

# SQE FOUNDATIONS

LEGAL SYSTEM OF ENGLAND AND WALES

LEGAL RESEARCH

KEY LEGAL CONCEPTS

## 6 READING AND REFERRING TO CASE LAW

### NOTES

So far, we have spent much of our time looking at legislation. Case law is another primary source of law, and in this chapter, we will consider how to read and refer to it. In common law jurisdictions such as our own, case law is important both in interpreting and in creating the law. It is therefore important that we as lawyers know how to successfully navigate full text case reports.

There is a common structure to reported cases which is helpful to know, and we'll use *Fisher v Bell* as an exemplar in this chapter to explain it. First, read this chapter, which includes excerpts of the case to illustrate the points made, and then read the case in full (full text provided in the appendix at the end of this Study Guide) and answer the questions posed.

### 6.1 DESCRIPTIVE INFORMATION

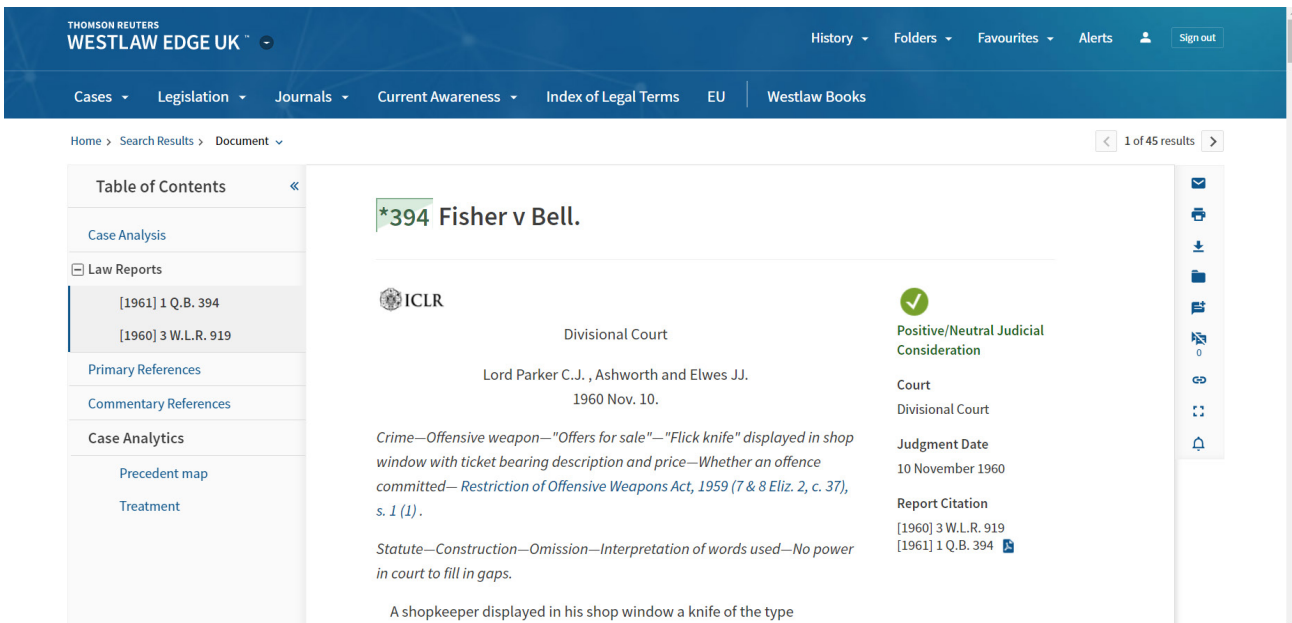
This section explains the structure of how cases appear on screen when conducting online research using platforms such as LexisNexis and Westlaw. The original reported text and layout of a case (often available to download as a PDF from these online research platforms) will not always follow the format you see when you view it online. The case we use in this chapter, *Fisher v Bell*, provides a good example of this.

#### 6.1.1 Initial Information

The case name is displayed at the top of the case report – in our example ***Fisher v Bell***. This title is followed by the name of the court that heard this case – in our example the Divisional Court, which as you may remember, is the appeal section of the High Court. The relevance of which court heard the

## NOTES

case is important when it comes to the doctrine of precedent because it affects the authoritative value of the decision. Below the name of the court the names of the judges involved appear, so at a glance you can see who heard the matter and how many judges were involved. In this case you can see that three judges heard the case and they were Lords Parker, Ashworth and Elwes. Underneath the judges' names is a date. This indicates the date the judges gave their decision. Here we see it was 10 November 1960.



