

Principles of UK law

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Alison Gailbraith, associate chartered landscape architect at Terra Firma Consultancy, on the importance of sound legal knowledge for practising landscape architects

As experts in our field, landscape architects have a legal duty beyond that which we have as individuals. We are not expected to know in great detail all the aspects of law that relate to our professional practice, but ignorance of the law is no excuse and we have a duty to ensure that our clients do not suffer from our lack of legal knowledge. Our level of knowledge should be such that we recognise when specialist legal help is needed and can advise our client to seek legal advice or get that advice for ourselves. Law is an important aspect of our professional practice.

This article outlines the general principles of law in the UK – the legal framework within which landscape architects practise – and is based on my professional experience and the texts listed at the end of the article. The specific fields of law likely to be relevant to landscape architects, and covered in other areas of the Pathway syllabus, include contract law, planning law, building regulations, health and safety law, environmental law, employment law, intellectual property law (including copyright), property law and torts (primarily negligence).

SOURCES OF THE LAW

Legal judgments and arguments are made with reference to two main sources:

- Unwritten: based on previous judgments (judicial precedent) made under common law, eg the case of *Rylands v Fletcher*.
- Written: legislation, or enacted law, eg the Health and Safety at Work Act 1974. (Note that these are examples of English cases and laws. Common law and legislation in Scotland and Northern Ireland is different – see below).

The first of these, common law, is also known as unwritten law as it derives from custom and from the precedent of previous cases tried in law courts. Common laws develop from the principles upon which judges in the superior courts (High Court of Justice, Court of Appeal, House of Lords) make decisions, with each subsequent case developing a principle further. Depending on the issues involved in a legal principle, its development may be very rapid, or may take place over a number of centuries.

Where a court case is felt (when considered by experienced members of the legal profession) to have further developed a particular principle of law, the decision is recorded and published in law reports and hence forms part of common law. Common law does not cover law relating to every field, as it relies upon people being prepared to litigate, and this tends to reflect the importance of issues within society at different points in time. The case of *Rylands v Fletcher* is an example of a principle of common law familiar to landscape architects. Pathway students will read about it in relation to strict liability.

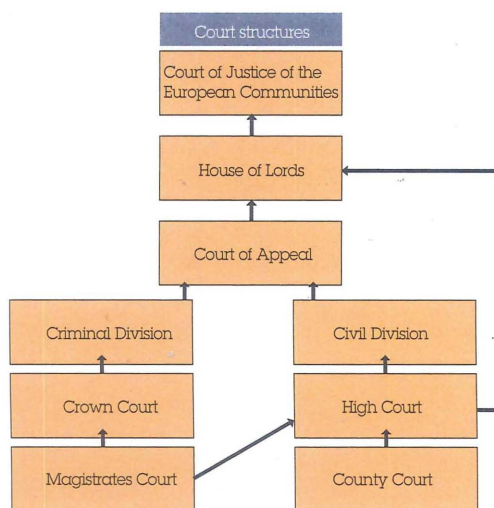
Enacted (or written) law comprises the Statutes, Acts and Edicts of the sovereign and her advisers, and legislation by Acts of Parliament takes precedence over all other sources of law. Acts of Parliament (also known as statute law) are made by parliament, and a new or amended Act may be initiated by the Secretary of State, a minister, the Cabinet or a private member of parliament, or may be prompted by European laws.

The proposed Act needs to pass through readings in both the House of Commons and the House of Lords before receiving the Queen's assent and becoming law. Landscape architects need to become familiar with a number of statutes, which include the Town and Country Planning Act 1990, the Wildlife and Countryside Act 1981, the Environment Act 1995, the Disability Discrimination Act 2005 and the Health and Safety at Work Act 1974.

Under the authority of the Acts are various forms of subordinate legislation, known as statutory instruments, which fill in the details of often very complex and wide-ranging topics. Statutory instruments include regulations, orders and rules. Examples relevant to landscape architecture are CDM Regulations 2007, Building Regulations, Hedgerow Regulations 1997, the Town and Country Planning (Tree Preservation Order) Regulations 1988, the Town and Country Planning (General Development Procedure) Order 1997.

I do not know of any rules of great relevance to landscape architecture, but examples of this form of statutory instrument are the Charity Tribunal Rules 2008 and Insolvency (Amendment) Rules 2008, which could have relevance (though hopefully not the latter!).

Law in the United Kingdom has been influenced since the early 1970s by the formation of the European Union (formerly the European Community). European laws take the form of treaties, passed on as 'directives', 'regulations' and 'decisions', which the member states are required to embrace within their own legal systems. Where there are conflicts between a domestic and European law, the European law takes precedence. Laws originating in Europe that have an impact on landscape architects include the Environmental Assessment Regulations and CDM Regulations.



REGIONAL JURISDICTIONS

To compound an already highly complex subject, the law is not the same throughout the United Kingdom. England and Wales have the same system, but Northern Ireland, though similar, has its own law courts and statutory provisions, while Scotland has both its own courts and its own legal traditions, which were preserved under the 1707 Treaty of Union. The Scottish legal system is, therefore, entirely different, with its main sources being legislation (includes EU law), judicial decisions and 'Institutional' writings. Differences are particularly evident in the areas of property, constitutional and administrative law, and criminal law. The three legal jurisdictions within the UK are, however, linked by the supreme court of appeal (the court of last resort), which is currently exercised by the Law Lords in the House of Lords, but which, from late 2009, will be the new Supreme Court of the United Kingdom. This will take over the judicial functions of the House of Lords and its main role will be to hear appeals focusing on cases that raise points of law of general public importance. Pathway students are advised to familiarise themselves with the laws of jurisdictions in Scotland and Northern Ireland.

