

How to Read English Cases

Part I

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Welcome Week 2021-22

Today's Agenda:

- What are case law and cases?
- Why read cases?
- How to read cases?
- Reading cases: from theory to practice (Friday's exercise!)

What is Case Law?

- Case law is the law made by the courts and decided by judges.
- In a common law system, (most) case law has binding status: it must be followed by subsequent courts operating at the same or lower levels.
 - Hence why it is so important to know what cases actually *say*, i.e. to understand the binding rules of law that they establish!

What is Case Law?

- First instance judgments typically involve findings of fact (i.e. what actually happened, or would have happened absent the disputed event, based on the evidence available) *and* findings of law (i.e. what legal rules govern the situation, and how these apply to the instant facts).
- It is much more difficult to appeal findings of fact than findings of law (though rules differ depending upon precise legal area, e.g. family, criminal, civil etc.) = so *higher court judgments* tend to focus solely on *questions of law*.

What is a 'Case'?

- Provide us with, in essence, a written record of the *story* of the legal action including its disposition.
- In English law, cases typically comprise a mixture of **procedural**, **factual** and **legal** information.
- Formal **judgment** of the court usually written by judge (or other trier of fact) involved, and contains decision of the court.
 - **Case reports** may augment judgment with additional information e.g. summary of arguments advanced by counsel, lists of prior case law considered in judgment, links to commentary/later cases referring to judgment.

judgment was affirmed in the King's Bench, in a writ of error, and therewith agrees (b) 27 H. 6. Aid in Statham. Vide 29 E. 3. 1 b.

The heir at common law should have a prohibition of waste against tenant in dower, but if the heir granted over his reversion, his grantee should not have a prohibition of waste: for it appears in the Register 72 that such assignee in an action of waste against tenant in dower shall recite the statute of Gloucester; *ergo*, he shall not have a prohibition of waste at common law, for then he should not recite the statute, *vide* F. N. B. 55 c. 14 H. 4. 3. 5 H. 5. (7.) 17 b.

Lastly, it was resolved, that the said woman by force of the said clause of without impeachment of waste, had such power and privilege, that though in the case at Bar no waste be [84 a] done, because the house was blown down *per vim venti* without her fault, yet she should have the timber which was parcel of the house, and also the timber trees which are blown down with the wind; and when they are severed from the inheritance either by the act of the party, or of the law, and become chattels, the whole property of them is in the tenant for life by force of the said clause of "without impeachment of waste." And for this cause judgment was given *per omnes judicarios una voce, quod querens nihil caperet per villam.*

[84 b] THE CASE OF MONOPOLIES.

Trin. 44 Eliz.

[See *Marsden v. Saville Street Foundry Company*, 1878, 3 Ex. D. 206; *Great Eastern Railway Company v. Goldsmid*, 1884, 9 App. Cas. 940; *R. v. County Court Judge of Haikuz* [1891], 1 Q. B. 798; [1891], 2 Q. B. 263].

A grant by the Crown of the sole making of cards within the realm, is void.

A dispensation or licence to have the sole importation and merchandizing of cards, without any limitation or stint, is against law, notwithstanding the 3 E. 4. which imposes a forfeiture upon their importation. S. C. [Moor. 671. Noy 173.]

Com. Dig. Trade, A 1. D 4. Skin. 133. 169, &c. Carth. 270. Lucas 131. 3 Inst. 181. 8 Co. 125 a. 2 Inst. 47. 3 Keb. 269. Hob. 212.

Edward Darcy, Esquire, a groom of the Privy Chamber to Queen Elizabeth brought an action on the case against T. Allein, haberdasher, of London, and declared, that Queen Elizabeth, 13 Junii, anno 30 Eliz. intending that her subjects being able men to exercise husbandry, should apply themselves thereunto, and that they should not employ themselves in making playing cards, which had not been any ancient manual occupation within this realm, and that by making such a multitude of cards, card-playing was become more frequent and especially among servants and apprentices, and poor artificers; and to the end her subjects might apply themselves to more lawful and necessary trades; by her letters patent under the Great Seal of the same date granted to Ralph Bowes, Esq. full power, licence and authority, by himself, his servants, factors, and deputies, to provide and buy in any parts beyond the sea, all such playing cards as he thought good, and to import them into this realm, and to sell and utter them within the same, and that he, his servants, factors, and deputies, should have and enjoy the whole trade, traffic, and merchandize, of all playing cards: and by the same letters patent further [85 a] granted, that the said Ralph Bowes, his servants, factors, and deputies, and none other should have the making of playing cards within the realm, to have and to hold for twelve years; and by the same letters patent, the Queen charged and commanded, that no person or persons besides the said Ralph Bowes, &c. should bring any cards within the realm during those twelve years; nor should buy, sell, or offer to be sold within the said realm, within the said term,