The screenshot shows the Thomson Reuters Westlaw Edge UK interface. The top navigation bar includes 'History', 'Folders', 'Favourites', 'Alerts', and 'Sign out'. Below this is a secondary navigation bar with 'Cases', 'Legislation', 'Journals', 'Current Awareness', 'Index of Legal Terms', 'EU', and 'Westlaw Books'. The main content area displays the case details for **\*394 Fisher v Bell.** The case is from the ICLR (Incorporated Law Reports) and was heard in the Divisional Court by Lord Parker C.J., Ashworth and Elwes JJ. on 10 November 1960. The case citation is [1960] 3 W.L.R. 919. The judgment date is 10 November 1960. The report citation is [1960] 3 W.L.R. 919 and [1961] 1 Q.B. 394. The case is categorized as 'Positive/Neutral Judicial Consideration'. The case summary includes the following text: *Crime—Offensive weapon—"Offers for sale"—"Flick knife" displayed in shop window with ticket bearing description and price—Whether an offence committed— Restriction of Offensive Weapons Act, 1959 (7 & 8 Eliz. 2, c. 37), s. 1 (1).* The statute is *Construction—Omission—Interpretation of words used—No power in court to fill in gaps.* The case summary also includes the text: *A shopkeeper displayed in his shop window a knife of the type*

On the right hand side you will see the case citation. There are specific rules for the construction and interpretation of case citations, and these are set out in Chapter 7 on legal research (see Section 7.4 Decoding Case Law Citations). Just above the citation is confirmation of the court that heard the case and the judgment date.

### 6.1.2 Catchwords

After the initial information, we are provided with a list of catchwords, usually in italics with dashes in between

each word or set of words. These words are included to provide a helpful guide to the subject matter of the case and are very useful when conducting legal research, especially when determining the usefulness of a case. The catchwords in our example start with '*Crime-Offensive Weapon-Offers for sale*' - and so on. The facts of this case therefore involve a criminal offence and the sale of an offensive weapon. In just six words we have a basic idea of the facts on which this case focuses.

## NOTES

### 6.1.3 Headnote

Finally, before the main body of the report, there is a headnote prepared by the law report author. Law reports are not word for word transcripts of a court case but are created from transcripts by respected authors. The headnote is a summary of the case facts together with the decision. This summary states what, in the law report author's opinion, are the decisive principle(s) of the case, and aims to encapsulate, in as precise a way as possible, the principle of law which the case establishes or supports. The headnote can also include any other case law which was considered, how it was dealt with, and the degree to which it was either followed or differentiated.

## 6.2 CASE REPORT TERMINOLOGY

When looking at a case you will encounter various terms which, although used in common parlance, have a particular meaning in the context of legal judgments. Understanding the nuances of these terms is important both in the study and practice of law.

### 6.2.1 Key Terms

Here is a list of some of the key technical terms used in reported cases and what they mean when used in this context.

- **Affirmed** – If a decision is *affirmed*, it means more senior judges hearing the case agreed with and upheld the decision of a lower court in the same case.
- **Applied** – If a decision is *applied*, it means the court considered itself bound by a previous decision from another case and used the same legal reasoning in the one before them.
- **Approved** – In this instance, an *approved* decision is one which was previously decided by a lower court in a different case, and which is subsequently determined to be correct.
- **Considered** – This is a formal way of saying that the facts and decisions from a different case were discussed and used in determining the current case outcome.
- **Distinguished** – Often a court will determine that not all cases presented in evidence are relevant to the case before it, because the material facts of those cases are not sufficiently similar to bind them.
- **Reversed** (sometimes also referred to as *set aside*) – In this instance if a higher court disagrees with the decision of a lower court on appeal, the judgment of the lower court is said to be *reversed* or *set aside*.
- **Overruled** – A court is said to have *overruled* a decision when, in a later case, it determines an identical question of law in direct opposition to the earlier decision made by a court of equal or lower status.
- **Dismissed** – This occurs when the court does not agree with the applicant (or appellant's application) and it is therefore *dismissed*.

