Architect's Legal Handbook

The Law for Architects

Fifth Edition

Anthony Speaight Gregory Stone

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Editors' Preface

This fifth edition marks a further stage in the development of this work from a collection of distinct articles into a single coherent guide to the law for architects.

The first edition of the *Handbook* was based on a series of articles commissioned by Peter Davey for the *Architect's Journal*. The idea took shape in Davey's mind while he was still a student working for his professional examinations. He realized that there was no up-to-date textbook on the law for architects, and that in consequence the questions were ill-put and the answers ill-informed. A structure was devised, and specialist contributors appointed, with the guidance of Evelyn Freeth, George Stringer, who was then legal Adviser to the RIBA, and George Burnet, legal adviser to the Royal Incorporation of Architects in Scotland. The articles were published during 1971 and 1972. In 1973 they appeared in book form under the title *Architects' Journal Legal Handbook*.

In successive editions the text was regularly updated to incorporate the unending stream of changes in the law. New sections and some completely new chapters were added. Over the years, too, the text became more closely integrated, as authors became familiar with the contributions from their colleagues.

This new edition contains more new material than any of its predecessors. There are entirely new chapters on International Work by Architects, on European Community Law affecting Architects, and Architects' Professional Indemnity Insurance. The growing confusion in the law of tort, especially concerning negligence and economic loss, led us to rearrange material and include fuller explanations of the principles of the law of contract and tort. The early chapters now guide readers from the origins and sources of the law, through the basic principles, and then to their application in architects' relations with their own clients and in their clients' contract with the contractor. One consequence of the new judicial climate is the growing popularity of collateral warranties or duty of care letters: the former chapter on the Architect's Appointment has been expanded to discuss this topic. Another change of recent years has been the availability to architects of the option of incorporation as a limited company: the chapter on Legal Organization of Architects' Offices, which formerly dealt mainly with partnership, now discusses limited companies as well.

Almost every field has seen important changes since the last edition. The chapter on Planning now prints the Town and Country Planning (Use Classes) Order 1987. Several amendment issues to the JCT form and the Scottish Building Contract are dealt with in the chapters on the standard forms of building contract. In the area of copyright there is a completely new statute, the Copyright, Designs and Patents Act 1988. The ripples of the House of Lords decision in *D & F Estates* v *Church Commissioners* reach many places. These are but a few examples of many changes.

There are too many people who have assisted us for us to acknowledge them individually. But we cannot leave the work without mentioning the valuable advice of Gina Wykeman of Kennedys on architects' contracts of engagement with their clients and collateral warranties.

Save when otherwise indicated, the law is as at 1st January 1990. In a few instances it has been possible to deal with changes already announced which will come into force at later dates: for example, the law on the European 'Works' Directive is stated as at 19th July 1990.

We do not seek to turn architects into lawyers. What we do hope is that the *Handbook* will continue that process whereby in recent years architects have become more aware of where legal pitfalls exist. Now that architects have the right of direct access to barristers for specialist advice, they are in a better position than ever before to inform both themselves and their clients of the legal implications of the work in which they are involved.

Anthony Speaight
Gregory Stone

List of Contributors

Consultant Editors

Anthony Speaight – Barrister, of 12 King's Bench Walk, Temple; co-author of *The Law of Defective Premises* (1982); contributor to *Construction Disputes: Liability and the Expert Witness* (Butterworths, 1989); contributor of many articles on legal topics to the *Architects' Journal*; elected member of the General Council of the Bar

The present editors have been editors of the *Handbook* since its third edition published in 1982

Gregory Stone – educated in England and France, postgraduate work in Economics; first went into the City where he was Chief Economist for a merchant bank, then in 1976 qualified for the Bar where he was specialized in planning, administrative and local government law

Stephen Bickford-Smith, BA (Oxon) of the Midland and Oxford Circuit, Barrister, FCI Arb – practising Barrister in the Chambers of the Rt. Hon. Lord Rippon of Hexham PC QC at 2 Paper Buildings, Temple, London, EC4, where he has been in practice since 1974, specializing in construction, property and planning law; he is also an editor of *Emden's Construction Law* and consultant editor of Building Law Monthly

George Burnet – writer to the Signet; former secretary of the Scottish Building Contracts Committee from 1964–1987; legal adviser to the Royal Incorporation of Architects in Scotland from 1960 to date