(b) Co. Lit. 28 a. Dyer 184. pl. 63. Moor 321. Poph. 194. Latch 262. 1 Roll. Rep. 183.

any playing cards, nor should make, or cause to be made any playing cards within the said realm, upon pain of the Queen's highest displeasure, and of such fine and punishment as offenders in the case of voluntary contempt deserve. And afterwards the said Queen, 11 Aug. anno 40 Eliz. by her letters patent reciting the former grants made to Ralph Bowes, granted the plaintiff, his executors, and administrators, and their deputies, &c. the same privileges, authorities, and other the said premises, for twenty-one years after the end of the former term, rendering to the Queen 100 marks per annum; and further granted to him a seal to mark the cards. And further declared, that after the end of the said term of twelve years, s. 30 Junii, an. 42 Eliz. the plaintiff caused to be made 400 grosses of cards for the necessary uses of the subjects, to be sold within this realm, and had expended in making them 5000*l.*, and that the defendant knowing of the said grant and prohibition in the plaintiff's letters patent, and other the premises, 15 Martii, anno 44 Eliz. without the Queen's licence, or the plaintiff's, &c. at Westminster caused to be made 80 grosses of playing cards, and as well those, as 100 other grosses of playing cards, none of which were made within the realm, or imported within the realm by the plaintiff, or his servants, factors, or deputies, &c. nor marked with his seal, he had imported within the realm, and them had sold and uttered to sundry persons unknown, and shewed some in certain, wherefore the plaintiff could not utter his playing cards, &c. *Contra formam prebitorum litterarum patentes, et in contemptum dicte dominice Regine, (a)* whereby the plaintiff was disabled to pay his farm, to the plaintiff's damages. The (b) defendant, except to one half gross pleaded not guilty, and as to that pleaded, that the City of London is an ancient city, and that within the same, from time whereof, &c. there has been a society of Haberdashers, and that within the said city there was a custom, *quod quilibet persona de societate illa, usus fuit et consuevit emere* [85 b] *veniente, et libere (c) merchandizare omnem rem et omnes res merchandizabiles infra hoc regnum Anglie de quocunque, vel quibuscunque personis, &c. and pleaded, that he was civis et liber homo de civitate et societate illa, and sold the said half gross of playing cards, being made within the realm, &c. as he lawfully might; (d) upon which the plaintiff demurred in law.*

And this case was argued at the Bar by Dodderidge, Fuller, Fleming Solicitor, and Coke Attorney-General, for the plaintiff; and by Crook, G. Altham, and Tanfield for the defendant. And in this case two general questions were moved and argued at the Bar, arising upon the two distinct grants in the said letters patent, viz. 1. If the said grant to the plaintiff of the sole making of cards within the realm was good or not? 2. If the licence or dispensation to have the sole importation of foreign cards granted to the plaintiff, was available or not in law? to the bar, no regard was had (e) because it was no more than the common law would have said, and then no such *particular custom* ought to have been alleged, for in his *que de jure communi omnibus conceduntur, consuetudo alioquin patria vel loci non est alleganda*, and therewith agrees (a) 8 E. 4. 5 a. &c. (A). And although (b) the bar was held superfluous, yet that shall not turn the defendant to any prejudice, but that he may well take advantage of the insufficiency of the declaration (B).

As to the first question it was argued on the plaintiff's side, that the said grant of the sole making of playing cards within the realm, was good for three reasons. 1. Because the said playing cards were not any merchandize, or thing concerning trade of any necessary use, but things of vanity, and the occasion of loss of time, and decrease of the substance of many, the loss of the service and work of servants, causes of want, which is the mother of woe and destruction, and therefore it belongs

(a) 1 Roll. 106.

