

## TEACHABLE MOMENTS FOR STUDENTS ...

RESEARCHING ENGLISH  
CASE LAW

BY STEPHEN YOUNG

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*Teachable Moments for Students ... is designed to provide information that can be used for quick and accessible answers to the basic questions that are frequently asked of librarians and those involved in teaching legal research and writing. These questions present a “teachable moment,” a brief window of opportunity when—because he or she has a specific need to know right now—the student or lawyer asking the question may actually remember the answer you provide. The material presented in this column is not meant to be an in-depth review of the topic, but rather a summary of the main points that everyone should know. It is a companion to the Teachable Moments for Teachers column that gives teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. Readers are invited to submit their own “teachable moments for students” to the editor of the column: Barbara Bintliff, University of Colorado Law Library, Campus Box 402, Boulder, CO 80309, phone: (303) 492-1233, fax: (303) 492-2707.*

Inevitably, at some point in a law student’s three years in law school he or she will encounter citations to English case law. Most often the initial encounter occurs when reading the introductory chapters to the hornbook for the first-year property class; however assignments for law review, research for a faculty member, and countless other projects will continue to bring the law student in contact with English case law throughout the rest of his or her law school career. How is English case law arranged? How does one decipher the citations?

What sources should one expect to use in locating a case?

**Court Structure**

Any understanding of a jurisdiction’s case law requires an understanding of the court structure within that jurisdiction. The modern organization of the courts in England began with the Judicature Act of 1873 and has continued through the Courts Act of 1971. Currently, the structure for the courts of record is made up of the House of Lords, the Privy Council, and the Supreme Court of Judicature.<sup>1</sup> The House of Lords is the supreme court of appeal for civil cases in the United Kingdom and criminal cases outside Scotland. The Privy Council is an appellate court that derives jurisdiction from the right of all the monarch’s subjects to appeal to the Crown for redress. The Supreme Court of Judicature is an umbrella title for the following courts; the Court of Appeal, which has two divisions, Civil and Criminal; the High Court, and the Crown Court. The High Court has three divisions, Queen’s (or King’s) Bench, Chancery, and Family. Finally there is the Crown Court; this is a criminal court with general jurisdiction and responsibility for handling most of the serious criminal cases. Cases from the courts listed above are widely reported in the various reporters.

**Deciphering Citations**

Although citations to English case law are not unlike their American counterparts, enough differences exist that it is worth spending a moment reviewing the basics of the citation. The following constitute some general rules that have traditionally applied to English case law research. Citations include the year in brackets when the year is essential to finding the case, e.g., [1969] 1 All E.R.210, and the year in parentheses when the volume number is sequential from year to year. In the citation the year is followed by the volume

<sup>1</sup> The courts of record are those courts that are widely reported, and therefore cases decided by these courts are far more available than cases decided by the “inferior” courts (e.g., Magistrates or County courts).

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number (if applicable), the abbreviation for the reporter, and the page the case begins on.<sup>2</sup> Parties in civil cases are referred to as Smith *and* Jones rather than Smith *versus* Jones, although they are cited as Smith v. Jones. In criminal cases the parties are referred to as the Crown *against* Williams, not *versus*, and are cited as R. v. Williams. Cases involving the Crown are cited as R. v. defendant, the R. indicating Regina or Rex depending on the monarch reigning at the time that the action was brought.

### Modern Law Reporting: 1865–Date

Modern law reporting began in England and Wales on November 2, 1865, with the publication of the *Law Reports* by the newly formed Incorporated Council of Law Reporting for England and Wales. The Council, responding to what it termed the “evils of law reporting,” had produced the first official set of reports for case law in the country.

The *Law Reports* consisted of 11 titles from 1865 to 1875, six titles from 1876 to 1890, and four titles from 1891 to the present. These changes in the size of the set reflected the changes in the court structure. Currently, the *Law Reports* comprises the following four series; *Appeal Cases* (covering the House of Lords and Privy Council), *Chancery Division* (covering the High Court–Chancery and Court of Appeal), *Queen’s (King’s) Bench Division* (covering the High Court–Queen’s Bench and both divisions of the Court of Appeal), and *Family Division*.<sup>3</sup> Cases from the Court of Appeal are reported in the series corresponding to the court in which the case originated, unless it was further appealed to the House of Lords when it would be reported in *Appeal Cases*. Citations to the *Law Reports* employ the bracketed year format, e.g., *Caparo Industries Plc v. Dickman* [1990] 2 A.C. 605, however citations to the earliest series of the *Law Reports* (pre-1891) are by volume number, not date.

