



THE DIVISIONS OF THE LAW	
Studying law	
Crimes and civil wrongs	
The courts	
Courts with civil jurisdiction	
Court of Appeal (Civil Division)	
County courts	
Magistrates' courts	
Appeals to the House of Lords	

Glanville Williams: Learning the Law

Thirteenth Edition

A.T.H. Smith



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— ★ —
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GLANVILLE WILLIAMS: LEARNING THE LAW

BY

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“A man has but one youth, and considering the consequences of employing that well, he has reason to think himself very rich, for that gone, all the wealth in the world will not purchase another.”

Sir R. North, *On the Study of the Laws.*

THIRTEENTH EDITION

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PREFACE

The warm reception accorded to the last edition has encouraged me and the publishers to bring out a fresh version. There have been many legal changes in the four years that have elapsed, and I have striven to incorporate them all where appropriate. To accommodate them, whilst keeping the book of manageable length, I have been forced to delete material no longer sufficiently germane for the present reader. Some of the details concerning the confusing distinctions between law and equity, for example, and the details of modern civil and criminal procedure. This would have been at the expense of omitting one of the amusing passages in the book. So I reproduce it here, entirely out of context.

“Then comes the defendant’s *defence*. The defence may actually embody a number of defences, perhaps inconsistent with each other”.¹

There is one general point that does perhaps need to be made. It is commonly supposed that the book is intended primarily for those who are thinking about making a study of the law. But that was not the audience that Glanville had in mind—he was writing primarily for people who had decided to study the law, and his objective was to make the book relevant to first year studies and even later. As it is, some buy it before going up to university, and finding bits of it too difficult on first reading, leave it to gather dust on the shelf thereafter. But time and again I am asked by my first year students questions: “how much of a case should I remember? What should I do if the problem omits what appears to be a relevant fact”, and so forth, to which they will find the answers if only they were to re-read the book.

¹ Hence the tale in *Punch* of the Q.C.’s son who was charged by the Head with having broken the schoolroom window: “In the first place, sir, the schoolroom has no window; in the second place the schoolroom window is not broken; in the third place, if it is broken, I did not do it; in the fourth place it was an accident”. All these defences, except the last, are *traverses*; the last is a *confession* and (the young man hoped) *avoidance*.

Some colleagues have told me that they keep a copy on the shelf and still make use of it from time to time as a reference work.

One difficult editorial decision taken in the course of producing the last edition arose over the use of the word “proselytise”, which is to be found on page 1. After much deliberation, I left it in (resisting the urge to suggest that those who were unfamiliar with the word should look to the place in the book where I recommend the purchase of a good dictionary). More than one critic took me to task, saying that the book was altogether too difficult for the modern reader and one (online) reviewer gave the use of this word as an instance. Coughing discreetly, I would point my critic in the direction of the Racial and Religious Hatred Act 2006, which makes it a criminal offence to stir up religious hatred, but also provides that “nothing in [the Act] prevents proselytising”. It cannot be stressed too often that the study of the law requires a good deal of self-discipline and hard work. But I should also want to reassure readers that the satisfactions to be derived from mastering the law provide a very good dividend by way of repayment.

A.T.H. Smith
Caius College
July 2006

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CHAPTER 1

THE DIVISIONS OF THE LAW

But in these nice sharp quillets of the law,
Good faith, I am no wiser than a daw.

—Shakespeare, *King Henry the Sixth*, Part I, II, iv.

This little book aims to help principally those who have decided to study law—whether in a University or College, or as a professional qualification.

From time to time I have been told of some who have read the book before making the decision, and have been sufficiently attracted by the taste it has given them of legal studies to make up their minds to continue. I did not, however, intend to proselytise when I wrote. As you will see if you look at Chapter 13, there are quite enough people trying to enter the legal profession without adding to the number. If you are uncertain about your career there may be strong personal and social reasons why you should take up something else: entering the world of commerce or industry, or becoming a technologist or research scientist. In the foreseeable future there is likely to be a much greater shortage of IT professionals, electronics specialists, good business managers (not overlooking areas such as banking and management consultancy) and people who combine linguistic skills with other abilities than there will be of lawyers. I assume, however, that you have decided to study the law or that you are giving the possibility serious thought.