EXAMPLE

In the case of *Fisher v Bell*, there is a note to say that the court ‘dismissed the information’ (See extract below). In this case the lower court was the Magistrates’ Court, so, in terms of the doctrine of precedent, the decision of the lower court would not bind the Divisional Court. The headnote does not refer to the justices formally affirming the Magistrates’ decision but effectively this is the outcome of dismissing the appeal.

NOTES

### 6.3 SUMMARY OF SUBMISSIONS

Following the headnote appears a summary of the submissions made by counsel in the case. This can be of interest as it delineates what was presented as persuasive argument. Take a moment now to look back at the submissions made in *Fisher v Bell*. These can be very interesting but remember, they are not authority (albeit they may refer to other authoritative cases); the authority in *Fisher v Bell* comes from the judges and their judgments, not the submissions made by counsel for each party.

## 6.4 JUDGMENT

The most senior judge usually provides the first judgment. Judgments can be long and detailed and set out particularly pertinent facts from the case as well as reference to other authorities. The remaining judges, if in agreement, may add a shorter judgment where they feel their views add to what has already been set out, or simply add 'I agree'. A dissenting judge (in other words, a judge who does not agree with the most senior judge) may set out their own judgment together with rationale for the same.

If you look at *Fisher v Bell* you can see that the leading judgment came from Lord Parker. There are no dissenting judgments as the remaining two judges agreed with Lord Parker and added no further comment.

## 6.5 FURTHER INFORMATION

Full text case reports will also provide the details of instructing solicitors as well as those of the law reporter. These details are included at the very end of a case report.

## 6.6 UNDERSTANDING CASE NAMES

### 6.6.1 Civil Case Names

Case names are descriptive and are made up of the names of the parties bringing and defending the case. A well-known civil case is *Donoghue v Stevenson*. The first name is the surname of the lady who brought the claim, she was called May Donoghue, and the second name is that of the person against whom the claim was brought, his full name was David Stevenson. When speaking the case name aloud, you would pronounce the 'v' as 'and', rather than 'versus'.

### 6.6.2 Criminal Case Names

Criminal cases usually look like this: '*R v Smith*'. Remember that in a criminal case, the party which brings the case is not the victim but the Crown. The R in this example is the abbreviation for Rex, or the Crown, and the second name is that of the accused who is now a defendant, Mr. or Mrs. Smith.

Somewhat confusingly, some older criminal cases do appear as two names, such as our exemplar case of *Fisher v Bell*, as they used to reference the senior police officer who brought the case as the named individual in the case. In our example, Fisher was the senior police officer and Bell the defendant. This practice was abandoned in 1985 when the Crown Prosecution Service (CPS) was set up, and from that point on, the CPS brought cases on behalf of the Crown.

Sometimes you will see just a single letter instead of the full name of a party, for instance, *R v G*. This practice is used when the prosecuted party in a case is a child, and for legal reasons cannot be named. This case is a criminal case, so starts with R and the child defendant is G.

### 6.7 ACTIVE READING

Finally, it is worth pointing out here that if you are looking at cases with a specific purpose in mind, it is a good idea to record your thoughts and findings as you go. Keeping a running record of the cases you read, the *ratio*, the decision made, the court that heard the case, and whether there were any persuasive dissenting judgments can save you considerable time when it comes to piecing any advice together. We're going to look at legal research skills in the next chapter, together with how we should present our findings.



Before we tackle the full range of legal research skills, let's first practice navigating the architecture of a full text case report by reading *Fisher v Bell*. It's a short case involving simple facts and has a clear judgment. Consider the following questions as you read. With these questions in mind, make sure to highlight relevant passages and phrases as you go so that you can then return to those highlights to answer the questions. You'll note that this case involves questions of contract law. Don't worry about understanding the detail of that at this juncture, we will return to what constitutes a contract later in the course.

- 1 Why is the case *Keating v Horwood* a potentially persuasive authority in this instance?
- 2 Explain why *Keating v Horwood* was not used as authority to support the proposition that the display of the knife in the shop window was an offer for sale.
- 3 Explain:
  - a. The *ratio decidendi* of this case; and
  - b. The decision in this case.

You can read the case in Appendix 1 at the end of this Study Guide.

Please be ready to answer these questions, think about the outcome of this case, whether it defeats the purpose of parliament in passing the Restriction of Offensive Weapons Act 1959, and the court's approach to statutory interpretation for our next workshop.