
EU LAW IN CRIMINAL PRACTICE

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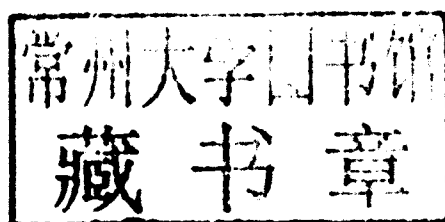
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FOREWORD

David Perry QC

In *Macleod v Attorney General for New South Wales* [1891] AC 455, Lord Halsbury LC famously asserted: 'All crime is local'. By this he meant that jurisdiction over a crime belongs to the country where it is committed. Lord Halsbury's dictum was not strictly true, even in the last decade of the nineteenth century and it is certainly not true today. Criminal justice systems have become more cosmopolitan, jurisdiction over crime has expanded and so too has international cooperation: no civilised State today could afford to adopt a policy of parochial insularity. These trends have been driven by the ease with which individuals move around the world and increasingly sophisticated communication technologies. The need for cooperation between neighbouring or contiguous States is nowhere more true than within the European Union, where freedom of movement is a fundamental principle.

This excellent and timely book is about the impact of the European Union on the administration of criminal justice in the United Kingdom. The subject matter is important, and increasingly so. There are over 130 criminal justice measures which impact upon the United Kingdom, and even if the Government decides to opt out of those criminal justice measures adopted under the Maastricht and Amsterdam Treaties, the influence of the Union on domestic criminal justice will continue to grow. The trends in this area are all one way. The domestic courts interpret Part 1 of the Extradition Act 2003 against the background of the Framework Decision of the European Arrest Warrant. Article 54 of the Convention Implementing the Schengen Agreement, which is intended to ensure that no one is prosecuted on the same facts in more than one Member State, has obvious implication for domestic criminal proceedings. Practitioners are likely to become more involved in proceedings before the Court of Justice as the scope for preliminary references by the national courts increases.

With admirable clarity the authors explain the European Union's growing involvement in criminal justice, the current institutions, legislative instruments and their current effect, and provide useful insights into what is likely to happen in the future. The glossary provides a succinct explanation of the key institutions and concepts.

The book provides a rich analysis of what is an increasingly important influence on the administration of criminal justice in the United Kingdom: which it is necessary for practitioners and advisers to understand if they are to move forward with confidence. The authors are to be congratulated for providing a guide to an area of law with which we must all become more familiar. With this book we will be well armed to make a positive contribution to the future of our own criminal law and for this we should be truly grateful.

ACKNOWLEDGEMENTS

I am very grateful to all of these members of chambers for the combination of zest and dedication that has brought this book to fruition. I should also mention with thanks another member of chambers, Katherine Hardcastle, who produced the glossary of EU terms that appears at the end of the book, and to the expert oversight of the project by David Perry QC and Professor Valsamis Mitsilegas. I am also very grateful for the efficiency, support, and enthusiasm of the editorial team at Oxford University Press, and of Eleanor Walter in particular.

LIST OF COMMONLY USED ABBREVIATIONS

AFSJ	Area of freedom, security and justice (Title V, Part 3 of the TFEU)
CICA	Crime (International Cooperation) Act 2003
CISA	Convention implementing the Schengen Agreement
CJA	Criminal Justice Act 2003
CJEU	Court of Justice of the European Union
EAW	European Arrest Warrant
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EEW	European Evidence Warrant
EIO	European Investigation Order
OLAF	L'Office européen de lutte antifraude (European Anti-Fraud Office)
PACE	Police and Criminal Evidence Act 1984
TEC	Treaty of the European Economic Community (Treaty of Rome)
TEU	Treaty on European Union (Treaty of Maastricht)
TFEU	Treaty of the European Economic Community as renamed by the Treaty of Lisbon

LIST OF CONTRIBUTORS

About the Editors

Duncan Atkinson is a barrister at the Chambers of David Fisher QC and David Perry QC. He was appointed junior treasury counsel in 2009, and has an unrivalled practice, specializing in criminal litigation, homicide, fraud, terrorism, and regulatory work, public law, and inquests. He has been instructed in some of the most high profile, sensitive, and difficult criminal cases and inquests in recent years, including the trial of Levi Bellfield, the Royal Blackmail case, the ‘fertiliser bomber’ case, and the inquest into the Potter’s Bar rail disaster, and has appeared as leading, sole, and junior counsel in cases of rape, public nuisance, blackmail, prison escape, corruption, conspiracy to pervert the course of justice, and prosecutions under the Official Secrets Act. He is the joint author of *Blackstone’s Guide to the Criminal Procedure Rules* (2e, OUP, 2011), and a contributor to *Blackstone’s Criminal Practice* (OUP), and *Fraud: Criminal Law and Procedure* (OUP).

David Perry QC (consultant editor) is joint head of chambers at the Chambers of David Fisher QC and David Perry QC. Described as a “phenomenally impressive” silk, David not only handles complex domestic cases but also advises overseas governments and is a top extradition expert. David was appointed silk in 2006 and is on the editorial board for *Blackstone’s Criminal Practice*.

