

Rideout's
Principles of
Labour Law

Roger W. Rideout
with
Jacqueline Dyson

Fourth Edition

SWEET & MAXWELL

RIDEOUT'S PRINCIPLES OF LABOUR LAW

by

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FOR MY FATHER

PREFACE TO THE FOURTH EDITION

The time had come substantially to rewrite this textbook. It is intended that it should remain primarily a textbook the aim of which is to explain the law to degree students studying labour law for the first time. The book is not primarily concerned, however, with first principles but aims to bring the student up to a level of practising competence. It is not an encyclopedia nor is it designed materially to instruct the competent academic.

Much individual labour law has changed, even since the third edition. This change is not confined to, nor even primarily concerned with, the content of the law. Labour law has developed, not always deliberately, some peculiar features. It is generally agreed that far too many decisions are reported. This excess is made the more significant by the insistence of the Court of Appeal that most of what comes before industrial tribunals involves questions of fact or broad bands of discretion upon which they are expected to act as "industrial juries." In consequence, all writers are forced to select decisions to illustrate trends. These trends may be towards the development of rules, but, in matters within the jurisdiction of industrial tribunals, are more likely to indicate directions of judicial thought.

That such thought has changed radically in the 12 years of what might be called "modern labour law" is common knowledge. Codes of practice as sources of procedural rules have given way to broad considerations of equity. In turn subjective reasonableness has appeared to go too far and obvious efforts to shift the balance have been made more recently by the E.A.T. This movement has its counterpart not only in the approach to the identification and assessment of reasons for action but also in associated areas. Again it is common knowledge that the concepts of the law of contract have been found surprisingly capable of adaptation to fit in to an informal contract, regulating a relationship most of which depends on non-contractual sources and attitudes.

There is, however, another side of labour law, from which other writers to various extents excuse themselves. The comparison of the judicial approach to the individual employee and the individual trade unionist is a fascinating one. The approach of the E.A.T. and, to some extent, the Court of Appeal in individual labour law is sharply at odds with the attitude of the Court of Appeal when dealing with industrial action. In those "collective" areas the student can see to what a marked degree United Kingdom legislation, and, indeed, the question of State intervention, remains in the experimental stage. The authors of this book continue to have not the slightest hesitation in presenting the whole area of the employment of labour as a single study. Comparison is instructive just because the law is not uniform in its approach to the different, and largely artificial compartments too often selected for isolated study.

The outcome of these considerations is that most of the consideration of individual employment law has been replanned and rewritten. This is parti-

cularly true of the chapters on the Contract of Employment, Unfair Dismissal, Redundancy and Discrimination. The chapter on trade union internal affairs has also been rewritten to introduce a new approach. In addition, so much new material has been introduced in other areas, particularly the consideration of industrial action, that only the outline of former editions remains.

Finally, it has become common for books of this nature to present for consideration substantial extracts from major judgments. Many such extracts have been produced for the first time in this edition.

It is hoped, however, that all these changes, which have led to a much longer work, will not have detracted from the readability of earlier editions.

The original author would like to thank Mrs. Dyson for joining him in this project and for greatly improving the chapter on liability for injury at work. His thanks are also due especially to Brian Bercusson of Queen Mary College who can be described as a constant source of inspiration. We would both like to express our deep appreciation of the vast amount of work done on yet another edition by Miss Lisa Goulding who has produced all the new typescript and read the galleys. This is probably the last edition for which she will perform this invaluable service so it is fair to couple with this renewed thanks for similar work on the second and third editions.

R. W. RIDEOUT
J. C. DYSON

UNIVERSITY COLLEGE LONDON
March 1983

PREFACE TO THE FIRST EDITION

Some years ago, when I first thought of writing this book, it appeared that Industrial Law, as it was then generally called, had changed from its initial conception as surely as that conception differed from the law of Master and Servant which had preceded it. The work of the great pioneer textbook writer, Sir William Mansfield Cooper, had for some time contained chapters which seemed to the ordinary student of little relevance. It had begun to be evident that we would even relegate such matters as the Truck Acts to a less significant place than they had enjoyed in earlier years. Mansfield Cooper's single final chapter on trade unions obviously called for expansion, since this aspect occupied at least a third part of most degree courses.

It was also clear that this was only the beginning. No other aspect of law, save perhaps Restitution, has changed and expanded at such a pace in recent years. The Industrial Relations Act 1971, revolutionary and unexpected as it may be, is only the greatest step in this process. It may be, indeed, that this development has now partly outstripped the concept of this book. Labour Law is in the process of being divided into ever more specialised fragments which themselves look like growing to the size of the former whole. No doubt the, presently common, single course will give place to separate courses on some of these subdivisions. It seems to me, however, that the need for a general textbook will always remain so that the student setting out to study Labour Law, may see the different aspects of it in the context of each other. For this reason, also, I have sought to include all the aspects which commonly form the general study whether or not the purist would deem them part of Labour Law.

The passage of the Industrial Relations Act 1971 interrupted the preparation of this book when it was almost complete. At this time it feels as if we have lived for a long time with the Act, whereas, of course, there are yet no judicial comments available on any part of its vast implications. I have thought it right, therefore, to include relatively substantial comment upon the common law relating to wrongful dismissal and to the economic torts. Much of this material is obsolescent, but it is not obsolete. It is bound to have a significant influence on the development of the application of this Act and others which will inevitably follow. In time the space occupied by Chapter 17 will be occupied by the vastly expanded matter of Chapter 18, but it does not seem wise, in a general textbook, to speculate too widely upon the nature of the unknown.

It would be pleasant, perhaps, if the exposition of Labour Law could be halted until it had settled into new and defined lines. The pause would be a lengthy, even indefinite, one. This book is offered, primarily to the student, in the hope that it will help to indicate some firm ground of study at this time.

I am indebted to a number of my colleagues for their comments, help and interest. I would like particularly to thank Mr. Peter Birks, Fellow of Brasenose College, Oxford, and Dr. W. E. Butler, Reader in Comparative

Law at University College London, for sparing much of their overloaded time to read the manuscript. The many valuable suggestions that they made have been incorporated, as have those of Dr. D. Prentice and others. I am also grateful for the help of various people at the Department of Employment and the Department of Health and Social Security. In some instances their assistance was given in other contexts and I hope they will not mind it being used also here. Finally, I would like to take this opportunity of affirming the enormous general debt I owe to Professor G. W. Keeton.

I have borrowed, directly or by sub-delegation, extensively the secretarial aid available to my more senior colleagues. Despite my handwriting the results they have produced have been of the highest degree of accuracy. Especially my thanks are due in this respect to Miss Mary Hoppen, Miss Gillian Hoxley, Mrs. Judy Berndt, Miss Rosemary Komlosi and Miss Loreley Teulon. Nevertheless so many additions were made before the submission of the typescript that I took the silence of my publishers for despair. Their patience, and that of their printers, astounds me. They have prepared the Tables of Cases and Statutes.

For all the shortcomings of this work and for any error I take full responsibility.

R. W. RIDEOUT

UNIVERSITY COLLEGE LONDON

February 1972

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