(b) Moor 672. Noy 173.

(c) Doctrin. placit. 56.

(d) Moor 671. Noy 174.

(e) Doctrin. placit. 56. Q. Carth. 270.

(u) Br. Prescription 71.

(A) Vide note (b) *Combe's case*, 9 Co. 75 b.

(b) Doctrin. placit. 69. Hob. 14. Cro. Car. 5. Cro. Jac. 133. 221. 312. 8 Co. 130 b. 133 b. Palm. 287. Lit. Rep. 173. 252. 2 Bulstr. 94.

(v) Vide note (f) *Fraunce's case*, 8 Co. 93 a. Note (f) *Bonham's case*, 8 Co. 120 b.



Michaelmas Term
[2018] UKSC 50
On appeal from: [2017] EWCv 151

JUDGMENT

Darnley (Appellant) v Croydon Health Services NHS Trust (Respondent)

before

**Lady Hale, President
Lord Reed, Deputy President
Lord Kerr
Lord Hodge
Lord Lloyd-Jones**

JUDGMENT GIVEN ON

10 October 2018

Heard on 7 June 2018

LORD LLOYD-JONES: (with whom Lady Hale, Lord Reed, Lord Kerr and Lord Hodge agree)

1. The appellant, Michael Mark Junior Darnley, who was then aged 26, was assaulted in the late afternoon of 17 May 2010 when he was struck on the head by an unknown assailant in south London. He later telephoned his friend Robert Tubman. The appellant told Mr Tubman about the assault and complained that he had a headache and that it was getting worse. Mr Tubman was sufficiently concerned that he drove the appellant to the Accident and Emergency Department (“A & E department”) at Mayday Hospital, Croydon which was managed by the respondent NHS Trust. It was noted in the clerking record that the appellant attended at 20:26 on 17 May 2010.

2. Mr Tubman accompanied the appellant at the A & E department and was a witness to the conversation with the female A & E receptionist. The trial judge accepted Mr Tubman’s account of the conversation which took place. The appellant provided his personal details. He informed the receptionist that he had been assaulted by being struck over the back of the head and he thought that he had a head injury, that he was feeling very unwell and that his head was hurting. The receptionist did not have a helpful attitude and was more concerned about how the injury occurred. She asked the appellant if the Police were involved. The appellant and Mr Tubman both told the receptionist that the appellant was really unwell and they were worried that he had a head injury and needed urgent attention. The receptionist told the appellant that he would have to go and sit down and that he would have to wait up to four to five hours before somebody looked at him. The appellant told the receptionist that he could not wait that long as he felt as if he was about to collapse. The receptionist replied that if the appellant did collapse he would be treated as an emergency.

3. The identity of the A & E receptionist who spoke to the appellant and Mr Tubman is not known, save that it must have been one of the two receptionists on duty at that time, namely Valerie Ashley or Susan Reeves-Bristow. Neither had any recollection of the conversation that took place and each was able to give evidence only of her usual practice.

4. The appellant sat down with Mr Tubman in the waiting area of the A & E department. However, the appellant decided to leave because he felt too unwell to remain and he wanted to go home to take some paracetamol. The judge found that the appellant and Mr Tubman left after 19 minutes at 20:45. Neither informed the receptionist or told anyone else that they were leaving. However, Mrs Reeves-

SUMMARY¹**Exclusion of convicted prisoners from voting in parliamentary and local elections****Article 3 of Protocol No. 1**

Vote – Exclusion of convicted prisoners from voting in parliamentary and local elections – General and automatic disenfranchisement of convicted prisoners under domestic legislation – Length of sentence or gravity of the offence not relevant for the ban on the right to vote to come into play – Large group of prisoners barred from voting – Legitimate aim of the legislation – Proportionality of the measure – Margin of appreciation

*
* *

The applicant was serving a sentence of discretionary life imprisonment for manslaughter but was released from prison on licence in 2004. As a convicted prisoner, he is barred by law from voting in parliamentary or local elections. Some 48,000 other prisoners are similarly affected. He issued proceedings in the High Court, under section 4 of the Human Rights Act 1998, seeking a declaration that the relevant legislation was incompatible with the Convention. His claim and subsequent appeal were both dismissed.

