

**Cases and Materials
on
The English
Legal System**

Geoffrey Wilson

SWEET & MAXWELL

CASES AND MATERIALS ON THE ENGLISH LEGAL SYSTEM

By

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LONDON
SWEET & MAXWELL
1973

*Published in 1973 by
Sweet & Maxwell Limited of
11 New Fetter Lane, London
and printed in Great Britain
by The Eastern Press Limited
of London and Reading*

SBN	Hardback	421	14970	1
	Paperback	421	15000	9



G. P. Wilson

1973

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AUSTRALIA

The Law Book Company Ltd.
Sydney : Melbourne : Brisbane

CANADA AND U.S.A.

The Carswell Company Ltd.
Agincourt, Ontario

INDIA

N. M. Tripathi Private Ltd.
Bombay

ISRAEL

Steimatzky's Agency Ltd.
Jerusalem : Tel Aviv : Haifa

MALAYSIA : SINGAPORE : BRUNEI

Malayan Law Journal (Pte) Ltd.
Singapore

NEW ZEALAND

Sweet & Maxwell (N.Z.) Ltd.
Wellington

PAKISTAN

Pakistan Law House
Karachi

PREFACE

THE English legal system consists of institutions such as courts and prisons; professional people such as barristers, solicitors, judges, policemen, prison warders and probation officers; principles and rules which are used and applied in advising, planning, judging, finding facts, compensating and punishing; remedies and penalties; ideas, assumptions and values which range from a sense of the system's past to current views about its functions, methods and goals; methods for adapting the law to changing conditions, values, expectations and needs, and of applying it to particular cases; criteria for assessing good and bad decisions and good and bad behaviour. It consists, too, of buildings, docks, waiting rooms, wigs, gowns, uniforms, trumpets, rituals, even modes of speech and life styles, books and libraries, syllabuses and examinations, patronage powers and discretions. The list is endless. Each of the parts has some kind of relationship with things not particularly legal yet all can be seen as forming part of a cluster of related activities which can arguably be regarded as a recognisably distinct enterprise. The materials which follow are designed as an introduction to that enterprise and to some of the received lore upon it.

One of the questions which faces anyone attempting to freeze within the covers of one book anything so fragmented, complex, changing, detailed, pragmatic and factual as the English legal system is as to the best perspective to adopt in order to give a balanced account of the system, or indeed whether to attempt to give a balanced account of it at all. Should one rather look at it from a particular point of view such as that of the poor, of minorities, policy-makers or pressure groups? Should one approach it as an apologist or critic? How far should one dig down in search of the values and assumptions on which it rests? I have adopted for the most part what could be described as an official or semi-official view and have relied heavily on official and semi-official material, in particular reports of Royal Commissions and Departmental Committees. This is not because members of committees are necessarily more accurate observers of the way in which the system works, though they do usually have access to more readily assimilable information than they would in their private capacities, nor because their discussions of a problem are necessarily better than those of anyone else. More important is the fact that their reports have often formed the basis of subsequent changes and that their identification of the problems and the way in which they discuss them often give useful clues to the values, assumptions and ideologies which make up the atmosphere in which the system works. They therefore form essential elements in any picture of the system as a whole. They need to be supplemented, however, by observation and research and the reports of observation and research if a real understanding of the way the system actually works in practice is to be obtained. I have also tended to assume that the best introduction to the general ideology of the system and its style is still rooted in the attitudes developed by the practitioners and judges of the Common Law courts even though it is

