

Chapter 12 – Core Subjects: Other areas

There are three other topics which are often included in legal education courses, and certainly in degree courses, which are key to a full understanding of English law. These topics are land law, equity and trusts, and public law. They tend to be more advanced topics and often appear in later parts of courses after topics such as contract law and criminal law have been taught. A further topic, which is often an optional subject in law courses but is vitally important for lawyers, is company law. In this chapter I intend to give a very brief introduction to these topics.

Land law, as you might expect, is about the law relating to land and buildings. One of the most important aspects is about how land can be owned in England and Wales. There are two basic types of ownership, known as freehold and leasehold. If I own the freehold of a property then I own it outright. This can be contrasted to a leaseholder who will have to return the property to the freeholder once the leasehold term expires.

When we talk about leasehold property we do not usually mean a short term lease of a house or business premises. For example, the occupier of a shop may well have leased the shop from its owner. The owner may own the freehold and decide to lease the shop to create a source of income. The occupier will pay a “full market rent” for the right to occupy the shop, which may run to hundreds or thousands of pounds a month. A similar situation occurs when somebody rents a house for a relatively short term, say six months or one or two years; they pay a full market rent to the owner in return for the right to occupy the house. These scenarios create a landlord and tenant relationship which is strictly governed by law, but they are not what we mean when we talk about leasehold land.

If I am buying a house, then I might be able to buy the freehold of the house. That will often depend on whether the seller owns the freehold or not. If they do not, then I might still be able to buy the freehold by finding out who owns it and making them an offer. If the seller does not own the freehold then they are likely to own the leasehold. This means that they own the house on the basis that they have a very long lease of it, often running to as much as 100 years or more. They do not pay a full market rent for the house as we saw with a short lease. Instead, they pay a lump sum for the house in the first place and then a very small rent each year, often running to just a few pounds. When the lease expires, the house would have to be returned to the freeholder, but there are legal protections in place to help the

leaseholder in such a case. Many people decide to buy the freehold from the freeholder before the lease expires and this can often be done for just a few hundred pounds.

Another important aspect of land relates to rights over land. This includes such things as rights of way, where someone has a right to enter land and cross it to access land somewhere else, and also charges, where a person grants rights to another person, often in return for a loan. If the loan is not repaid then the person who has the charge can use certain powers to help them obtain repayment of the loan. For example, they might be able to obtain possession of the land and sell it, using the proceeds of sale to reimburse them. Many people buy houses with the aid of a mortgage and this is a type of charge.

Finally, land law also covers the land registration system in England and Wales. The ownership of land (freehold and leasehold) is now registered at HM Land Registry. It is therefore unusual these days to find large bundles of deeds to prove ownership; the land register at the Land Registry contains the information. There are still pieces of land which are not registered in this way but the next time they are sold they will have to be registered.

Moving on to Equity and trusts, this is a subject which tends to cause confusion to those new to the subject. Again it is a topic which is extremely complex. The starting point is probably to understand what we mean by a trust. A trust is where money or property is legally owned by a person on behalf of someone else, perhaps because that other person is not capable of dealing with the money or property in an appropriate way. It requires a rather technical "splitting" of the legal and beneficial ownership. What that means is that if I actually own some money, so that legally it belongs to me, I could place it into a trust whereby I (the "settlor") transfer the legal ownership of the money to someone else, but on the basis that it still actually belongs to me. In other words, that other person is now the legal owner, but I am the beneficial owner. The legal owner, or "trustee", is bound by legal obligations to deal with the money in certain ways, generally ways which will benefit me. The money is said to be held on trust for me. I could direct that the money be held by the trustee for the benefit of someone else. That person would be called a "beneficiary".

Trusts are often found in wills when someone dies. Trustees take ownership of the deceased person's property and hold it on trust for the beneficiaries in the will. For example, if the deceased is leaving

money or property to children, then it is often put into a trust until the children reach a certain age, at which time it may be released to them. Another common use for trusts is in the realm of tax planning, whereby people place money into trusts to avoid paying tax or to pay a lower amount of tax. These trusts can sometimes be located overseas.