CRIMINAL AND CIVIL LAW

How the offences are classified, tried and resolved depends on their nature; whether they are deemed to be a criminal offence (such as murder or theft) or a civil wrong (such as a breach of contract). The legal system is effectively divided into two main branches: criminal and civil. Other minor branches are ecclesiastical, military and naval, and administrative law.

The principle purposes of criminal law are to preserve the fundamental beliefs of society, to punish and reform the offender, and to deter future offenders. To constitute a crime, conduct must be proved to be in breach of the criminal law, and most criminal offences are covered by statute or subordinate legislation. An example of criminal behaviour relevant to landscape architects is damage to a protected species of wildlife, such as a badger (protected under the Protection of Badgers Act 1992), for which the punishment could be a six-month prison sentence and/or a fine of up to £5,000.

The principal purposes of civil law are to attempt to right a wrong, honour an agreement or settle a dispute. Civil law deals with disputes between individuals or organisations rather than offences against the general beliefs of the society, as in criminal law. Civil law courts provide a forum for deciding disputes such as torts (negligence, strict liability, trespass and libel), contract disputes and the probate of wills, trusts, property disputes, administrative law and commercial law. Compensation may be awarded to the victim and paid by the person who caused the wrong in a legal alternative to, or civilized form of, revenge. A relevant example would be non-payment of professional fees by a client, which constitutes breach of a contract.

Arbitration is another means of resolving disputes. A private and informal hearing is held, and the dispute is settled by an arbitrator, usually someone with knowledge of the technical field. The arbitrator (there could be more than one) is often identified pre-conflict in the contract. Arbitration is generally a faster and less expensive means of dispute resolution, and is generally the chosen means of dispute resolution when using building contracts such as the Joint Committee for Landscape Industries (JCLI) or Joint Contracts Tribunal (JCT) Minor Works Building Contract. The president or vice-president of the Landscape

Institute can be named in Schedule 1 (paragraph 2.1) as the arbitrator, to be agreed to by both parties to the contract at its outset.

LEGAL PROFESSIONALS

Solicitors:

- Majority of work in magistrates' courts and county courts.
- Preparation of cases and also advocacy.
- Commercial work relating to business eg commercial transactions, corporate matters, land, share and other property dealings.
- Non-litigation work including conveyancing of houses, making wills, advising on tax matters etc.
- Most solicitors are graduates with a law degree.
- Landscape architects might engage the services of a solicitor to give advice regarding non-payment of invoices by a client.

Barristers:

- Traditionally acting as advocate, presenting cases in court.
- Need the ability to think quickly and respond to evidence.
- The barrister will be briefed (instructed) by a solicitor, who first contacts the client and has initial conduct of the case.
- Mainly work in the Crown Court, the High Court or in appeal court, and occasionally in magistrates' courts.
- Deal with advice on litigation and the drafting of documents ('pleadings') related to litigation.
- Most barristers are law graduates with additional professional training with a qualified barrister.
- More senior barristers can apply to become a Queen's Counsel (to 'take silk').
- Barristers are all sole practitioners, but they often share premises (chambers) and administrative staff.
- Landscape architects may work with a barrister when giving evidence at a planning appeal.

Executives:

- Legally qualified professionals employed largely by solicitors and usually specialising in a given area of law.

Magistrates:

- Also known as Justices of the Peace.
- Unpaid, trained members of the local community appointed by the Lord Chancellor.
- Two types: Lay Magistrates and Stipendiary Magistrates, who sit in groups of three.
- Magistrates deal with two categories of crime: serious, such as theft or fraud, where magistrates may deal with the case or refer it to the Crown Court; or less serious (referred to as summary offences), such as traffic matters, which only magistrates deal with.
- They can impose a maximum penalty of six months' imprisonment, as well as community penalties, compensation and fines.
- Legal advisers are available.

Judges:

- Court of Appeal Judges – Heads of Division – most senior.
- High Court Judges – they try serious criminal cases, important civil cases and assist the Lord Justices to hear criminal appeals.
- High Court Masters and Registrars. A master is a procedural judge who at first instance deals with all aspects of an action, from issue until trial by a trial judge – usually a High Court judge. After the trial the master resumes responsibility for the case.
- Circuit Judges – some deal specifically with criminal or civil cases, while some are authorised to hear public and/or private law family cases. Others may sit more or less on a full-time basis in specialised civil jurisdictions, such as chancery or mercantile cases, or as judges of the Technology or Construction Court.
- District judges – full-time judges who deal with the majority of cases in the county courts. They are assigned on appointment to a particular circuit and may sit at any of the county courts or district registries of the High Court on that circuit.

Law is a complex area, but it is vital that landscape architects feel confident, with a basic understanding of the legal system as a whole and the areas relevant to our work, if we are to competently operate on behalf of our profession, our clients and ourselves.

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