Eileen Davie, LLB – Advocates Library, Parliament House, Edinburgh

Richard Dyton, LLB (Hons), AKC – obtained his law degree at Kings College, London; as a solicitor in the commercial department of Kennedys Solicitors, his experience includes advising in relation to international commercial contracts; in the field of construction law, he has a particular interest in providing contractual advice to architects and engineers

Patrick Elias, QC – Fellow of Pembroke College, Cambridge; lecturer in law at the University of Cambridge; author of *Trade disputes*; joint author of *Labour law: Cases and materials*; editor of the unfair dismissal section of *Harvey on labour relations and employment law*

Susanna Fischer – Barrister, member of the Middle Temple

Michael F. Flint – is the Chairman of Denton Hall Burgin & Warrens, having been a partner in that firm since 1960 except for a period of five years which he spent as an executive in the film industry; he is the author of *The User's Guide to Copyright*, the part author of *Intellectual Property – The New Law* by Flint, Thorne and Williams and of *Television by Satellite – Legal Aspects* edited by Stephen de Bate, and is a frequent contributor to legal journals on copyright and space law matters; he is also a member of the Council of the Common Law Institute of Intellectual Property

Andrew W. Foyle – partner of Lovell White Durrant, Member of the Institute of Arbitrators, the Society of Construction Law and of Committee T (Construction) of the Section on Business Law of the International Bar Association; both he and his firm have advised on numerous arbitrations involving all sides of the construction industry (employers, their professional advisers and contractors) and have also advised arbitrators on the conduct of arbitrations; he has spoken on the subject of arbitration at conferences organized by the Institute of Arbitrators and the International Chamber of Commerce

Kim Franklin, ACI Arb – Barrister, was called to the Bar in 1984 and practises in the field of construction disputes from the Middle Temple; she is a joint editor of *Construction Law Journal*, a contributing author of *Construction Disputes – Liability and the Expert Witness* and *The Architect: Liability*, a regular contributor to the *Architects' Journal* and gives lectures on building contract law and practice

Peter K. Franklin, MSc, FCIOB, MSFSE, MASI, MREHIS – Senior Building Adviser, Scottish Home and Health Department; he has been involved in building control legislation with the Scottish Office since 1966 as well as being a member of many BSI Committees; he lectures regularly on the subject to universities, colleges and professional institutions

J. F. Garner – Emeritus Professor of Public Law at Nottingham University; author of *Administrative Law*, *Control of Pollution Encyclopaedia*, *Law of Sewers and Drains* and *Countryside Law*

Andrew Geddes, MA (Oxon) – called to the Bar in 1972; he is a member of European Law Chambers specializing in EEC law with particular emphasis on competition law, product liability and the environment, on which he has written extensively in the specialist press and he is currently writing a book on Product Liability and Product Safety in the EEC; he was appointed a Recorder in February 1990

Charles Harpum, MA, LLB – Barrister of Lincoln's Inn, a Fellow of Downing College, Cambridge since 1977 and a Lecturer in Law at Cambridge University; he was called to the Bar by Lincoln's Inn in 1976; his academic interests are in land law, conveyancing, trusts and legal history

Sir Desmond Heap, LLM, Hon LLD, PPRTPI – Solicitor; formerly Comptroller and City Solicitor to the Corporation of London; currently consultant in private practice; author of *An Outline of Planning Law* (9th edn); general editor of *Encyclopaedia of Planning Law and Practice*; member of the editorial board of *Journal of Planning and Environmental Law*; past President of the Law Society and of the Royal Town Planning Institute; associate of the Royal Institute of Chartered Surveyors; Gold Medalist, RTPI, 1983; Gold Medal Award, Lincoln Institute of Law Policy, Cambridge, MA, USA, 1983

Peter Madge, LLM, FIRM, ACII, FCI Arb – qualified in law and insurance, has spent all his career in the insurance and risk management fields and is a consultant in legal liability, liability risk management and insurance; Principal of Peter Madge Risk Consultancies, prior to which he was a Director of Willis Faber where he was Managing Director of Corporate Liability and Managing Director of Willis Wright-

son Risk Management Services Limited; author of many books dealing with liability and construction insurance including *The Indemnity and Insurance Aspects of Building Contracts* and *A Concise Guide to the 1986 Insurance Clauses*; he has a close involvement with legal reform and its effect on insurance protection; acts as insurance consultant to the Royal Institute of British Architects and the Joint Contracts Tribunal