Held

Article 3 of Protocol No. 1: The rights guaranteed under Article 3 of Protocol No. 1 were crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law and, furthermore, the right to vote was a right and not a privilege. Nonetheless, the rights bestowed by this provision were not absolute and there was room for implied limitations. Any limitations on the right to vote had to be imposed in pursuit of a legitimate aim, be proportionate to that aim and not thwart the free expression of the people in the choice of the legislature. Prisoners generally continued to enjoy all the fundamental rights and freedoms guaranteed under the Convention, except for the right to liberty, where lawfully imposed detention fell expressly within the scope of Article 5. Nevertheless, Article 3 of Protocol No. 1 did not exclude that restrictions on electoral rights be imposed on an individual who had, for example, seriously abused a public position or whose conduct threatened to undermine the rule of law or the foundations of democracy. However, the severe measure of disenfranchisement was not to be resorted to lightly and the principle of proportionality required a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned. As in other contexts, an independent court, applying an adversarial procedure, provided a strong safeguard against arbitrariness. The Court accepted that the domestic

1. This summary by the Registry does not bind the Court.

legislation might be regarded as pursuing the legitimate aim of preventing crime and enhancing civic responsibility and respect for the rule of law. As to the proportionality of the voting ban, 48,000 prisoners barred from voting was a significant figure which covered a wide span of offenders and sentences, ranging from one day to life imprisonment and from relatively minor offences to offences of the utmost gravity. Nor was it apparent that there was any direct link between the facts of any individual case and the removal of the right to vote. There was no evidence that Parliament had ever sought to weigh the competing interests or to assess the proportionality of a blanket ban on the right of a convicted prisoner to vote. The domestic courts, for their part, did not undertake any assessment of the proportionality of the measure itself. It was undisputed that the United Kingdom was not alone among Contracting States in depriving all convicted prisoners of the right to vote. It could also be said that the law in the United Kingdom was less far-reaching than in certain other States. However, the fact remained that only a minority of Contracting States imposed a blanket restriction on the right of convicted prisoners to vote or had no provision allowing prisoners to vote. Moreover, and even if no common European approach to the problem could be discerned, that could not in itself be determinative of the issue. While the margin of appreciation in this field was wide, it was not unlimited. The law in question remained a blunt instrument, applied automatically to convicted prisoners in detention, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right had to be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1. The Court therefore endorsed the Chamber's finding under this provision.

Conclusion: violation (twelve votes to five).

Article 41: The finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. The Court awarded him a specified amount for costs and expenses.

Case-law cited by the Court

X v. Germany, no. 2728/66, Commission decision of 6 October 1967, Collection 25
Golder v. the United Kingdom, judgment of 21 February 1975, Series A no. 18
Glimmerveen and Hagenbeek v. the Netherlands, nos. 8348/78 and 8406/78, Commission decision of 11 October 1979, Decisions and Reports 18
Hamer v. the United Kingdom, no. 7114/75, Commission's report of 13 December 1979, Decisions and Reports 24
Draper v. the United Kingdom, no. 8186/78, Commission's report of 10 July 1980, Decisions and Reports 24
X v. the United Kingdom, no. 9054/80, Commission decision of 8 October 1982, Decisions and Reports 30
Silver and Others v. the United Kingdom, judgment of 25 March 1983, Series A no. 61
T. v. the United Kingdom, no. 8231/78, Commission's report of 12 October 1983, Decisions and Reports 49

Why Read Cases?

- To find out what the law is.
 - Many areas of English law have developed a complex body of rules tailored to distinct social/market circumstances.
- To understand how legal rules work in practice.
- To determine whether the law is working satisfactorily (do the legal rules result in objectively fair and just outcomes?)

