Principles

Alison Galbraith, 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 to ensure that which we have powers that we are not expected to know in great detail all the aspects of law that relate to our professional practice. As chartered landscape architects 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 recognize when specialist legal help is needed and can advise our client to seek legal advice or get that advice for ourselves.

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 information 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 the decisions of judges of previous cases tried in law courts. Common law develops 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 long time.

Where a case is felt (when considered by experienced members of the bar) 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. Many 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 advisors, and legislation by Acts of Parliament taking precedence over all other sources of law. Acts of Parliament (also known as statute law) are made by parliament, and a statute pre-empts any law made 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 architects. An example of the legal alternative to, or civilised form of, revenge is arbitration. 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 as the private final arbiter that settles the dispute. In arbitration, the arbitrator is the judge and the only dispute resolution in the form of a contract, and is binding on both parties. The price of an arbitrator is less expensive than the costs 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 are the only people who are qualified to carry out legal work. Solicitors are the 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.

The barrister is a qualified lawyer who can appear in any court. Under the Chancery Bar Association, barristers are divided into six main courts:

- High Court
- County Court
- Magistrates Court
- Crown Court
- High Court
- Court of Appeal

**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 its own court system and its own legal traditions, which were preserved under the 1707 Treaty of Union. The Scottish legal system is, therefore, entirely different, with its own 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 Preservation Order). The law Lords in the House of Lords, but which, from late 2009, will be the new Supreme Court of the United Kingdom.

Criminal law makes no provision for a maximum penalty of six months’ imprisonment as, or as judges of the Technology or Construction Court.

- District judges – full-time judges who deal with the majority of the cases in the county courts. They are appointed to 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.

**REFERENCES**

Gifford, D and Slater, J (1997) Understanding the English Legal System

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