Roderick Males – architect and practice consultant; Director of Professional Training at the School of Architecture in the Victoria University of Manchester; lecturer and author on professional practice matters; member of various institutional groups and committees

Charles Manzoni, AMI MechE – Barrister at 12 King's Bench Walk; he is a qualified Mechanical Engineer and worked in industry for a number of years before going to the Bar; he specializes in law relating to the engineering industry as well as more general commercial matters

Dr A. R. Mowbray – lecturer in law at Nottingham University, editor of *Garner's Rights of Way* and author of various articles on administrative law

Dr Vincent Powell-Smith – author and construction law consultant; practising arbitrator; member of Gray's Inn; formerly lecturer in law at the University of Aston Management Centre, and visiting lecturer at the Birmingham School of Architecture and Cambridge University Department of Architecture; joint editor of *Construction Law Reports*; author of over 60 books including *The Building Regulations Explained and Illustrated* (8th edn, 1989); he has been legal correspondent of *Contract Journal* since 1974

Angus Stewart, QC, BA (Oxon), LLB (Edin) – 1971 visiting lecturer on *Nazi Architecture*, Sheffield Polytechnic; 1975 called to Scottish Bar; 1983–88 Standing Junior Counsel to the Department of the Environment in Scotland

Nicholas Vineall, MA (Cantab and Pittsburgh), Diph – Barrister and member of the Middle Temple; he specializes in employment, landlord and tenant and contract/commercial work; he went to the Bar after reading Natural Science at Cambridge University and holding a Harkness Fellowship at the University of Pittsburgh

George Young, BA, FInstAM – formerly partner and administrator in YRM; now deputy chairman of the Institute of Administrative Management; currently lecturing and examining in professional practice at schools of architecture and engaged as author and part editor of the new *RIBA Handbook of Management*

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Contents

1

Introduction to English Law

ANTHONY SPEAIGHT*

1 The importance of law

Ignorantia juris non excusat

1.01 The well-worn maxim that ignorance of the law is no excuse applies with equal force to everyone, including architects. Everyone who offers a service to others and claims expertise to do what he offers has a responsibility to society in general and to his clients in particular to know the law.

Architects and the law

1.02 Architects and other professional people are under a special obligation to have a sound working knowledge of the law in every aspect of the services they give. The responsibility is a heavy one. In matters such as building law and regulations, planning legislation and building contracts, clients seem to expect near infallibility. Architects should always be capable of advising what action should be taken, when and in what circumstances, but readers must realize that architects must never assume the role of barristers or solicitors in offering advice in purely legal matters. At most they should do no more than express their considered opinions, which should be reinforced by knowledge and enlightened judgement. All architects should tell their clients to seek their own legal advice on matters that exceed the knowledge an architect can reasonably be expected to have.

The legal system – rules of society

1.03 People living in all types of community have one thing in common: mutually agreed rules of conduct appropriate to their way of life, with explicit consequences for failure to observe the rules. This is what law is about. The more varied the activities and the more complex the social structure, the greater is the need for everyone to be aware of the part he or she must play in formulating and observing the rules. In highly developed communities these rules have grown into a complex body of law. In England and Wales the law is continually developing and being modified as personal rights and social responsibilities are re-interpreted.

The English system of law

1.04 There is no single code of English law such as exists in many countries, though there is an increasing tendency towards codification, and the statute books already contain codes covering many areas of law. Roman law, on which most of the continental codes were based, failed to make a lasting impression in England; Roman laws, like their architecture, disappeared with the legions. Roman influence has survived to a much greater degree in Scotland, where, by the Act of Union of 1707, a largely independent system has been preserved. This accounts for many differences between English and Scottish law (see Scottish sections of this book, particularly Chapter 2).

*In the first edition, this chapter was written by Evelyn Freeth. It was later revised by Richard Gordon.

2 Sources of law

2.01 English law may be conveniently divided into two main parts – unwritten and written – and there are several branches of these.

Common law

2.02 Common law – the unwritten law – includes the early customary laws assembled and formulated by judges, with modifications of the old law of equity (para 3.09). Common law therefore means all other than enacted law (para 2.06), and rules derived solely from custom and precedent are rules of common law. It is the unwritten law of the land because there is no official codification of it.

Judicial precedent

2.03 The basis of all legal argument and decision in the English courts is founded upon the application of rules announced in earlier decisions and is called *Stare decisis* (let the decision stand). From this has evolved the doctrine of judicial precedent, now a fundamental characteristic of common law.

