It is hard enough narrowing them down now and would be much worse then. It would also shift the focus to the appointments process. In other parts of the world, it clearly increases the desire of the politicians who make the appointments to fill the court with people of their own political persuasion. That does not happen here. Colleagues in the US are amazed that I do not know my colleagues' politics. We have not had political appointments to the Law Lords for many decades and the risk is even less now that we are to have an independent Judicial Appointments Commission. But I doubt whether we shall change our practice of sitting in panels rather than *en banc*.' (Emphasis added.)

Staying for the moment with Lady Hale, the very small number of female judges at the highest levels of the judiciary means that it is perhaps unsurprising that there are few examples of judges adopting an explicitly feminist standpoint, either implicitly or explicitly. However, the case of *Radmacher v Granatino* [2010] UKSC 42, [2011] 1 All ER 373, is an instructive exception, albeit only in a dissenting judgment delivered by a minority of one. The case arose from an ante-nuptial agreement or, in other words, an agreement (sometimes known as a *pre-nuptial agreement* or a *pre-nup*), made before marriage, dealing with financial provision and the division of assets if the marriage breaks down. The all-male majority of the Supreme Court decided there was a presumption that the courts should give effect to such agreements provided they had been freely entered into and were, in all the circumstances, fair. The basis of this decision was said [at para. [78]] to be 'respect for individual autonomy ... It would be paternalistic and patronising to override ... [the] ... agreement simply on the basis that that the court knows best'. So, a spouse wishing to challenge an ante-nuptial agreement must prove either that it was not freely entered into or that it is unfair.

Against the presumption favoured by the majority, Lady Hale dissented on the basis that a marriage contract creates status. She elaborated on this (at para. [132]) as follows.

'This means two things. First, the parties are not entirely free to determine all its legal consequences for themselves. They contract into the package which the law of the land lays down. Secondly, their marriage also has legal consequences for other people and for the state.'

Lady Hale, from her standpoint as the only female Supreme Court Justice and the court's only family law specialist, also made the point that in a typical case involving an ante-nuptial agreement, the wife would be more dependent

on a favourable financial outcome than her husband would be (although this was not so in the present case). She put the feminist point bluntly (at para. [173]):

‘In short, there is a gender dimension to the issue which some may think ill-suited to decision by a court consisting of eight men and one woman.’

Lady Hale, therefore, rejected the idea of a presumption in favour of upholding ante-nuptial agreements, taking the view that each agreement (provided, of course that it had been freely entered into and was fair) should simply be put into the balance, together with all the other relevant factors in each case, thus enabling the court to make a fair decision on each case as a whole. *Radmacher* may, therefore, easily be seen as a case where that which could easily have remained as an inarticulate major premise emerged expressly as an articulated one, involving in this case not only the typical financial weakness of women when marriages break down but also the impact of the very predominantly male composition of the senior judiciary on the outcome of ensuing litigation.

Moving on from Lady Hale in order to conclude, in more general terms, many people find that one of the most enduring pleasures of studying law is playing the game of ‘hunt the inarticulate major premise’, and you may often find that your reading of even the dullest of cases can be enlivened by trying to get behind the words and the doctrine in order to penetrate the mind of the judge as an individual human being.

The second theorist whose views may usefully be considered by way of an introduction to legal method is Ronald Dworkin (b. 1931). Dworkin shares a common starting point with Holmes, to the extent that both agree that the concept of rules provides an inadequate model of law in practice. However, he proceeds down a different route, placing great emphasis on what he calls ‘standards’. What Dworkin means by ‘standards’ is certain types of ideas which exist outside the texts containing the legal rules, but which go into the melting pot, together with those rules, when it is necessary to identify the law which is to be applied to a given situation. More particularly, Dworkin divides these standards into ‘policies’ and ‘principles’.

‘I call a “policy” that kind of standard that sets out a goal to be reached, generally an improvement in some economic, political or social feature of the community (though some goals are negative, in that they stipulate that some present feature is to be protected from adverse change). I call a “principle” a standard that is to be observed, not because it will advance or serve an economic, political or social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension of reality.’ (*Is Law a System of Rules?* in *The Philosophy of Law*, 1977, p. 43.)

An example of something which Dworkin would call a principle is the presumption against gaining advantage from wrongdoing, which is discussed at page 300.

Expanding on the idea of principles, and the way in which they work, Dworkin says:

‘All that is meant, when we say that a particular principle is a principle of our law, is that the principle is one which officials must take into account, if it is relevant, as a consideration inclining in one direction or another ...