<sup>2</sup> Beginning in 2001 the High Court and the Court of Appeal adopted a format neutral citation system.

<sup>3</sup> Usually the *Law Reports* are shelved in this order thereby reflecting the Court hierarchy.

Occupying a unique role in law reporting in England and Wales is the *Weekly Law Reports*. Although this set serves as an advance sheet for the *Law Reports* it is also considered a reporter in its own right. The *Weekly Law Reports* began publication in 1953 and is currently published as weekly paperback issues cumulating into three annual volumes. While the material contained in volumes two and three are later reported in the *Law Reports*, it should be noted that material from volume one does not appear in the *Law Reports*. Each paperback issue of the *Weekly Law Reports* contains within it cases for volume one and either cases for volume two or volume three. This multivolume arrangement within a single issue can cause confusion. The citation format for the *Weekly Law Reports* is identical to the *Law Reports*, e.g., *Holgate v. Duke* [1984] 2 W.L.R. 660.

It would be incorrect to assume that the Incorporated Council of Law Reporting for England and Wales is the only game in town. Other publishers also provide services reporting cases from all levels of the court system. The most popular, and heavily cited, is the *All England Law Reports* published by Butterworths. This set began publication in 1936 and continues to provide coverage for all the courts of record in weekly paper reports and three or more annual bound volumes. Citation format is *Mills v. Cooper* [1967] 2 All ER 100.

### Older Law Reporting: Pre-1865

Among the 60-plus other modern law reporters, the more popular include *Criminal Appeal Reports*, *Lloyd’s Law Reports*, *Justice of the Peace Reports*, *Simon’s Tax Cases*, *Road Traffic Reports*, *Industrial Cases Reports*, *Local Government Reports*, and *Knight’s Industrial Reports*. On occasion the only available report of a case is in a newspaper (e.g., *Times* or *Financial Times*) or in a law journal (e.g., *Solicitor’s Journal*, *New Law Journal*, *Law Society Gazette*).

While the vast majority of the cases researched today were decided since 1865, it is impossible to ignore the huge body of case law created in the country prior to modern law reporting. Although no exact date can be placed on when law reporting in England began, the first period of law reporting is generally considered to be between the 1100s and 1563. During this period cases were reported in the *Year Books* and *Plea Rolls*. The Selden Society has reprinted the *Year Books*, while both the Selden Society and the Pipe Roll Society have selectively reprinted the *Plea Rolls*. Most academic law libraries carry the Selden Society's reprints. Originally the *Year Books* were published in Law French, therefore making usage very difficult; however the reprints have been translated. There is currently an ongoing debate as to the purpose of the *Year Books*, however it is most likely they were used for educational reasons rather than for court records.

Between 1571 and 1865 we see the publication of the nominate reports. This generic term (there were more than 260 individual reporters) refers to the naming of the report after the individual publisher (e.g., *Giffard*). Many of these reports were collections and therefore did not report current cases; additionally there is much overlap between the reports and a wide range in the quality of the reporting.<sup>4</sup> Four of the more heavily cited nominate reports are *Plowden*, *Coke*, *Burrow*, and *Durnford & East* (the first to cover terms of court). Although very few academic law libraries carry many of the nominate reports, a compilation set, the *English Reports (Full Reprint)*, is widely available. This "best of" set comprises 178 volumes covering the period 1220 to 1865, and it incorporates cases selected from the *Year Books* as well as the nominate reports. A separate pamphlet provides a chart to indicate which nominate report is in which volume of the *English Reports*. Additional compilation sets of older reports include the *Revised Reports* (1786–1866) and the *All England Law Reports Reprint* (1558–1935).

<sup>4</sup> It is this inconsistency in coverage and quality that culminated in the Incorporated Council of Law Reporting for England and Wales reference to the "evils of law reporting."