2.04 Two factors contributed to the important position that the doctrine of judicial precedent holds today: the Judicature Acts (para 3.12) and the creation of the Council of Law Reporting, which is responsible for issuing authoritative reports which are scrutinized and revised by judges and which contain a summary of arguments by counsel and of the judgements given. It is essential for the operation of a system of law based on previous cases that well-authenticated records of arguments and decisions be available to all courts and everyone required to advise on the law.

Authority of a judgement

2.05 Legally, the most important part of a judgement is that where the judge explains the principles on which he has based his decision. A judgement is an authoritative lecture on a branch of the law; it includes a *ratio decidendi* (the statement of facts or grounds for the decision) and one or more *obiter dicta* (things said by the way, often not directly relevant to the

matters at issue). It is the *ratio decidendi* which creates precedents for the future. Such precedents are binding on every court with jurisdiction inferior to the court which gave the decision; even courts of equal or superior jurisdiction seldom fail to follow an earlier decision. Until recently both the Court of Appeal and the House of Lords regarded themselves as bound by their own decisions. The House of Lords has to some extent freed itself from this limitation but took the opportunity in *Davis* v *Johnson* [1978] 1 All ER 84 of stating that the Court of Appeal remains strictly bound by its own decisions.

Legislation

2.06 Legislation – the written or enacted law – comprises the statutes, acts and edicts of the sovereign and his advisers. Although historically enacted law is more recent than common law because Parliament has been in existence only since the thirteenth century, legislation by Acts of Parliament takes precedence over all other sources of law and is absolutely binding on all courts while it remains on the statute books. If an Act of Parliament conflicts with a common law rule, it is presumed that Parliament was aware of the fact and that there was a deliberate intention that it should do so.

2.07 All legislation must derive its authority directly or indirectly from Parliament; the only exception being that in cases of national emergency the Crown can still legislate by Royal Proclamation. In its statutes, Parliament usually lays down general principles, and in most legislation Parliament delegates authority for carrying out the provisions of statutes to non-parliamentary bodies. Subordinate legislation is required which may take the form of Orders in Council (made by the government of the day – in theory by the sovereign in Council), regulations, statutory instruments or orders made by government departments, and the byelaws of statutory undertakings and local authorities.

2.08 The courts are required to interpret Acts in accord with the wording employed. They may not question or even discuss the validity of the enactment. Rules have been established to help them interpret ambiguities: there is a presumption that Parliament in legislative matters does not make mistakes, but in general this principle does not apply to statutory instruments unless the governing Act says anything to the contrary. The courts may decide whether rules or orders are made within the powers delegated to the authorized body ordered to make them, or whether they are ultra vires (outside the body's power). Byelaws must not only be intra vires but also reasonable.

Branches

2.09 Of the branches of the law, those with the greatest general effect are civil law and criminal law; others are ecclesiastical (canon), military and naval, and administrative laws. These latter derive more than most from Roman law.

Civil law

2.10 Civil law is related to the rights, duties, and obligations of individual members of the community to each other, and it embraces all the law to do with family, property, contract, commerce, partnerships, insurance, copyright and the law of torts. The latter governs all actionable wrongs against persons and property – actions for damages, such as defamation, trespass, nuisance, negligence and a wide variety of other matters.

Criminal law

2.11 Criminal law deals with wrongful acts harmful to the community and punishable by the State. Except when wrongful action may fall within the scope of both civil and criminal wrong, architects are usually concerned with civil law.

European Community law

2.12 Since 1 January 1973 there has been an additional source of law: that is the law of the European Community. By our accession treaty Her Majesty's Government undertook that the United Kingdom would accept the obligations of membership of the three original European Communities, that is the Coal and Steel Community, the Economic Community and the Atomic Energy Community. That commitment was honoured by the enactment of the European Communities Act 1972. Section 2(1) of the 1972 Act provided that all directly applicable provisions of the treaties establishing the European Communities should become part of English law; so, too, would all existing and future Community secondary legislation. Since the terms of the treaties are in the main in very general terms, most detailed Community policy is embodied in secondary legislation. Most major decisions are taken in the form of 'directives', which require member states to achieve stated results but leave it to the member state to choose the form and method of implementation. Other Community decisions, known as 'regulations', have direct effect.