‘Principles have a dimension that rules do not – the dimension of weight or importance. When principles intersect ... one who must resolve the conflict has to take into account the relative weight of each. This cannot, of course, be an exact measurement, and *the judgment that a particular principle or policy is more important than another will often be a controversial one*. Nevertheless, it is an integral part of the concept of a principle that it has this dimension, that it makes sense to ask how important or how weighty it is.’ (Emphasis added. *Op. cit.*, p. 47.)

Dworkin’s concession that ‘the judgment that a particular principle or policy is more important than another will often be a controversial one’ is very important in terms of the creativity of legal method. For example, in *R v R (Rape: Marital Exemption)* [1991] 4 All ER 481 the court abolished the rule (which had been applicable at the time of the facts giving rise to that case) under which a husband could not be convicted of rape or attempted rape on his wife. Even if you agree (as most people probably do) that the law of rape should be wide enough to protect wives against their husbands, you cannot escape the fact that using the process of deciding a case as a vehicle for changing the law involved penalizing the husband in respect of conduct which was not within the law of rape and attempted rape at the time of the events which gave rise to the prosecution in this case. But from the court’s point of view the problem was this. In a conflict between the principle which prohibits retrospective penalization, and the principle (which reflects modern views of sexual equality and human rights) that a wife should be entitled to preserve her physical integrity by rejecting her husband’s sexual advances, which principle should prevail over the other? As you will see (at page 130), the court prioritized the principle that protected the wife’s interests, but in a less emotive context it might well have relied upon the other principle.

One of the most controversial aspects of Dworkin’s theory is his *right answer thesis*, according to which his analysis leads to the conclusion that there are right answers in even hard cases (by which Dworkin means cases which cannot be resolved by reference to existing legal statutes or case-law). Admittedly, at one time even Dworkin himself seemed to be having second thoughts about his right answer thesis, describing the argument as ‘a waste of important energy and resource’ and saying that it is better ‘to take up instead how the decisions that in any case will be made should be made, and which of the answers that will in any case be thought right or best or true or soundest really are’. (*Pragmatism, Right Answers and True Banality*, in Brint and Weaver (eds), *Pragmatism in Law and Society*, 1991, p. 365.) However, he later put his continuing commitment to the rights answer thesis beyond doubt: ‘Some critics ... suggest that I have

changed my mind about the character and importance of the one-right-answer claim. For better or for worse, I have not.’ (*Justice in Robes*, 2006, p. 266, n. 3.)

In a major book, intriguingly entitled *Justice for Hedgehogs* (2011), Dworkin aims to provide a unifying theory of the legitimacy of state power, law, ethics, morality, justice and interpretation, which provides what may well be the final version of his theory. In this book, Dworkin seeks to avoid conflicts between principles (which he had previously seen as being inevitable) by means of interpretation. The title of the book draws on the work of the ancient Greek poet, Archilochus (c. 680 BCE–c. 645 BCE), according to whom the fox knows many, relatively small, things but the hedgehog knows one big thing. The fox is, of course, proverbially cunning and it would be impracticable to attempt to list everything that the fox knows. The hedgehog, on the other hand, has very little reputation for anything; but he does know that he can protect himself against predators by rolling himself up into a prickly ball when threatened. So, more or less come what may, the simple little hedgehog will gain the most desirable prize of all – survival – merely by knowing one really big thing.

According to Dworkin, most contemporary legal theorists are foxes: they know many things but none of them is overwhelmingly important. Dworkin himself, on the other hand, aspires to be a hedgehog and the one really big thing that he claims to know is the unity of value. (You may be tempted to think that Dworkin is guilty of the intellectual equivalent of sleight-of-hand here, because he is seeking to unify a number of other things. However, he is at least seeking to identify one big thing, which sets him apart from the foxes.)

Very briefly indeed, Dworkin argues that when we identify our values, we tend to think in terms of matters such as equality, individual freedom, observing the requirements of due process of law, maintaining the predictability of law while also enabling law to develop to meet changing circumstances, and so on. However, Dworkin argues that when values such as these are both properly understood and are taken together, they constitute a coherent unity of mutually supporting elements. In order to achieve this unity, however, each of the elements needs to be interpreted appropriately. So, for example, a crudely majoritarian conception of democracy can easily lead to the denial of minority rights. Therefore, it is better to take a partnership model of democracy, in which ‘each citizen ... has an equal voice and an equal stake in the result’. (*Op cit.*, p. 5.) If we proceed on this basis, ‘democracy itself requires the protection of justice and liberty that democracy is sometimes said to threaten’. (*Ibid.*) The same technique must, of course, be applied to the interpretation of each individual value, in order to construct the mutually supporting unity of value which provides the one big thing that hedgehogs (such as Dworkin) know. (For a somewhat more extended discussion of *Justice for Hedgehogs*, see, for example, McLeod, *Legal Theory*, 6th edn, 2012, pp. 127–135.)