The Doctrine of Precedent

- *Stare decisis* = ‘let the decision stand’
- Prior judgments have legally binding status, and must be followed by later courts of same or equal level
 - **Supreme Court** bound only by earlier SC precedent (which it can overrule, though does so rarely)
 - **Court of Appeal** bound by SC and earlier CA precedent
 - **High Court** bound by SC and CA precedent - not technically bound by other HC decisions, but these are of strong persuasive authority and usually followed
 - **County Court** bound by HC in addition to SC and CA
- ...unless the earlier case can be ‘distinguished’ on the facts!

The Doctrine of Precedent

- There is an important distinction between:
 - *Ratio decidendi* = ‘the rationale for the decision’
 - The legal principle that the case establishes as binding law
> i.e. what must be followed by subsequent courts!
 - *Obiter dictum/dicta* = ‘other things said’
 - These are, essentially, remarks made ‘in passing’ in the judgment which are not necessary to the decision reached, and thus do not bind later courts
 - *Obiter dicta* can, however, be highly influential and become binding in time (e.g. *Hedley Byrne v Heller* on negligent misstatement)

How to Read Cases?

- Reading cases is a **skill!**
 - It takes time to acquire - don't feel frustrated if it's a slow and difficult process initially
 - It gets easier with practice (...I promise!)

How to Read Cases?

- Use guidance and feedback to improve
 - Lectures & textbook reading will help you to identify the key takeaways from long judgments (...but are not an adequate substitute for reading the most important judgments themselves)
 - Class participation
 - Formative work
 - Mooting/debating

How to Read Cases?

- There is loads of **support** available to develop case reading skills:
 - Foundational Legal Skills course
 - Class teachers
 - Lecturers
 - Academic mentors
 - Peers (remember: cooperation trumps competition for everyone!)
 - LSE Life

Reading Cases: Preliminary Issues



Reading Cases: Preliminary Issues

■ Court? [Supreme Court]

- At what level does this court operate: what precedent is it bound by, and which courts will be bound by its holding? (also check the **date**)

Reading Cases: Preliminary Issues

- Parties? [*Darnley v Croydon Health Services NHS Trust*]
 - At first instance, the title is *Claimant v Defendant* or *Prosecutor v Defendant*; on appeal, *Appellant v Respondent*.
 - Note that you pronounce the ‘v’ as ‘and’!
 - *Donoghue v Stevenson* is ‘Donoghue and Stevenson’
 - *R v Brown* is ‘The Crown and Brown’(!)
 - Cf. *Roe v Wade* is ‘Roe versus Wade’

Reading Cases: Preliminary Issues

- **Judges?** [Lady Hale, Lord Reed, Lord Kerr, Lord Hodge, Lord Lloyd-Jones]
- Although all judges are bound to apply the law accurately and dispassionately...that does not mean that they don't have quite different legal personalities!
- Do the judges agree in a single judgment?
 - Are there one or more **dissenting** judgments? (i.e. the judge disagrees re final disposition of case)
 - Are there one or more **concurring** judgments? (i.e. the judge agrees re final disposition of case, but either disagrees with reasoning of majority or wants to add additional reasons)

Reading Cases: Preliminary Issues

■ Citation? [[2018] UKSC 50, [2019] AC 831, [2018] 3 WLR 1153, [2019] 1 All ER 27, [2018] Med LR 595, [2019] PIQR P4]

- Since 2001, judgments have ‘**neutral citations**’ issued by the court itself: here, [2018] UKSC 50
 - Cases with a neutral citation can be found online, open access, at the British and Irish Legal Information Institute website:
<https://www.bailii.org/>
- Most cases also published elsewhere in general and/or subject-specific **law reports**, or newspapers
 - To access proprietary law reports, use a legal information service like Westlaw or LexisNexis (both available via LSE Library Search)
- Though not hugely important, there is a formal **hierarchy for citing law reports**: starting with ICLR Law Reports (AC, QB, Fam, Ch), WLR, All ER, subject-specific reports, newspapers.

Reading Cases: from Theory to Practice!