In consequence, there is today an ever growing corpus of European Community decisions incorporated into English law. This topic is discussed more fully in Chapter 21.

3 Legal history

Origins of English law

3.01 The roots of English law lie deep in the foundations of English history. The seeds of custom and rules planted in Anglo-Saxon and earlier times have developed and grown gradually into a modern system of law. The Normans interfered little with common practices they found, and almost imperceptibly integrated them with their own mode of life. William I did not regard himself as a conqueror, but claimed to have come by invitation as the lawful successor of Edward the Confessor – whose laws he promised to re-establish and enforce.

Feudal system and land law

3.02 The Domesday Book (1086), assembled mainly by itinerant judges for taxation purposes, provided William I with a comprehensive social and economic survey of his newly acquired lands. The feudal system in England was more universally applied than it was on the Continent – a result perhaps of the thoroughness of the Domesday survey. Consequently, in England feudal law was not solely a law for the knights and bishops of the realm, nor of some parts of the country alone: it affected every person and every holding of land. It became part of the common law of England.

3.03 To the knowledge acquired from Domesday, the Normans applied their administrative skills; they established within the framework of the feudal system new rules for ownership of land, new obligations of loyalty to the adminstration under the Crown, and reorganized arrangements for control of the people and for hearing and judgement of their disputes. These were the true origins of our modern legal system.

3.04 Ultimate ownership of land in England is still, in theory, in the Crown. The lord as 'landowner' merely held an 'estate' or 'interest' in the land, directly or indirectly, as tenant from the king. A person holding an estate of the Crown could, in turn, grant it to another person, but the ownership still remained in the Crown. The tenant's 'interest' may have been

of long or short duration and as varied as the kinds of services that might be given in return for the 'estate'. In other words, many different estates and interests in land existed. Tenure and estate are distinct. 'Tenure' refers to the relation of the landlord to his overlord, at its highest level to the king. 'Estate' refers to the duration of his interest in the land, and has nothing whatever to do with the common use of the word.

Possession not ownership

3.05 English law as a result has never used the concept of ownership of land but instead has concentrated on the fact of 'possession', mainly because ownership can refer to so many things and is ill-fitted to anything so permanent and immovable as a piece of land. A man's title to land in England is based on his being able to prove that he has a better right to possession of it than anyone else who claims it.

Real and personal property

3.06 Law makes a distinction between 'real' and 'personal' property. The former are interests in land other than leasehold interests; the latter includes leasehold interests and applies to movable property (personal property and chattels). A leasehold interest in land is classed as 'personal' rather than 'real' property because in early times it was not possible to recover a leasehold interest by 'real' actions for the return of the thing (*res*). In common law a dispossessed owner of freehold land could bring an action for recovery of possession, and an order would be made for the return to him of his land. For the recovery of personal (tangible or movable) articles his remedy was limited to a personal action in which the defendant had the option of either returning the property or paying its value.

Beginnings of common law

3.07 Foundations of both the common law and the courts of justice were laid by Henry II (1154–1189). In his reign the 'king's justice' began to be adminstered not only in the King's Court – the *Curia Regis* – where the sovereign usually sat in person and which accompanied him on his travels about the country, but also by justices given commissions of assize directing them to administer the royal justice systematically in local courts throughout the whole kingdom. In these courts it was their duty to hear civil actions which previously had been referred to the central administration at Westminster. It was the judges of assize who created the common law. On

completion of their circuits and their return to Westminster they discussed their experiences and judgements given in the light of local customs and systems of law. Thus a single system common to all was evolved; judge-made in the sense that it was brought together and stated authoritatively by judges, but it grew from the people in that it was drawn directly from their ancient customs and practices.

3.08 Under the able guidance of Edward I (1272–1307) many reforms were made, notably in procedures and mainly in the interest of the subject as against the royal officials, and the law began to take its characteristic shape. Three great common law courts became established at Westminster:

1. The Kings' Bench, broadly for cases in which the Crown had interest.
2. Common pleas, for cases between subject and subject.
3. Exchequer, for those having a fiscal or financial aspect.

However, as adminstered in these courts, the common law was limited in its ability to meet every case. This led to the establishment of the principles of equity.

