

LEARNING LEGAL RULES. By James A. Holland & Julian S. Webb. Delhi : Universal Publishing Co. Pvt. Ltd., 1996. Pp. XXIII+300, Rs. 210/-. ISBN 81-7534-013-4.

The aim of the authors of Learning Legal Rules has been to bring together the theory, structure and practice of legal reasoning. The ultimate solution to any legal problem is to be found in the application of basic principles to ascertained facts. The difficulties which obstruct the ultimate solution lie in the selection of appropriate principles and rejection of irrelevant facts. The authors set out to teach the art of conducting the legal trial and try to answer the questions which every lawyer and every Judge should ask himself from time to time.

For the students, the first task is to become well acquainted with the instruments of law. Chapter 1 of the book deals with what is law? Apart from primary legislation, delegated legislation and Judicial authorities, the authors take into account recent changes to the court system and also examine the permeating influence of European Community (EC) law, upon the Acts passed by the English Parliament. In cases where there is conflict between principles of directly enforceable EC Law and English Law, EC Law must prevail.¹ It is the duty of a British court, when delivering final judgement, to override any rule of national law found to be in conflict with any directly enforceable rule of EC law.² The principle of legal supremacy of EC law over the constituent members of EC was well established, when the Britain joined the community. Thus by joining EC, British Parliament voluntarily accepted limitations to its sovereignty. The authors present a checklist to find the relevant law to solve the problems of conflict of laws of EC & English Law.³ In case of conflict one has to take into account whether the conflict is statutory or whether the conflict is of the delegated authority. Is there any delegated legislation? What must be the commitment of EC & England about case law? Invariably all such conflicts must be looked at from the point of view of each party.

Chapter 2 deals with Finding the Law and also deals with use of computer databases for developing the appropriate skills. For finding the law, the authors stress that to do the job i.e. library and research, proper skills may be learnt to do the job. Law is, above all a library-based subject. One must be prepared to spend a substantial amount of time doing library-based research. Since 1970s the three main computerised legal information retrieval (IR) systems—LEXIS, JUSTIS and LAWTEL are available. Each system has its own user manual, and the authors advise the researchers to be familiar with them.⁴ The advantages of

such systems are obvious. They have the potential to store, with relative ease, large quantities of information in electronic form, as a database. This information can also be searched thoroughly and accessed to for more quickly than by traditional means.

Chapter 3 deals with Reading the Law. To interpret the legal text three questions might be asked, what is called what, how & why of law, that is :

- (a) What kind of law is it?
- (b) How does it affect existing law?
- (c) Why was it made?⁵

The enquiry broadly relates to 'Mischief Rule' in Heydon's case.⁶ The authors suggest critical reading, analysing or challenging the ideas presented and considering how the arguments have been developed by posing the following questions:

- (a) Are the assumption unsupported or unrecognised?
- (b) Are the conclusion reached unsupported by the arguments put-up?
- (c) Are the existing counter - arguments ignored?

The authors further deal with note-taking techniques and to harness 'Mind Maps' e.g. at the centre, place the question, or concept, you are seeking to analyse. From the centre, move out to your first stage of development, and write down the overall themes you wish to develop. From each of those themes, you may then radiate outwards, noting specific arguments and examples that you need to develop in respect of those themes.⁷

However, the process of reading the law does not operate in a vacuum; it is not an arid activity, but one that is applied in real legal disputes. Going to law is not simply a case of lawyers dusting down the appropriate statutes and cases, and reading them (though that will inevitably be part of it); it is, at its heart, a process of re-constructing disputed events ('the facts') and proposing a legal solution to them.⁸

Language is the means of disclosing facts, expressing ideas, applying principles and analysing facts. Chapter 4 Law, Fact and Language, deals with the interplay of law, fact and language. The authors illustrate the fact that the flexibility of words affords a danger to logic as well as an effective aid to explanation. Rhetoric and jargon may disguise principle and obscure uncomfortable fact. Law, fact and language give the Judges a high degree of flexibility in deciding cases. The framework of rules and principles within which Judges operate does impose some constraints on them. But these guiding principles of precedents and interpretation are capable of revision by the Judiciary itself. A

sense of legal tradition may guide lawyers, but it is the lawyers who reshape and mould it for the future.⁹

Chapters 5 and 6 are invaluable guides to the discussion and application of precedents—the themes which enable the lawyer and the Judge to determine the presence or absence of compatible variations. In English law, the main rules of interpretation are the literal rule, the golden rule, the mischief rule and secondary aids to construction. In European system logic and legal reasoning mainly are the methods of construction. The authors have incorporated some key new decisions affecting English legal method and reasoning; notably the House of Lords decision in *Pepper v. Hart*¹⁰ concerning the interpretation of statutes. Chapters 7 & 8 mutually grapple with these problems.