Public law tends to cover two distinct areas; constitutional law and administrative law.

Constitutional law is about the relationship between the various entities which make up the “state”. This includes the executive, the legislative and the judiciary. The executive is basically the government of the day and the entity which decides which laws to make. The legislative is the Parliamentary process which then makes the laws; we looked at this earlier in the book. The judiciary means the court system and so the entity which applies the laws to particular cases. Generally we expect these areas to be separated; something often referred to as the “separation of powers”. So, for example, the executive should not interfere with the role of the judiciary. Sometimes we see reports of politicians calling for harsher sentences in specific cases and this is potentially an example of where the powers are not sufficiently separated.

The interesting thing about the constitution in English law is that it is unwritten. Many countries, including the United States of America, have a written constitution which people can read and refer to when asserting their rights. English law has no such document. The issue of human rights is an important part of any constitution and we saw earlier in the book how English law has opened the door to the European Convention on Human Rights by passing the Human Rights Act 1998.

Another important aspect here is the Rule of Law. This dictates that power should not be used arbitrarily (irrationally or without a sound basis), that everyone should be equal before the law (in other words, we are all subject to the law in the same way) and that the constitution is a product of the ordinary law of the land.

Administrative law, which is the other limb of public law, is about the relationship between the state and the individual. In other words, the relationship between the people who live within England and Wales and the State. When we talk about “the State” here, we mean public bodies. This includes bodies which are owned by the state and generally has a fairly wide range. It could, for example, include bodies which are funded by the government.

An important feature of administrative law is a process known as judicial review. This is where a decision made by a public body such as a Local Authority is reviewed by a judge. This might happen because the recipient of the original decision is unhappy with the outcome. The case will be heard in the Administrative Court, which is part of the High Court, and the court has the power, amongst others, to set aside the original decision.

Finally for this chapter, company law is also an important area for lawyers to know something about. A company is a type of business entity which is created by filing certain information at Companies House, which is located in Cardiff in Wales. Once formed, a company takes on a legal personality of its own as confirmed in the famous case of *Salomon v A Salomon & Co Ltd* (1897). That means it can do some things which real people can do. For example, it can enter into contracts, employ people, own property, sue another person and be sued in its own right. It is an artificial person if you like.

The important point here is that it is separate from the people who own it. A company is owned by its shareholders. When I set up a company I invest money into it and in return it issues shares to me. These shares are evidence that I own the company and they therefore have a value; I can sell them to someone else, who would then own the company. I could sell half my shares to someone else and then we would own half the company each. As the value of my company increases, so too does the value of my shares.

The fact that a company is a separate legal person means that it is liable for its own debts. If a company owes me money, I can sue the company in court if it does not pay me. However, I cannot sue the individual shareholders who own the company; the debt is one which is owed by the company, not by them personally.

The other important role in a company along with the shareholders is that of the directors. The directors of the company are actually employees of the company (although they may also own some shares which would make them shareholders too). Directors have day to day responsibility for running the company on behalf of its owners (the shareholders). They have various duties which are set out in the Companies Act 2006 and in particular a duty to act in the best interests of the company for the benefit of the shareholders as a whole. If we think of a large organisation like a bank or a supermarket, we find a small number of directors running the company on behalf of possibly millions of shareholders.

ers, all of whom own a small piece of the company. The vast majority of those shareholders have little say in how the company is run, so they rely on the statutory duties to ensure it is being run for their benefit. If they are not happy with the performance of a particular director, they can potentially vote to remove that director, but that will require a majority vote which might be difficult to co-ordinate in such a huge company. In smaller companies shareholders tend to have a much greater say in the running of the company. In fact, in very small companies, the shareholders and directors tend to be the same people.

This chapter has provided a very brief introduction to some of the other main legal topics such as land law, equity and trusts, public law and company law. Many other topics are often covered as optional subjects in law courses, such as employment law, commercial law, environmental law, planning law, the law of finance and so on, but such topics are necessarily beyond the objectives of a book in the "Really Basic Introduction" series.