It will take quite a long time for the ideas contained in *Justice for Hedgehogs* to become widely known and understood. However, Dworkin’s previous way of thinking about law and legal method have had a noticeable impact on the way

some judges think. It may well be, therefore, that at least some contemporary law students will be seeking to become hedgehogs as part of their continuing professional development.

Since the insights offered by Holmes and Dworkin clearly diminish the significance of the plain words of the legal texts which are commonly thought to determine legal disputes, many people coming to the study of law for the first time are reluctant to acknowledge their truth. However, mature consideration makes it plain that (whether or not you find Holmes, Dworkin, or any other legal theorist convincing) *something* beyond the legal texts must come into play in legal reasoning, if only because a legal text (or, at least, a legal text which has generated sufficient disagreement to bring the parties to court) will seldom have a single plain, or literal, meaning.

'The literal meaning is a *potential meaning rather than an actual usage*; it is a conventional meaning within a system of such meanings (dictionary) rather than an actual use of the word in combination with other words. The dictionary definition of a word is independent of any linguistic or empirical context ... no word has a single simple literal meaning except in certain instances in the dictionary itself or more frequently in the mind of the judge.

'A literal meaning is, at the end of the day, always an interpretative meaning. A selection has to be made – consciously or unconsciously – to prefer one of several possible literal meanings in the context of the phrase or clause or statutory rule to be interpreted.' (Emphasis added. Goodrich, *Reading the Law*, 1986, p. 108.)

Of course, interpretation is not unique to legal texts: we all do it all the time. Two examples from non-legal situations will illustrate the point.

First, consider two shops, one displaying a sign saying 'Pork Butcher', and the other displaying a sign saying 'Family Butcher'. You know, of course, that the first butcher specializes in pig meat, while the second does *not* butcher families. Yet *why* does one adjective qualify the activities of the butcher in terms of the meat sold, while the other does so in terms of the market served? The answer, as Goodrich says, is that the context is all-important.

Secondly, suppose a university is worried about the possibility of being held liable for breaches of copyright by staff using photocopiers when they prepare teaching materials. Accordingly, every photocopier in the university bears a warning notice, which explains the relevant aspects of the law of copyright, and is headed 'For the Attention of Every Single Member of Staff'. Are married members of staff entitled to ignore the notice?

We will return to the problem of *plain meaning* in Chapter 18, but at this stage we must consider the form of legal reasoning.

1.3 The form of legal reasoning

It is often said that, basically, legal reasoning is *syillogistic*. Strictly speaking, this statement is inaccurate, since the words *syillogism* and *syillogistic* form part of the

technical vocabulary used by professional philosophers and in that vocabulary *sylogism* is the name given to an argument in the following form.

All A are B
All B are C
Therefore *all A are C*.

For example:

All members of the human species are animals
All animals are mortal
Therefore all members of the human species are mortal.

However, lawyers, in common with many other people who are not professional philosophers, often use the words *sylogism* and *sylogistic* slightly more loosely as being applicable to reasoning in the following form:

If $A = B$
And $B = C$
Then $A = C$

Taking a legal example, therefore, this form of reasoning could produce the following:

It is an offence to exceed the speed limit
Exceeding the speed limit is what the defendant has done
It is an offence to do what the defendant has done

or, expressing the conclusion more directly, the defendant is guilty of speeding.

Essentially, therefore, *sylogistic* reasoning is perfectly straightforward. However, before we give further consideration to legal *sylogisms* we must pick up three more technical terms which describe the elements of any *sylogism*. The first line is known as the *major premise*, the second as the *minor premise*, and the third as the *conclusion*.

In the context of legal method, this becomes:

a statement of law (the major premise),
a statement of fact (the minor premise), and
a conclusion (which results from applying the major premise to the minor premise).

Having picked up this terminology, it becomes apparent that the discussion so far has simply assumed that the major and minor premises exist, without explaining how they can be discovered and formulated. But, of course, in purely practical terms, lawyers must establish both the premises before they can reach a conclusion.