In chapter seven, authors explain that European legislation is structured in a manner that it is very different from English Acts of Parliament. The civilian tradition emphasise simplicity of drafting and a high degree of abstraction.

Chapter 8 emphasise that Civil Law approach to rules of statutory interpretation is far more ‘purposive’ than rule of law system. British lawyer may attack the English courts, the civil law system as a ‘naked usurpation of the legislative function’. The question then would be how House of Lords would react to the situation? The question is should House of Lords adopt or is adopting this more purposive style of interpretation - the ‘grand’ style?

The difference in approach is increasingly being recognised by English Judges when considering community legislation, or even when considering English legislation that has been passed to fulfil an obligation under European community law. In *Bulmer v. Bollinger*,¹¹ Lord Denning MR proposed the view that when considering community legislation, the national court should adopt the civil method of interpretation. Again, in *Macarthy v. Smith*¹² and *Buchanan and Co. Ltd v. Babco Forwarding and Shipping (UK) Ltd*¹³ the Court of Appeal, and particularly Lord Denning, stressed the use of the civil method on the more general level.

However, English courts still seem to be unwilling to comprehend the Jurisprudence of Court of Justice of Economic Community (CJEC). This problem also arose in *Factortame* case.¹⁴ The House of Lords deflected the arguments on interim protection by arguing (per Lord Bridge) that the principles cited by the applicants were drawn, in effect, from obiter statements of CJEC. Yet as Gravells notes, ‘the distinction between *ratio decidendi* and *obiter dicta* has no place in the Jurisprudence of the European Court.’¹⁵

Finally, in Chapters 9 and 10, the art of reconciling fact, principle and language in English law and in Community law is explained. The authors describe the decision making techniques as follows: structure the problem,

identity alternative courses of action, determine your objectives, assess the consequences, identify uncertainty and finally evaluate your remaining alternatives. The authors warn that these techniques are not fool proof albiel, nor is it a substitute for relying upon any decision making.¹⁶

In the last Chapter 10, authors briefly describe the sources of European law mainly as Treaties, Acts of the Institutions, Regulations, Directives and Decisions and explain importance and effects of each in the application of English law. The authors conclude the book with a note that it is the English lawyer who will have to change, more than his continental counterpart and will have to embrace purposiveness in interpretation.

Learning Legal Rules is not like the substantive law subjects where one is to learn and memorise the law. 'Thinking like a lawyer' is a technique that one has to develop by practice. The book is readable and user-friendly. The book is not only valuable to law students, lawyers and Judges, it is equally useful for the intellectuals and legislatures of developing countries like India to understand intricacies of the transient process which is silently being evolved and is transforming the English law adapting with the realities and the influence of European community, of which UK is going to become an integral part in not too distant past.

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- 1. *R. v. Secretary of State for Transport ex parte Factortame* (No. 2) (C-213/89), (1991) 1 A.C. 603; (1991) 1 ALL E.R. 70.
- 2. See EUROPEAN COMMUNITY ACT 1972.
- 3. Holland J.A. & Webb J.S., LEARNING LEGAL RULES (1996) (Indian Reprint) at 22-23.
- 4. *Id.* at 42.
- 5. *Id.* at 50.
- 6. (1584) 3 Co REP 7a, 7b.
- 7. *Supra* n. 3 at 71.
- 8. *Supra* n. 3 at 74.
- 9. K. Llewellyn, THE COMMON LAW TRADITION (Boston : Little Brown, 1960) at 53.
- 10. (1992) 3 WLR 1032; (1993) 1 All E R 42.
- 11. (1974) Ch 401; (1974) 2 All ER 1266.
- 12. (1979) 1 WLR 1189; (1979) 3 All E R 325.
- 13. (1977) 2 WLR 107; (1977) 1 All E R 518.
- 14. (1990) 2 AC 85, 151.
- 15. N. Gravells, (1989) *Disapplying an Act of Parliament Pending a Preliminary Ruling : Constitutional Enormity or Community Law Right?* PUBLIC LAW at 568, 586.
- 16. *Supra* n. at 237.