On the question whether you should study law throughout your time at university, or study a different subject with a view to qualifying to practise law later (assuming, that is, that you have decided that you wish to practise law), it is difficult to be seen to offer objective advice. The former course offers a quicker and cheaper route to employment, and the opportunity to assess for yourself at an early

stage whether the law is a discipline to which you wish to subject yourself. But there are some legal practitioners (who may themselves have studied something other than law at university) who would claim that too early a specialisation in the law can narrow rather than broaden the mind by depriving the student of the opportunity to be exposed to other disciplines. That is not a view that I share.¹ On the contrary, I would wish to argue that the longer course offers a chance to acquire both a necessary legal framework and a deeper understanding of the law. Even if you have only narrowed your immediate options to obtaining higher education in one of the humanities, I would certainly wish to bring to your notice the attraction of law as compared with the traditional arts subjects.

Law is the cement of society, and an essential medium of change. Its study at a university enables you to explore how and why this is so. A common misunderstanding is that the study of law involves little more than the rote learning of legal rules. Closer acquaintance will show that it is more complex and challenging than that. Far better to think of the law as forming an integral part of a constantly evolving social landscape. Knowledge of law increases one's understanding of public affairs, as well as affording some understanding of social values. At a more practical level, its study promotes accuracy of expression, facility in argument and skill in interpreting the written word. It is of wider vocational relevance than most arts subjects. Its practice does, however, also call for much routine, careful, unexciting work, and it is for you to decide whether you think you are temperamentally suited to that.

In this book I offer an introduction to English law and its study at university or college. A word or two about the term English law. The use of "England" is taken generally to include both England and Wales. Without at this stage wishing to trouble you with the constitutional niceties, you should know that the Scottish legal system is in detail very different from the English. When England, Wales and Scotland are intended to be referred to as a single entity, the correct term is "Great Britain", and when Northern Ireland is added, it becomes the United Kingdom. The reason why the law emanating

¹ For a passionate defence of the importance of the study of law in the university, see Professor P. Birks, "The Academic and the Practitioner" [1998] L.S. 397.

from these islands is worthy of study is that it is the home of the common law; the place where a family of law was born, quite different from the civil law that underlies much German, Italian and French law, very different from Islamic law. The system of law that was historically developed in the courts of Westminster spread with the development of the British Empire throughout much of the western world—to the United States of America, to the Commonwealth countries of Canada, Australia and New Zealand, to the African continent and to parts of the far east—India, Singapore, Malaysia and many more besides. Ideally, perhaps, a university would offer in addition the chance to study at least some of the elements of these other legal systems—comparative law. But that is to ask a great deal of the already crowded curriculum, and the ideal is achieved only rarely.

CRIMES AND CIVIL WRONGS

One of the non-lawyer's inveterate errors is to suppose that the law is largely—even exclusively—concerned with the criminal law. An old chestnut that the reader beginning legal studies is likely to hear recounted (so why not by me?) concerns the visitor who was being given a glimpse of the Court of Chancery. He peered round and asked where was the prisoner.² In fact the law is divided into two great branches, the criminal and the civil,³ and of these much the greater is the civil. It is important to grasp the nature of the division at the outset to understand the structure of the English legal system; the terminology is different, the procedure is different and the outcome is different. I shall, therefore, try to give a simple explanation of it.

The distinction between a crime and a civil wrong, though capable of giving rise to some difficult legal problems, is in essence quite simple. The first thing to understand is that the distinction does not reside in the nature of the wrongful act itself. This can be proved quite

² According to a gloss on the tale, someone then explained that a Chancery judge does not try anything except counsel's patience.

³ "Civil law" is a phrase used in several meanings. It may mean, as in the above context, the law that is not criminal law. It may also mean the law of a state as opposed to other sorts of law like international law; or it may mean Roman law. A "civilian" is a person learned in Roman law.