- In Part II of this lecture, on Friday morning, we will discuss two (short!) judgments of the Supreme Court (formerly House of Lords)
- *R v Bentham* [2005] UKHL 18, [2005] 1 WLR 1057, [2005] Crim. L.R. 648
- *Darnley v Croydon Health Services NHS Trust* [2018] UKSC 50, [2019] AC 831

Finding Cases: Westlaw UK (via the LSE Library Search function)

The screenshot shows the LSE Library search interface. The search bar contains 'Westlaw uk' and the results are displayed on page 1 of 1,167 results. The results list includes:

- 1** **ARTICLE**
Westlaw UK – a Review of the New Platform
Monk, Clare
Cambridge, UK: Cambridge University Press
Legal information management, 2008-06-02, Vol.8 (2), p.147-150
“... be concentrating on. Westlaw UK is currently undergoing some dramatic changes and all users will soon be using a new platform to access UK and EU information. This review will...”
PEER REVIEWED
Full text available >
- 2** **DATABASE**
Westlaw UK
London : Sweet & Maxwell
Online access >
- 3** **ARTICLE**
Legal Information Retrieval Study – Lexis Professional and Westlaw UK
Mason, Dean
Cambridge, UK: Cambridge University Press
Legal information management, 2006-12, Vol.6 (4), p.246-250
“This article by Dean Mason looks at the retrieval effectiveness of the online legal research tools Lexis Professional and Westlaw UK and is the result of research carried out for his Masters Degree...”
PEER REVIEWED

R v Bentham [2005] UKHL 18

Firearms Act 1968

Section 17: Use of firearm to resist arrest

...

(2) If a person, at the time of his committing or being arrested for an offence specified in Schedule 1 to this Act, has in his possession a firearm or imitation firearm, he shall be guilty of an offence under this subsection unless he shows that he had it in his possession for a lawful object.

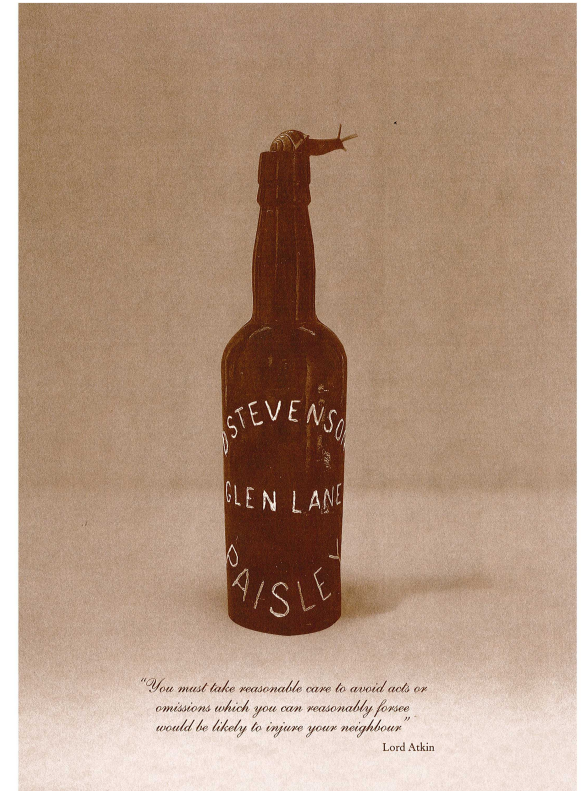
R v Bentham [2005] UKHL 18



Darnley v Croydon Health Services NHS Trust [2018] UKSC 50

■ *Donoghue v Stevenson* [1932] AC 562

- The ‘*snail in the ginger beer*’ case
- Foundational case for modern law of **negligence** in tort, premised upon three-fold legal test:
 1. Existence of duty of care towards claimant by defendant;
 2. Breach of the duty; *and*
 3. Causal link between breach and harm suffered



Darnley v Croydon Health Services NHS Trust [2018] UKSC 50



Reading Cases: for each case...

- Distinguish between:
 - The facts of the case
 - The procedural history of the case before the lower courts
 - The legal question(s) before the HL/SC
- What additional information is provided by the formal law reports for each case? (AC, WLR, Crim L.R.)

Reading Cases: for each case...

- What is the *ratio* of the case (i.e. the point of law formally decided by the court)?
- How did the court arrive at its decision?
- Do you agree with the court's approach? What might be weaknesses in its argument? Does the court arrive at an objectively 'just' outcome?
 - If you have time in advance, please discuss these final questions with your peers!

Friday's Agenda: