

FOREWORD (PRIVATE LAW)

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It is a great pleasure to be writing the Foreword to the twelfth edition of the OUULJ. As I mentioned in my Foreword to the 10th edition, the relationship between legal academics, law and judges has undergone a radical and beneficial shift over the past hundred years. Because they have different experiences and are writing in different contexts with subtly different aims, academics and judges have different perspectives, which means that they can and should benefit from each other's thoughts on difficult and important legal topics.

Judges and legal practitioners are influenced by the facts of a particular case before them, and are generally concerned about the practicalities of their decisions, whereas academics tend to take a more principled, if sometimes less realistic, approach. Judges have the benefit of oral argument from each side, whereas academics are more limited to what has been referred to as an intracranial dialogue. Judges tend to be under more time pressure to get their judgments out, whereas academics generally have more time before their views have to be published.

Conscientious judges will want to listen to the arguments developed in writing and orally by the advocates, and will want to read what is said by judges in other relevant cases. But if they are sensible, they will also be interested to read what academic lawyers have written on the topic in issue. And the law benefits from this.

Just as the development of the law in the courts benefits from articles written by academics, so do practising lawyers and legal academics benefit from having written articles about law at an early stage of their careers. It is obviously very valuable, indeed essential, to study law; it is obviously very important, indeed essential, to pass one's law exams. But writing articles on legal issues is not something which law students regularly do. And yet, providing an in depth analysis of a difficult or important legal topic is not only of great value to the development of the law; it is also of great value to the development of the writer.

I find it hard to think of a better training for a successful legal career in a university or outside in the professional legal world than to write such an article. It helps you understand not only the specific topic, but also how to think and how to write like a lawyer. And one only really understands a topic if one can explain it clearly to someone else.

In the light of these considerations, the writers of the four articles published in this edition can anticipate very distinguished legal careers – if that is they want. The four articles are all of high quality, and address important topics which raise issues that still need to be resolved and on which accepted judicial and other views are open to question.

All four topics are of interest to me, although *Can You Hear Me?* is concerned with territory which is less familiar to me than the other three articles. The article raises some interesting practical, social and developmental issues, as well as some legal issues, and it deals with all those issues interestingly and clearly. Family law is an area of law whose social and human importance

has never been in doubt, but its intellectual aspect has been overlooked until relatively recently.

The Latent Uncertainties and Difficulties Surrounding Knowing Receipt addresses an area of law which is more familiar to me. The article exposes inconsistencies and raises questions in relation to a difficult and technical legal topic in a challenging way. Given that the decision in *Byers v The Saudi National Bank* on its way to the Supreme Court, it will be interesting to see how things develop there.

Home (Not So) Alone: Remodelling the CICT discusses an area of law which is pretty familiar territory for me: *Stack v Dowden* was virtually the first case I heard as a Law Lord, and I dissented. The article deals with developments since *Stack* in a full and convincing way, identifying a number of significant issues. Like *Can You Hear Me?* it raises social and ethical questions just as much as legal questions.

Interpreting Smart Contracts covers two areas of interest to me, contractual interpretation and blockchain, and it does so in depth and with perceptiveness. The interrelationship between the law and Artificial Intelligence, and indeed the relationship between lawyers and AI, raises profound, concerning and very difficult questions, and will continue to do so for a long time.

I enjoyed reading all four articles and I hope that many other people do.

David Neuberger

May 2023