Equity

3.09 In the Middle Ages the common law courts failed to give redress in certain types of cases where redress was needed, either because the remedy the common law provided (i.e. damages) was unsuitable or because the law was defective in that no remedy existed. For instance, the common law did not recognize trusts and at that time there was no way of compelling a trustee to carry out his obligations. Therefore disappointed and disgruntled litigants exercised their rights of appeal to the king – the 'fountain of all justice'. In due course, the king, through his Chancellor (keeper of his conscience, because he was also a bishop and his confessor), set up a secial Court of Chancery to deal with them.

Rules of equity

3.10 During the early history of the Court of Chancery, equity had no binding rules. A Chancellor approached his task in a different manner to the common law judges; he gave judgement when he was satisfied in his own mind that a wrong had been done, and he would order that the wrong be made good. Thus the defendant could clear his own conscience at the same time. The remedy for refusal was invariably to be imprisoned until he came to see the error of his ways and agree with the court's ruling. It was not long before a set of general rules emerged in the Chancery Courts which hardened into law and became a regular part of the law of the land. There is, however, another and even more fundamental aspect of equity. Though it developed in the Court of Chancery as a body of law with defined rules, its ideal from earliest times was the simple belief in moral justice, fairness, and equality of treatment for all, based on the idea of natural justice as opposed to the strict letter of the law. Equity in that sense has remained to this day a basic principle of English justice.

Common law and equity in the nineteenth century

3.11 Up to the end of the fifteenth century the Chancellor had generally been a bishop, but after the Reformation the position came to be held by professional lawyers (of whom the first was Sir Thomas More) under whom the rules of equity became almost as rigid as those of common law; and the existence of separate courts administering the two different sets of rules led to serious delays and conflicts. By the end of the eighteenth century the courts and their procedures had reached an almost unbelievable state of confusion, mainly due to lack of coordination of the highly technical processes and overlapping jurisdiction. Charles Dickens describes without much exaggeration something of the troubles of a litigant in Chancery in the case of '*Jarndyce* v *Jarndyce*' (*Bleak House*).

Judicature Acts 1873–1875

3.12 Nineteenth century England was dominated by a spirit of reform, which extended from slavery to local government. The law and the courts did not escape reform, and the climax came with the passing of the Judicature Acts of 1873 (and much additional and amending legislation in the years that followed) whereby the whole court system was thoroughly reorganized and simplified, by the establishment of a single Supreme court. The Act also brought to an end the separation of common law and equity; they were not amalgamated and their rules remained the same, but henceforth the rules of both systems were to be applied by all courts. If they were in conflict, equity was to prevail.

The Supreme Court 1875–1971

3.13 The main object of the Judicature Act 1873 was an attempt to solve the problems of delay and procedural confusion in the existing court system by setting up a Supreme Court. This consisted of two main parts:

1. The High Court of Justice, with three Divisions, all courts of Common Law and Equity. As a matter of convenience cases concerned primarily with common law questions being heard in the Queen's Bench Division; those dealing with equitable problems in the Chancery Division; and the Probate, Divorce, and Admiralty Division with the three classes indicated by its title.
2. The Court of Appeal – hearing appeals from decisions of the High Court and most appeals from County Courts.

Modern reforms

3.14 In 1970, mainly as the result of recommendations by a Royal Commission on Assizes and Quarter Sessions under the chairmanship of Lord Beeching, Parliament made further reforms among the Chancery Division, the Queen's Bench Division, Commercial court, Admiralty Court, and the newly formed Family Division – the latter for dealing with guardianship, adoption, divorce and other matrimonial matters.

Courts Act 1971

3.15 The Courts Act 1971 then followed, with effect from January 1972, and the object of separating civil from criminal proceedings throughout the country and of promoting speedier trials. The Act established the Crown Court in all cities and main towns for hearing criminal cases in continuous session, leaving the High Court to deal with civil actions. The County Courts, Magistrates' Courts, and the Coroners' Courts remain unaffected by the new changes; but the Act abolished all Courts of Assize and Quarter Session and various other long-established courts of special jurisdiction, such as the Liverpool Court of Passage and the Tolzey and Pie Poudre Courts of Bristol and others whose usefulness had long been in decline.

3.16 Another episode of reform of the civil court structures appears to be upon us. The Civil Justice Review published in 1988 (Cm 394) recommended that the jurisdiction of the lower tier of civil courts, the County Courts, be enlarged from £5 000 to £50 000. This would leave the High Court handling claims for over £50 000 and other cases of particular importance, complexity or difficulty. The Courts and Legal Services Bill, published just before this book went to press, if enacted in the terms of the Bill as published, will confer upon the Lord Chancellor effectively unlimited power to allocate to the County Courts such jurisdiction as he sees fit.