## Finding Cases

Case name access to the reporters can be achieved through the tables of cases that accompany the major modern law reporters. For example, indexing of the *Law Reports* is achieved through a combination of volumes: the decennial digests for 1865 to 1950, red bound indexes, known simply as the "Red Book," for the years since 1951, and "Pink indexes" issued three times per year for the most recent material.<sup>5</sup> Very recent cases may also be located by checking the "Table of Cases" in the most recent issues of the *Weekly Law Reports* and the *All England Law Reports*. The recently published *All England Law Reports Consolidated Index 1936–2002* indexes the annual volumes of the *All England Law Reports*, while more recent cases published in this service are accessed by tables and indexes contained in the weekly paper reports. For access to pre-1865 cases consult the index volumes to *English Reports (Full Reprint)* or the "Table of Cases" volume to *The Digest*. If neither of these do the job, a check of the tables in the *All England Law Reports Reprint* or the *Revised Reports* may yield an obscure reference.

Subject access to English case law can be achieved either through using the above-mentioned indexing tools or any one of the following three print sources: *The Digest*, *Halsbury's Laws of England and Wales*, and *Current Law*. *The Digest*, comparable to American digests, can be used for locating pre- and post-1865 material on a particular subject. *The Digest*, formerly known as *The English and Empire Digest*, includes cases from many commonwealth countries as well as English, Scottish, and Irish decisions. This set is arranged alphabetically by subject (title). A listing of the titles is provided inside the front cover of each volume. *Halsbury's Laws of England*, an encyclopedic work in its fourth series, is also a good starting point to locate topical case material. Like its American counterparts, *American Jurisprudence 2d* and *Corpus Juris Secundum*<sup>®</sup>, this set provides an

<sup>5</sup> Indexes include table of cases, subject index, cases, statutes, and statutory instruments judicially considered. The pink and red indexes also index cases reported in a number of other law reporters.

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overview of the entire body of law, citing extensively to case law, statutes, and delegated legislation. *Current Law* is a comprehensive legal information service covering all case and statutory developments from 1947 to the present. No American equivalent exists although this service does provide a citator service similar to *Shepard's*.<sup>6</sup> Subject arrangement in *Current Law* is broader than in *The Digest*, therefore it is not as useful for tracing cases on a particular subject.

### Online Resources

Both of the primary legal research services in the United States, LexisNexis® and Westlaw®, have a strong presence in the United Kingdom. LexisNexis has provided access to English case law for a number of years. Its library of extensive U.K. legal resources currently contains reported and unreported cases dating back to the beginning of modern law reporting, 1865. Westlaw, a fairly new addition to online U.K. case law, also employs 1865 as its starting date for coverage of reported and unreported cases. Both LexisNexis and Westlaw provide users with separate files for the *Law Reports* and for certain subject areas (e.g., taxation).

Case law resources on the Internet are still somewhat spotty. Although decisions from the House of Lords are usually available within two hours,<sup>6</sup> cases from lower courts quite often take a little longer or are not available at all on the Internet. The most authoritative of the Web sites is the Court Service Web site, which provides free access to selected judgments from the Court of Appeal and the High Court.<sup>7</sup> One other free Web site worth mentioning is the British and Irish Legal Information Institute (BAILII), which also provides access to decisions from the Court of Appeal and the High Court.<sup>8</sup> In addition to these sites there are a number of other fee-based services offering access to judgments from courts at various levels.

<sup>6</sup> House of Lords decisions since 1996 are available at <[www.publications.parliament.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm](http://www.publications.parliament.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm)>.

<sup>7</sup> The Court Service Web site is available at <[www.courtservice.gov.uk/judgments/judg\\_home.htm](http://www.courtservice.gov.uk/judgments/judg_home.htm)>. Judgments since 1996 are available on this site.

<sup>8</sup> BAILII is available at <[www.bailii.org/databases.html#ew](http://www.bailii.org/databases.html#ew)>. Judgments since 1996 have been loaded from the fee-based Smith Bernal Casetrack database.

### Conclusion

Locating English case law is no more complicated than locating case law from the United States. Indeed, an argument could be made that since England is a unitary and not a federal system of government, the task of locating case law is much easier since there are fewer jurisdictions with which to contend. Recent developments in electronic resources have also helped to minimize the differences between domestic and foreign legal research. However, if the student needs additional assistance in locating English case law I recommend the following texts for being both succinct yet comprehensive in their coverage of the topic—*How to Use a Law Library*,<sup>9</sup> and *Using a Law Library*.<sup>10</sup>

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<sup>9</sup> Philip A. Thomas & John Knowles, *Dane & Thomas: How to Use a Law Library: An Introduction to Legal Skills* (4th ed. 2001).

<sup>10</sup> Peter Clinch, *Using a Law Library: A Student's Guide to Legal Research Skills* (2nd ed. 2001).