arguable that the work of their successor on the civil side, the Queen's Bench Division of the High Court, is no longer as central to the working of the system as a whole as this might suggest. This has affected the choice of extracts, especially in relation to civil procedure, law making and remedies. It is perfectly arguable that a different starting point would more accurately reflect the legal system as it is today. There has, especially in recent years, been a great shift of interest away from the Queen's Bench Division, and indeed from the High Court altogether, to new courts like the Restrictive Practices Court and the Industrial Relations Court, to lower courts like the county courts and the magistrates' courts, and to the numerous tribunals which have grown up outside the traditional legal system but which the Franks Committee on Administrative Tribunals and Inquiries, for example, in 1955, insisted are part of the machinery of adjudication of the country. It has, however, in my view yet to be seen how this will affect traditional views as to what constitutes the real unity of the English legal system. The shift in interest has not really been matched by the development of a new global approach which would bring into one legal philosophy the varied activities, styles and functions of the old and the new. Indeed to a large extent the new developments have relied on past capital both in terms of standards and of personnel. Although, therefore, many of the examples are taken from within the jurisdiction of the Queen's Bench Division they are still included much more as clues to what is currently regarded as the English legal way of going about things than as something which is characteristic of only one part of it. The assumption here is that all systems have to make some provision for preparation for trial, finding facts, finding, developing and applying law, providing remedies, devising measures of treatment for those who infringe society's rules, and giving opportunities for appeal. The materials have also been arranged so far as possible to keep open the questions which are raised by the very phrase "English legal system," namely, what is "English" about the system, how does it compare with the approach of other countries to the solution of the same problems, to what extent do the materials identify something that can be regarded as distinctively "legal," and in what sense do they make up something which can be called a "system"? One other assumption I have made is that there is still some virtue in trying to see the system as a whole and that there is a sense in which it is possible to see a connection between the various activities discussed in the book without imposing a false unity upon them.

There are some notable omissions, for example, the Restrictive Practices Court and the Industrial Relations Court. They have been omitted simply because even a partial account of them would have taken up too much space. Nor have I attempted to emphasise what elements in the system as a whole are related to the fact that it is part of a Western parliamentary system operating in a mixed economy or to illustrate some of the basic substantive values of the system which, though not part of the machinery of justice, seem to be so much part of the common law heritage that it is difficult to imagine the English legal system without them.

I apologise for the errors of detail that this book is bound to contain and the rapidity with which parts of it will become out of date. Contrary to widespread belief the English legal system is subject to constant and often quite radical change. Being a little out of date is an inevitable result of

stopping for a moment to try and catch a glimpse of the system as a whole. The most that I can hope is that the errors will not distort and that readers will find it easy enough to update the materials. I also hope that if they feel compelled to dismantle parts of the book, shore up and repair others, and make additions here and there, they will still be better off than they would have been without it. Hopefully what the extracts will provide is at the least an anthology and at best a handbook with which to set out to observe the system as it really works from day to day in London and the provinces.

My thanks are due to the various publishers and writers listed below who have given me permission to quote from their works and in particular to Her Majesty's Stationery Office for permission to quote so extensively from government publications. I owe personal thanks to Philip Britton, David Farrier and Christina Sachs who have at various stages given me a reassuring hand. Had I relied on them more I should have made fewer mistakes. I am particularly grateful to Elizabeth Anker in the Government Publications Room at the University of Warwick Library whose patient willingness to help far exceeds her passion for sending things for binding. There are others, too, who would I know be puzzled to find their names mentioned in a preface to a law book without whom this book would never have been completed. Someone besides the author always suffers in the production of any book. Dr. Monika Lichtenfeld suffered more than anyone else. Were it not that it would be an inadequate recompense I would dedicate this book to her.

There are two disclaimers I would wish to make. It had been my expectation that the materials would be in the larger print and my contributions in the text smaller. The publishers decided that it would be more economical to reverse this. One result is that my growing illiteracy is revealed more glaringly than I would wish. The second is that although this book was written at Warwick it is not a wholeheartedly Warwick book. It is written more in pious memory of those students at Queen's College, Cambridge, who now form part of the legal system to which it is devoted.

GEOFFREY WILSON.

1973.

ACKNOWLEDGMENTS

GRATEFUL acknowledgment is made to the following for permission to reproduce materials from their publications: Her Majesty's Stationery Office, The Bar Council, The Law Society, The Solicitors' Journal and Times Newspapers Ltd. We would also like to express our gratitude for permission to reproduce from the undermentioned works:

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