4 Construction cases within the present system

4.01 Most construction industry claims today are heard by Official Referees. Official Referees are judges nominated by the Lord Chancellor to hear 'Official Referees' business'. The definition of such business is a High Court case,

(a) which involves a prolonged examination of documents or accounts, or a technical scientific or local investigation such as could more conveniently be conducted by an official referee; or
(b) for which trial by an official referee is desirable in the interests of one or more of the parties on grounds of expedition, economy or convenience or otherwise. (Rules of the Supreme Court, Order 36, Rule 1)

In practice, however, any substantial building or engineering case is regarded as 'Official Referees' business', and little else figures as such. Therefore, for most practical purpose one can consider there to be a specialist construction division of the High Court. At present there are six full-time Official Referees in London; in addition a number of circuit judges based at important provincial centres have been nominated to handle Official Referees' business in their localities. An anomalous feature of the situation is that Official Referees have a lower status and lower pay than High Court judges, and yet they handle cases of a greater complexity than most High Court work. If their status were to be differentiated from that of ordinary High Court judges, it would be more logical to confer an elevated status upon them. In general Official Referees are extremely popular with court users: the heavy workload brought to their courts at the choice of litigants is the best possible testimony to the skill with which the present Official Referees conduct their work.

4.02 Another tribute to the work of the Official Referees is the fact that a number of innovations in procedure which they pioneered have been copied throughout the remainder of the civil court system. One such innovation was the requirement for prior disclosure of statements of witnesses of fact. Another innovation was a procedure whereby experts would meet to discuss the issues in the case at an 'off the record' meeting with a view to narrowing dispute and identifying the real issues. A third feature of the practice of Official Referee courts recently has been a far greater use of written submissions by advocates. At the time of writing a new chapter in civil procedure is being written by the introduction of a video camera and visual display units into the courtroom of one Official Referee: there seems little doubt that over the next few years they will lead to the introduction of information technology into the daily life of the courts.

4.03 An alternative method of dispute resolution, which is often used in construction cases, is arbitration. This topic is more fully discussed in Chapter 11. An arbitrator has jurisdiction to determine a dispute only if the parties agree. But such agreement is commonly included in contracts. Indeed, almost all standard forms of building or engineering contracts contain arbitration clauses. So, too, does the Memorandum of Agreement between architect and client published by the RIBA for use with the RIBA Architects Appointment (see Chapter 5). The importance of arbitration in the construction field became even greater with the Court of Appeal's decision in *Northern Health Authority* v *Crouch* [1984] 1 QB 644: it was held that where a contract defined parties' obligations with reference to certificates, and conferred on an arbitrator power to 'open up, review and revise' such certificates, only an arbitrator and not a judge could so modify certificates. The *Crouch* decision has created a number of difficulties. It is proposed in the Courts and Legal Services Bill that, if the parties consent, such powers may once again be exercised by a judge.

5 The scheme of this book

5.01 The general scheme of the new edition of this book is to take the reader from general principles to specific applications of such principles and specialized fields of the law. The book deals with Scottish law, as well as English law. For the Scottish reader there is a separate introductory chapter (Chapter 2) and separate chapters on Land Law (Chapter 8), Standard Building Contracts (Chapter 10), Statutory Authorities (Chapter 13), Construction Regulations (Chapter 16) and Professional Conduct (Chapter 24); in addition the chapters on copyright, arbitration and legal organization of architects' offices contain distinct Scottish sections.

5.02 For the English reader this introductory chapter is followed by chapters on the general principles of the two fields of the law which are of the greatest importance to architects, namely contract (Chapter 3) and tort (Chapter 4). The specific application of the law of contract to an architect's relationship with his own client is discussed in Chapter 5. Chapter 6 deals with the liability of the architect in contract and tort if, unhappily, a claim arises out his work for a client. Chapter 7 then introduces the general principles of a third area of English law, land law. With that basis laid one can proceed to the longest chapter, which is on Standard Building Contracts (Chapter 9). The treatment of arbitration, which normally arises out of a clause in a standard contract, follows in Chapter 11. The next group of chapters deal with the intervention of public authorities: Chapter 12 describes the authorities themselves, and then Chapters 14 and 15 deal, respectively, with the two crucial fields in which architects deal with public authorities, namely planning and construction regulations. The next group of chapters deals with aspects of the law of particular importance to architects in the running of their practices – copyright (Chapter 17); employment (Chapter 18); partnership law and company law (Chapter 19); and insurance (Chapter 20). Then there are two chapters dealing with the international dimension: Chapter 21 explains the impact on the construction field of European Community law, whilst Chapter 22 gives advice on legal aspects of work by British architects overseas. Finally, on the fringes of the law but at the heart of an architect's practice, the book deals with the rules of professional conduct.