Valsamis Mitsilegas (consultant editor) is Head of the Department of Law, Professor of European Criminal Law, and Director of the Criminal Justice Centre at Queen Mary, University of London. His expertise lies primarily in the area of EU law, in particular EU Justice and Home Affairs (including immigration, asylum and border controls, criminal law, police and judicial co-operation in criminal matters and the external dimension of EU action in these fields). Professor Mitsilegas provides regular advice to the UK Government and the Judiciary of England and Wales and is actively engaged with the legal profession as regards the impact of European Union law on the domestic legal system. He contributes a chapter on European Union law to *Blackstone’s Criminal Practice*.

About the Contributors

Victoria Ailes was called to the bar in 2005 after taking her degree in Mathematics and Philosophy at Trinity College, Oxford. She was judicial assistant to Lord Rodger of Earlsferry and Lord Brown of Eaton under Heywood in 2007–8. She now acts in criminal matters, particularly those with an international or cross-jurisdictional dimension.

Michael Bisgrove is a barrister at the Chambers of David Perry QC and David Fisher QC. Following an undergraduate degree in neuroscience, Michael moved to London and converted to Law. He began his career at the Bar in 2006. From an initial general criminal practice, Michael developed an enthusiasm for public and regulatory law. In addition he has worked in large scale review and disclosure exercising on behalf of HMG. Michael has a keen

interest in corporate misbehaviour and is now deepening and broadening his experience of financial regulation and financial crime both offshore and within England and Wales

Julian Blake studied Social and Political Sciences at the University of Cambridge before becoming a Fox International Fellow at Yale University, USA. In this position he researched and lectured in international relations and international security studies. He therefore has significant expertise in crimes that are international or multi-jurisdictional in nature. He practices in international crimes and torts, extradition, national security law and appeals from foreign jurisdictions to the Privy Council. Julian has been involved in some of the most high profile cases and investigations in recent years. This includes civil claims by former residents of Guantanamo Bay and the Gibson Inquiry into mistreatment of detainees post 9/11. He is currently instructed to represent the Government in a freedom of information appeal brought by the All Party Parliamentary Group on Extraordinary Rendition and a civil claim brought by two prominent Libyan political figures.

Alex Chalk appears as leader and junior in the most serious criminal cases, ranging from terrorism, to heavy fraud and homicide. Notable cases include the prosecution of six men accused of plotting acts of terrorism within the UK. He has also acted for the Crown in an Operation Trident double-murder case concerning street shootings in London.

Ranked in Chambers UK for his fraud work, Alex has appeared for the Serious Fraud Office as junior counsel in a multi-million pound advance fee fraud. He has also acted in a long-running prosecution brought by the Serious Organised Crime Agency. As defence counsel Alex has successfully acted for clients charged with grave offences, including murder, attempted murder and rape. As leading counsel Alex has prosecuted the long-running election fraud trial of three candidates standing to become local councillors. He has advised in other cases involving alleged breaches of electoral law, including offences under the Representation of the People Act 1983.

James Chegwidan is a barrister at 6KBW College Hill. Called in 2008, he practises in employment law, general civil claims, regulatory law and human rights. He was the recipient in 2010 of the Peter Duffy Scholarship for human rights scholarship at Lincoln's Inn and thereafter spent time working at the European Court of Human Rights, Strasbourg as an *avocat stagiaire* in the UK Division. James's experience in European rights jurisprudence includes applying ECHR guideline judgments in EU and Council of Europe states (Cyprus and Turkey), reported cases involving the application of EU directives (*Ségor v Goodrich Actuation Systems* (2012)), and appeals. Additionally, he has provided pro-bono advocacy and assistance to individuals and charities on rights issues, including in 2012 a delegation to the United Nations Human Rights Committee on children's rights to bodily autonomy. James is a member of the Lawyers' Secular Society and the Human Rights Lawyers' Society, and a contributor to *The Proceeds of Crime* (Mark Sutherland Williams ed).

Annabel Darlow is a barrister specialising in criminal law with a particular emphasis on appellate work and serious fraud. She was appointed Crown Court Recorder in 2009 and Standing Counsel to the Department for Business, Innovation and Skills in 2012.

Rosemary Davidson is a barrister at 6KBW College Hill and was called to the bar in 2004. She has a BA in jurisprudence from Balliol College, Oxford and an LLM in Public Law and Human Rights from University College, London. She practises in public law and human rights, with particular specialisms in extradition and immigration. She has written extensively

on extradition, including being the co-author and assistant editor of *The Extradition and Mutual Legal Assistance Handbook* (OUP, 2010).

Richard Evans is a barrister who was called to the Bar in 2008. He specialises in general crime, extradition and health and safety. He studied law at Jesus College, University of Cambridge and Université Panthéon-Assas, Paris II.

Jacob Hallam read history at Corpus Christi College Cambridge. He specialises in cases involving serious crime for both defence and prosecution, on his own, as junior counsel, or as a leading junior in Crown and appellate courts. Since 2007, his work has primarily centred on cases of homicide, many of which have involved aspects of international law. In addition to his work in the criminal courts, Jacob has developed an expanding practice in advisory work, judicial review, extradition and libel law. Jacob is an experienced advocate, and a member of the faculty of advocacy teachers at Gray's Inn.

