

COURT OF APPEAL CRIMINAL DIVISION

A PRACTITIONER'S GUIDE

ALIX BELDAM AND SUSAN HOLDHAM

1ST EDITION



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Court of Appeal Criminal Division: A Practitioner's Guide

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Court of Appeal Criminal Division: A Practitioner's Guide

“Appeal: In law, to put the dice into the box for another throw”

Ambrose Bierce, The Devil's Dictionary

Authors' Note

The purpose of this book is first, to explain the statutory bases of the jurisdiction and powers of the Court of Appeal Criminal Division and the principles on which its practice is based and secondly, to give detailed guidance for practitioners on issues they will or may encounter in practice. We know from our extensive experience working with the court that this is a unique and specialised area, not least because although the Criminal Appeal Act 1968 underpins much of the work of the court, the diverse nature of the statutory provisions means that there is inevitably no cohesive legislative structure governing the work of the court. We have sought to present these diverse provisions and how they are applied in practice in an accessible form and provide both a route card and a map for all who are concerned in the work of the court. Even if there were any element of dice-throwing in a modern appeal, at least this book will assist as to where, when and how best to throw them.

Notwithstanding our role in the Criminal Appeal Office, we are writing entirely in our private capacities. Any opinions, suggestions or conclusions are our personal views and whilst we believe that the contents accurately reflect the practice and procedure, nothing should be taken as an official statement and any errors are ours and ours alone.

This book reflects the law as at July 2, 2012.

Acknowledgments

In researching the history and former practices of the court, we have been especially assisted by Rosemary Pattenden's *English Criminal Appeals 1844-1994* (Oxford: Clarendon Press, 1996) and early editions of *Archbold Criminal Pleading, Evidence and Practice* (London: Sweet & Maxwell).

Over the years we have worked at the CAO, we have consistently received sound advice on both the law and practice from Michael Catterson, a CAO lawyer of many years experience, whose knowledge and analytical skills are highly respected by judges, academics and practitioners. His generosity in giving us time and material to use is very much appreciated.

The senior determining officer of the Costs Section, Chris Greenhill, gave freely of his own time to read and comment on the costs and funding chapter. His knowledge in this area is second to none and we are grateful to him.

Special thanks are due to Charles Llewellyn, who bravely volunteered to read the manuscript, for his comments, suggestions and grammatical skills. The map in Appendix D is almost entirely the work of Max Llewellyn. We are also indebted to Sir Roy Beldam, the retired Lord Justice who kindly provided guidance on advocacy for us to use.

And, for his active encouragement in this endeavour, we are grateful to Roger Venne QC, who retired as Registrar just as we were completing our manuscript.

We also wish to acknowledge the patience and forbearance of our families as we were writing this book. Without their support, it would never have been written.

Foreword

The Court of Criminal Appeal, created by the Criminal Appeal Act 1907, was and now as the Court of Appeal Criminal Division remains a creature of statute. It was created to fulfil the dual functions of ensuring that justice was done in individual cases and providing guidance on substantive and procedural criminal laws. Its work continues to be highly specialised. Originally the court dealt with appeals against convictions (or findings of guilt) and sentences (or orders) and this continues to provide the majority of the work of the court. However, although the functions of the court are unchanged, today it also deals with a plethora of appeals and applications outside the Criminal Appeal Act 1968, some of which have become common place, others arise infrequently, and some very seldom, indeed if ever, arise. Successive pieces of legislation have extended the jurisdiction of the court, and, to meet changing demands, its practice and procedure have steadily evolved. As has now become inevitable, the complications and difficulties have increased. During the legal year 2009-2010 no fewer than 1,480 applications for appeal against conviction and 5,653 applications for leave to appeal against sentence were received.

I therefore welcome this comprehensive view of the relevant law practice and procedure of the court. It has been prepared by two of the court's most highly respected lawyers who, between them, have a wealth of experience and expertise in this field, and a remarkable and comprehensive knowledge of both the broad principles and the minute details which govern the way in which the court works. This accumulated knowledge has been encapsulated with economy and clarity in this volume.

The volume will be invaluable for the purpose of answering the myriad of questions which can arise about the law and practice of the court. My own copy will be kept readily to hand.

Lord Judge C.J.
May 2012

How to Use This Book

Appearing in the Court of Appeal Criminal Division can be a daunting experience, not least because much of the information relating to the practice of the Court of Appeal Criminal Division is not easy to source in view of the disparate provisions that now apply. This book brings together for the first time the procedure of the court and the now manifold rights of appeal. It is aimed at practitioners who want to know the practice and procedure of the Court of Appeal not only in relation to the usual conviction and sentence appeals but also to the more esoteric rights of appeal and understand when they are properly to be exercised.