2

Introduction to Scots Law

EILEEN P. DAVIE*

1 Law and Scotland

1.01 To many Scots, their legal system is an institution which expresses their individuality as a nation and is at least the equal of the more widespread English system of law. Despite the union of the Scottish and English legislative bodies in 1707 into the Parliament of Great Britain, the Treaty of Union preserved Scottish law and courts. As a result, Scots law is still in many respects entirely different from English, particularly in branches such as the law of property, constitutional and administrative law, and criminal law. But since 1707 much legislation has been enacted for the whole of the UK, and appeals have been permitted from the Scottish civil courts to the House of Lords, which since 1876 has always had at least one Scottish Law Lord and now, customarily, at least two. The current Lord Chancellor, Lord Mackay of Clashfern, is a former Scottish judge. Thus, much English law has been superimposed, sometimes unhappily, on what had previously been an entirely Scottish system.

2 Sources

2.01 Legislation, or enacted law, is still one of the principal sources of Scottish law. Considerations applicable to it are the same as for English law. Many of the Acts of the Scottish Parliament prior to 1707 are still in force, applying only to Scotland. Some UK legislation is not applicable to Scotland, while some is applicable there alone. In addition, membership of the European Economic Community binds the UK to give effect to European Community law properly made under the treaties.

2.02 The two other principal sources of modern Scottish law are to be found in judicial decisions and in the work of 'institutional' writers (para 2.09). Together these sources make up the common law, and form a body of law which has grown up over almost as long a perod as has English law and has been changed and added to by statute.

Feudal system

2.03 While primitive customary law has traces of Scots law, the first recognizable organized system of law derived from Norman feudalism, which was fully accepted in Scotland by the mid twelfth century. This system, embracing most aspects of organized society, was pyramidal. Theoretically all land belonged to the king, who granted areas to barons (his vassals) in return for military and other services when required. Each baron was able to grant smaller areas of his land to his own vassals on a similar basis and so on down the scale. In time military service was replaced by a money payment called feu-duty, and although the feudal system still forms a theoretical basis of land tenure in Scotland, the owner being the vassal 'of a superior', it has been substantially reformed in the last twenty years. In 1970 provision was made enabling unreasonable, inappropriate, or unduly burdensome feudal conditions imposed by the superior to be varied or discharged. In 1974 machinery was created for redeeming existing feu-duties and prohibiting the creation of new feu-duties.

Sheriffs

2.04 At about the same time as the feudal system became accepted in Scotland, another institution was introduced which was to become of great importance in the administration of law: the office of sheriff. The sheriff was, and remains, an important administrative and judicial officer, and today the Sheriff Courts conduct the greatest part, by volume, of litigation. Actions for debt and damages can be raised there irrespective of the sums involved. Action for sums of up to £1 500 may only be raised in the Sheriff Court.

Dean of Guild Court

2.05 Another ancient legal institution, once familiar to architects, was the Dean of Guild Court, which exercised various functions in relation to buildings in burghs. The Dean of Guild Court has been abolished and its building control functions transferred to a local authority committee.

Fundamental institutions

2.06 The period prior to 1532 is of interest here only because by that date most of the fundamental institutions of Scottish law had come into existence. Lack of documentation in Scotland is the reason for much uncertainty; fewer records were kept there than in England, because Scotland was in a relatively backward and troubled state. The thirteenth and fourteenth centuries, however, saw the development of an early form of trial by jury, and the establishment of Sheriff Courts and the circuit courts.

2.07 In 1532 the College of Justice was founded with a court of 15 judges, the direct predecessors of the judges of the present Court of Session (para 3.01) which today comprises 24 judges. This was a major step towards establishing the present Scottish legal institutions.

*In the first edition, Donald MacFadyen QC and William Nimmo Smith QC wrote this chapter; in subsequent editions it was revised by Donald MacFadyen QC and Colin Harris.