

The English Legal System

J.P. Price



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The English Legal System

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Preface

This small book developed out of an introductory series of fifteen lectures on the English Legal System which were delivered at the University College at Buckingham in February and early March 1978.

The limitations of the book are defined by the limits of those lectures. First, the book is entirely restricted to England and Wales and contains no references to Scotland or Northern Ireland. Secondly, the subjects covered are those normally thought suitable to a course of introductory lectures. It is a book on the legal system, not on legal method, and it is a traditional survey of the legal system. Tribunals, for example, are more appropriate to a course on Administrative Law and are therefore omitted. Thirdly, the lectures at Buckingham were followed by a separate series of lectures on the History of the Legal System, delivered by my colleague Irving Stevens, and for this reason the book is confined to contemporary law. Finally, the lectures at Buckingham were supplemented by weekly tutorials. The lectures, and therefore the book, are intended as a clear and complete statement of what the law is. Why the law is, and how it might develop, are questions for tutorials and outside the scope of the book. I should add that although I gave some of the tutorials at Buckingham the bulk were given by my colleagues Irving Stevens and Michael Robinson, to whom I am grateful for much unknown help.

The lectures at Buckingham were delivered not only to law students but also to students in three other schools of study at the University: the School of European Studies; the School of Politics, Economics and Law; and the School of Accountancy and Financial Management. The book is designed to meet the requirements of students taking university and professional examinations, both in law and in subjects of which law forms a part. It is also suitable for students taking "A" Level and other examinations in schools and colleges since it presupposes no knowledge of law, and terms are explained wherever possible (even so, it may be useful to have a small law dictionary).

For enabling me to write the book I would like to thank Professor P. S. James, Mrs. Chris Evans, Miss Vera Curtis, Mr. D. A. F. Sutherland and the publishers.

If any errors remain in the text, I would be grateful to hear of them from the reader.

January 1979

J. P. P.

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CHAPTER I

Introduction: Personality, Status and Capacity

1. A Story. Legally relevant facts can be very simple.

Mr. Jones is driving carefully along in his new Rover 3500 motor car. Mr. Smith, in his Jaguar motor car, is in a hurry. As Mr. Jones is driving east through Hammersmith Broadway, Mr. Smith is coming down Shepherd's Bush Road and tries to slip in front. Mr. Smith miscalculates his enterprise, and a collision results. The tangle of metal is now a fact. There are a number of legal consequences, both civil and criminal.

2. Civil and criminal law. The broad division of English law is into civil law and criminal law.

(a) *Civil law* is about the relation between people in society: between landlord and tenant, for example, or garage proprietor and customer, or between two car drivers. The great categories of civil law are tort and contract:

(i) *Tort* is about compensation for casual damage and the allocation of unforeseen risks. When Smith negligently drives into Jones, Jones's remedy is damages for the tort of negligence (*see 3*).

(ii) *Contract* is about compensation for breach of an agreement and the allocation of foreseen risks. When Jones *buys* something, a newspaper or the servicing of his car, then a contract arises.

(b) *Criminal law* is about the relations between a person in society and the state. It lays down what acts are prohibited and what punishment will be inflicted for them. When Smith negligently drives into Jones, the reaction of the police will probably be to prosecute him for the crime of driving without due care and attention (*see 4*).

3. A civil action. Mr. Jones, or his insurance company, will want Mr. Smith, or his insurance company, to pay for the damage to his car and for any injuries Jones has suffered. Smith will probably

pay. But if he does not, then Jones will bring an action for damages for negligence in the Civil Courts. His first step is to go and see a solicitor (*see* II, 2–6) for legal advice (*see* II, 7–9). The solicitor will probably arrange legal aid (*see* II, 10–13) for Jones to bring the action in the county court (*see* II, 14–23). If Jones is claiming more than £2,000, the solicitor will arrange for him to see a barrister (*see* II, 24–28), and the action will be brought in the High Court (*see* III). Appeal lies to the Court of Appeal (*see* IV, 1–5) and to the House of Lords (*see* IV, 7–10). At the end, someone will have to foot the bill (*see* IV, 11).

4. A criminal case. The second consequence of the tangle of metal is that the police (*see* V, 20, 21) will wish to prosecute Smith (*see* V, 22) for the crime of driving without due care and attention. This is not a serious crime, so Smith will not be arrested (*see* V, 1–10). Instead, a police officer will lay an information before a magistrate, who will issue a summons to Smith to attend at the magistrates' court (*see* VI, 2–9), or to plead guilty by post (*see* VI, 11). If the crime were more serious, Smith would be tried at the Crown Court (*see* VI, 19–24) by a jury (*see* VI, 25–29). Appeal lies to the Divisional Court (*see* VI, 35, 36) or to the Court of Appeal (*see* VI, 37–39) and to the House of Lords (*see* VI, 41). Again, someone will have to pick up the bill (*see* VI, 42–44).

5. Cases and statutes. The two great sources of English law are *cases* (*see* VII) and *statutes* (*see* VIII).

In most civil cases an action is brought by the *plaintiff* against the *defendant* and the action is known by the names of the parties: *Jones v. Smith* (where *v.* is pronounced "and"). A serious criminal case is brought by the *Crown* against the accused (*see* V, 22), and is known as *R. v. Smith*, or simply *Smith*.

Sometimes an action is brought for the court to interpret a will or a settlement or other complicated document; then it will be called *Re Smith*. If a case concerns Smith but is not brought by him in name, it may be called *Ex parte Smith*.