The book is divided into four sections:

Part 1 sets out in narrative form the development of appeals relating to trials on indictment. It gives a brief history of the creation of the Court of Criminal Appeals and the Court of Appeal Criminal Division in reaction to the public dissatisfaction about the methods available to question the safety of convictions. It also traces the expansion of the jurisdiction of the Court of Appeal Criminal Division from appeals against conviction and sentence or other findings and orders made at the conclusion of the trial, through the growth of appeals against rulings and orders which can occur during the trial or even before a trial has started or proposed defendant charged and culminating with the application to quash a previous acquittal to enable a defendant to be tried again. It covers the provisions governing the jurisdiction and constitution of the court and it also gives an overview of the powers of the court.

Part 2 relates to the essential case management and progression of a case from submission of the application and drafting of grounds to the hearing and beyond. The procedure has largely evolved in the context of appeals against conviction and sentence, which make up a very large percentage of the work of the Court of Appeal Criminal Division. This part guides practitioners through all aspects of the process from the initial settling of grounds, through service of the Notice of Appeal, applications for bail and the consideration of leave by the single judge to the hearing itself with reference to the appropriate Criminal Procedure Rules, and Practice Directions. Flowcharts are provided to clarify some procedures. Part 2 also explains in detail the powers of the Registrar of Criminal Appeals and his practice in relation to case management.

Part 3 sets out comprehensively all the rights of appeal which are exercisable in the Court of Appeal Criminal Division. They are grouped together mainly in the order in which they could be exercised throughout the course of a trial. In respect of each right of appeal the relevant statutory provisions and part of the

Criminal Procedure Rules are given. The appropriate forms, time limits and powers of the court are listed together with guidance on whether leave is required; enabling the practitioner to see at a glance what is necessary in respect of each particular right of appeal. Reference is made to any authorities which affect the procedure or outline the approach of the court. The information is laid out in an easily accessible way with paragraph headings to enable the reader to find information quickly, with flowcharts to explain some of the more complex provisions.

Part 4 covers several special topics, each relevant to criminal appeals, but not in themselves part of the appeals process and with which any advocate who appears in the Court of Appeal Criminal Division will need some familiarity. They are the role of the Criminal Cases Review Commission; human rights; costs and funding which is dealt with in depth and reporting restrictions, a topic which has assumed a greater importance with the growth in number of interlocutory appeals, retrials and the availability of information on the internet.

Appendices provide helpful addresses, telephone numbers and website addresses as well as practical information about facilities and a guide to the forms in use in the Court of Appeal Criminal Division.

Terminology

References to counsel are intended to include solicitor advocates as appropriate. The Criminal Appeal Act 1968 refers to “leave to appeal” in common with other Acts giving a right of appeal to the Court of Appeal Criminal Division. The Criminal Procedure Rules refer to “permission to appeal”. The authors prefer the view of Thomas L.J. as expressed in *R. v Barry Ward* [2010] EWCA Crim 1932:

“Crime is ‘leave’, civil is ‘permission’. In the civil courts you ask for ‘permission’, in this court you ask for ‘leave’.”

Preface

Only two works have been devoted exclusively to the practice and procedures of the Court of Appeal, Criminal Division; Thompson and Wollaston in 1969 and Thompson, Morrish and McLean in 1979. In the last 30 years the jurisdiction of the Court has expanded markedly, for example in relation to restraint and receivership orders, confiscation proceedings and the capacity of the Court to review rulings that terminate proceedings. Since its inception in 1997 the role of the Criminal Cases Review Commission has continued to gain in importance so that, on occasions, it can act virtually as the investigative arm of the Court.

The need to ensure that applications of any description are properly and correctly prepared and that any application is in accord with the correct process has never been more important bearing in mind the sheer volume of work that the Court now has to deal with. In my short time in office I have been struck at how practitioners, at all levels, are anxious to do the job properly.

It is therefore essential for there to be a clear, up to date guide to the Court's jurisdiction, practice and procedures. The authors have served as senior Criminal Appeal Office lawyers for many years; their knowledge of the work of the Court is unrivalled and completely up to date. This book will enable the reader to share that knowledge. I would regard it as essential reading for any practitioner who contemplates proceedings before the Court.

Michael Egan QC

Registrar of Criminal Appeals May 2012

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