The major premise is formulated from those sources which the legal system accepts as being authoritative. In English terms, and for almost all practical purposes, this means Acts of Parliament and delegated legislation (see pages 64 and 71); case-law (see Part 2); European Union (previously European

Community) law (see Chapters 5, 15 and 20), and, to some extent, under the Human Rights Act 1998, parts of the European Convention for the Protection of Human Rights and Fundamental Freedoms (see Chapter 6). Handling those sources, in such a way as to be able to produce a convincing formulation of the law, is a highly developed intellectual skill, which cannot be acquired quickly, easily or painlessly. However, one of the major purposes of this book is to ensure that those who are willing to persevere may equip themselves with a critical foundation on which to develop that skill.

The minor premise (consisting as it does of the facts of a case) will either be proved to the satisfaction of the court or agreed between the parties. In terms of professional practice, far more disputes involve questions of fact than involve questions of law. Therefore all competent practitioners need a good grasp of the law of evidence, so that they know how to go about trying to prove the facts on which they rely, and how to try to prevent their opponents from proving other facts. For the moment, however, we need say no more about the minor premise, although at the end of Chapter 2 we will return to some of the problems surrounding the distinction between *law* and *fact*.

In passing, you will notice that you are now in a position fully to understand the Holmesian concept of the 'inarticulate major premise' (see page 4). Holmes' point is simply that the formal syllogism is all very well as far as it goes, but that the most important factor in determining the result of a case comes before the formal statement of the major premise, and is the judge's personal starting-point or *inarticulate* major premise.

At this stage it will be useful to examine some more generalized aspects of intellectual argument, so that legal method can be seen within the context of the broader field of intellectual endeavour, rather than as a thing apart.

1.4 Propositions and processes: truth and validity

It is useful to observe and to maintain the key distinction between the *truth of a proposition or conclusion* on the one hand, and the *validity of the process of argument* on the other. Some examples will illustrate the point. These examples will use incontrovertible scientific facts, simply because no one can feel strongly about such subject matter, and therefore no one will be distracted by considerations of what they think the position *ought* to be.

Speaking in round figures, it is true to say that the Sun is 93,000,000 miles from the Earth, and that light travels at 186,000 miles a second. It is also logically valid to say that if we know the distance between two points, and the speed at which something is travelling, we can work out the time taken for the journey by dividing the distance by the speed. Thus if *A* and *B* are 100 miles apart, something travelling at 100 miles an hour will take one hour to make the journey. Applying this to the figures given at the start of this paragraph, we can say that dividing 93,000,000 by 186,000 will give us the number of seconds which light takes to travel from the Sun to the Earth, namely 500. In this example we have applied a process of reasoning that

is valid to facts that are true, and therefore we have inevitably come to a conclusion that is true.

However, it is also possible to produce a conclusion which happens to be true by applying valid reasoning to premises which are false. If I tell you that the Sun is 1,000,000 miles from the Earth, and that light travels at 2000 miles a second, dividing 1,000,000 by 2000 still produces the figure of 500 seconds. In this example the premises are false, but the process of reasoning (dividing one figure by the other) is valid. *Quite by chance* the conclusion happens to be true.

A third example shows that applying invalid reasoning to false premises may also produce a conclusion which happens, *purely by chance*, to be true. Suppose I tell you not only that the Sun is 5000 miles from the Earth, and that the speed of light is 0.1 mile a second, but also that the way to do the calculation is to multiply one figure by the other, rather than by dividing one by the other. This calculation still produces the figure of 500 seconds for the time taken by light to travel from the Sun to the Earth. As we know, this happens to be true. However, the premises are false and the argument is invalid.

In practical terms, the second and third examples illustrate a very common danger. If you see an argument which ends with a conclusion that you either know to be true or want to be true, it is easy to fall into the trap of assuming that the premises are true and that the argument is valid. Falling into this trap is particularly easy if the premises are drawn from a field in which you lack expertise, and if you are less than skilled in identifying invalid arguments. In the vast majority of cases, of course, there will be no problem. Premises which are true will be used as the basis of arguments which are valid, and the conclusions which are reached will, therefore, also be true. However, good lawyers are constantly on the lookout for cases which embody false premises or invalid arguments, or both.

We must now consider three common methods of reasoning, and the limitations of each.

1.5 Methods of reasoning: *induction*, *deduction* and *analogy*

1.5.1 Introduction

Induction, *deduction* and *analogy* are all methods of reasoning which are commonly employed in a variety of contexts. We will look at each method in turn, and then place them in a legal context.

1.5.2 Reasoning by induction

The process of *inductive reasoning* involves making a number of observations and then proceeding to formulate a principle which will be of general