Will Hays is a barrister at the Chambers of David Perry QC and David Fisher QC. He practises in criminal law, public law and related areas. As well as prosecuting and defending serious crime in the Crown Court, Will has a particular expertise in restraint and confiscation, having appeared as junior in the Supreme Court on three occasions in matters concerning confiscation. He also appears in civil matters, including proceedings for civil recovery and judicial review. He is regularly instructed to appear in the Tribunals in matters ranging from immigration to VAT. Will is appointed to the Attorney General's C Panel for civil and EU work.

Christopher Hehir is a barrister at 6KBW College Hill, practising in criminal law. He studied law at Merton College, Oxford and received his BA (Jurisprudence) in 1988. Christopher was called to the Bar in 1990, and was appointed a Recorder of the Crown Court in 2009.

Paul Humpherson studied and subsequently taught law at Worcester College, Oxford, before moving to London to study for the Bar. He was called by Gray's Inn in 2010 and has practised as a criminal barrister for the last two years from 6KBW College Hill. Over that time Paul has prosecuted and defended in a wide range of criminal cases, and has begun to develop expertise in regulatory law and financial crime.

Paul Jarvis was called to the Bar in 2001. He practises in the areas of national and international crime, in particular cross-border crime including fraud, insider dealing, market abuse, bribery, corruption and money-laundering. He also acts and advises in cases concerning trademark and copyright offences and other areas where EU legislation plays a key role such as environmental crime. He is recommended by *Chambers & Partners* as a leading junior barrister in the area of crime.

Ben Lloyd is a barrister at 6KBW College Hill, practising in extradition, criminal law, public law and related areas. He has appeared in extradition cases before the UK Supreme Court and is experienced in litigation involving the application of EU law. He was called to the Bar in 2004.

Dan Pawson-Pounds is a barrister at 6KBW College Hill, having served in the British Army before being called to the Bar. He practises in criminal law, regulatory law, public law and related areas. He has wide experience of prosecuting and defending a range of grave offences in the Crown Court and advises a number of government departments in relation to war crimes, potential human rights abuses and other international criminal offences. He also has experience of corporate criminal investigations.

Adam Payter is a barrister at 6KBW College Hill, specialising in extradition, professional discipline and financial, regulatory and corporate criminal investigations. Prior to joining Chambers, Adam worked at Liberty in 2009 and he is now an elected member of Liberty's Policy Council. He previously worked at the United Nations International Criminal Tribunal for the former Yugoslavia. From 2008–2011, Adam sat as a Justice of the Peace. He was called to the bar in 2008.

Simon Ray is a member of 6KBW College Hill and is ranked as a leading junior barrister with considerable expertise in serious and complex criminal litigation. He specialises in financial crime, corruption and corporate offending and in recent years has been instructed in cases in the Supreme Court and the House of Lords.

Alistair Richardson is a barrister at 6KBW College Hill, specialising in financial and corporate crime. Alistair has particular expertise in asset forfeiture. He has also lectured internationally on mutual legal assistance, extradition and criminal law, and provides advice to overseas governments in these areas

Esther Schutzer Weissman studied classics at Oxford before converting to law. She completed her pupillage with David Perry QC, assisting in cases in Strasbourg, before becoming a tenant specialising in serious crime and international financial crime. Esther has been in high-profile cases such as *R v Ibori* and *SFO v Nadir*, as well as doing a selection of administrative law cases (judicial review of decisions to offer no evidence, judicial review of a decision not to hold an inquest, appeals arising out of the UN Refugee Convention and on the meaning of the Extradition Act). Esther was appointed to the Special Advocates Panel in 2009 and is a Treasury Counsel monitoree. She previously spent three months working at the ECHR in Strasbourg and is the contributing editor to the criminal section of Article 6 in European Human Rights Law.

Mark Weekes graduated in 1997 from Trinity College, Oxford with a degree in Modern History, after which he completed the CPE at the University of Westminster (1998) and BVC at Inns of Court School of Law (1999). He was called to the Bar (Lincoln's Inn) in 1999. Mark was a pupil at, and has always practised from 6KBW College Hill. He has prosecuted and defended in the Crown Court and Court of Appeal in a wide variety of cases and also regularly deals with extradition, public law and and confiscation matters. Mark is currently instructed as part of the Special Prosecution Team investigating systemic governmental corruption in the Turks and Caicos Islands following the suspension of the government there in 2009.

Sarah Whitehouse graduated from St Andrews University and became a banker for 8 years before converting to law. She was called to the Bar in 1993 and was appointed Treasury Counsel in 2006. She was appointed to the Attorney General's list of Special Advocates in 2009. She is ranked as a leading junior (band 1) by Chambers & Partners and was criminal Junior Barrister of the Year in 2012. She appears on a regular basis in the Court of Appeal and prosecutes and defends in a wide variety of criminal cases including terrorism, murder, sexual offending, and fraud. She is a Grade A advocacy tutor at Lincoln's Inn.

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