Cases and statutes which lay down rights and duties constitute *substantive* law; if they are concerned with procedural matters they constitute *adjective* law.

6. Legal persons. Jones can bring his case in the courts (*see* 3) because he is a person. In English law all *natural persons* have *legal personality*. Of course institutions, like a company or a

trade union, often wish to bring a case in the courts. They are not natural persons, but they may be deemed to be *artificial persons*, and thus to have legal personality.

Jones brings his case against Smith, who is another natural person. But what if Smith were a diplomat from a foreign country or if he were only a child on a joyride. Could he be made to appear in the English courts? If Smith is a foreign citizen this is a question of status; if a child, it is a question of capacity.

Personality (*see 7-9*), status (*see 10-13*) and capacity (*see 14*) are the basic preliminary questions in legal proceedings.

LEGAL PERSONALITY

7. Corporations. A company deemed to be an artificial person is called a *corporation* and has *corporate personality*.

Corporate personality is something more than, and quite distinct from, the legal personality of the members of the corporation. This is illustrated by *Salomon v. Salomon & Co. Ltd.* (1897). Salomon had sold his business to Salomon & Co. Ltd., in which he held 20,001 of the 20,007 issued shares and of which he was managing director. When the company went into liquidation Salomon, being in law an employee, became a creditor. It did not matter that in substance he was the company. In law they had quite distinct personalities.

An extreme example of the separation of natural personality from the artificial personality of the corporation is provided by the case of *Newborne v. Sensolid Ltd.* (1954). After Leopold Newborne had decided to form a company, Leopold Newborne Ltd., he signed a contract as "Yours faithfully, Leopold Newborne (London) Ltd., Leopold Newborne". Unfortunately, he sent the contract to the defendants before he had registered his company. The defendants sought to avoid the contract on the ground that Leopold Newborne Ltd. was not in existence at the time when the contract was made. The Court of Appeal agreed, and rejected Newborne's argument that the contract was made personally with him. "As the company was not in existence when the contract was signed there never was a contract, and Mr. Newborne cannot come forward and say: 'Well, it was my contract'. The fact is, he made a contract for a company which did not exist": *per* Lord Goddard C. J.

8. Corporations, sole and aggregate. A company is not the only example of a corporation. Corporations are of two kinds:

4 I. INTRODUCTION: PERSONALITY, STATUS AND CAPACITY

(a) *Corporations sole*, which have only one holder at a time e.g. the Crown, or the office of bishop.

(b) *Corporations aggregate*, such as companies, which have a number of members.

Corporations can be created in three ways:

(a) by *royal charter*, e.g. universities;

(b) by *statute*, e.g. the National Coal Board and other public corporations;

(c) by *registration*, under the Companies Acts.

Companies are corporations aggregate created by registration. There are various kinds of company, but like other corporations created by statute and by registration they are all subject to the doctrine of *ultra vires*. This means that in general the company cannot do anything which is not authorised by the powers which have been conferred on it by the statute or by registration. Its legal personality is limited to the terms of its creation.

9. Unincorporated associations. It is not hard to think of associations which are not corporations. A golf club is a simple example. How can a golf club make a contract to buy land? The answer is that in law the contract is made by the members of the golf club acting together through their officers. The golf club has no legal personality other than the personality of its members, and no independent legal existence.

An unincorporated association more elaborate than a golf club is a *partnership*. A partnership is a firm which does not want to become incorporated as a company. It is defined in the Partnership Act 1890 as the "relationship which subsists between persons carrying on a business in common with a view to profit". That Act gives a partnership certain qualities without giving it legal personality. Thus in general an act done by one partner binds the other partners, and legal proceedings are brought by and against the partnership in the name of the firm.

An even more elaborate unincorporated association is a *trade union*. Trade unions were illegal at Common Law, and owe their existence to a series of Trade Union Acts. These Acts confer many powers, for example, the power to make a contract, and other powers have been inferred from them: *National Union of General & Municipal Workers v. Gillian* (1946) (see VIII, 9).

STATUS

10. Status. Even in a road traffic case status may be important. If Smith is a foreign diplomat he may have immunity from proceedings in the English courts. In other areas of law status may be much more important. If an English woman wishes to marry a man from abroad, should they undergo the marriage formalities of English law or those of the foreign country? If a London company enters into a contract with an overseas company, whose law of contract applies? More important, which law of divorce or of breach of contract is applicable?

Status involves problems of *nationality* (see 11) and *domicile* (see 12).

11. Nationality. British nationality law is now very complicated. It is contained in the British Nationality Acts 1948–65. *British subjects* are either

- (a) *Commonwealth citizens*; or
- (b) *Citizens of the United Kingdom and colonies.*

Anyone who is not a British subject is an *alien*.

Citizenship of the United Kingdom and colonies may be acquired in five ways:

- (a) birth;
- (b) descent;
- (c) registration;
- (d) naturalisation;
- (e) the incorporation of territory into the United Kingdom and colonies.

Acquisition of citizenship, however, is not now the basis of a right to enter the United Kingdom.

Immigration is regulated by the Immigration Act 1971, which has created a new category of *patrials*. The position is further complicated by the right of free movement granted to the nationals of other countries in the European Economic Community.

12. Domicile. Nationality is about allegiance. But a citizen of the United Kingdom and colonies can owe allegiance to the Crown and still be domiciled abroad. *Domicile* is about the relationship of a person with a jurisdiction. If a family from abroad are visiting England when their baby is born, the baby will be of