Verdict MT 2014

Law in the UK

Article:
Will UK-EU relations reach their Sapphire Anniversary?

Essay Competition:
Should there be devolution of legislative powers in the UK?

Regional Feature:
Find out about careers in firms all over the UK

Letter from the Editor

Hi everyone,

To our new members, welcome, to our old members, welcome back (to borrow some words from Albus Dumbledore in anticipation of the ball at the Harry Potter studios)! I hope you have all enjoyed Michaelmas Term and everything that Law Soc has to offer. For this term's edition of Verdict the main focus is on helping those considering a career in law; the advice from current trainees and associates will hopefully be useful whatever stage you are at in the application process. I also hope that those not considering a career in law will find something of interest. A big thank you to all the law firms who contributed to Verdict, to my deputy editor Michael for his hard work and to Xin and Richard for all their help and support. Also a more general thank you and goodbye to the departing exec committee!

Happy Reading!

Issy van Niekerk

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Will UK-EU relations reach their Sapphire Anniversary? Reflections on 41 years and counting

Jocelyn Teo
Lincoln College

In 1973, the United Kingdom (UK) joined what was then the European Economic Community (EEC). The first UK European Communities membership referendum in 1975 endorsed the UK's continued membership, with more than 67% of the votes in favour. Approximately 40 years on, Prime Minister David Cameron has proposed another 'in or out' referendum on British membership of the European Union (EU) by 2017. How will the results change? Has the initial high hopes for economic growth through increased trade and cooperation fallen through, and disagreements become insuperable? Do the costs of remaining in the EU outweigh the benefits? This article examines the impact of EU law on the UK, with reference to parliamentary sovereignty, human rights and free movement, and the increasing tensions arising from them.

Parliamentary Sovereignty

The UK's constitutional framework is unique in that it prioritises parliamentary sovereignty and lacks a written constitution. This is in contrast to many countries in continental Europe that have a written constitution, and where it is commonplace for the courts to strike down legislation that infringes the constitution. Continental Member States are thus accustomed to the idea that the Court of Justice of the European Union (CJEU) (formerly the European Court of Justice (ECJ)) and the European Court of Human Rights (ECtHR) may declare that provisions of national law are contrary to EU law. Member States would then have a duty to set aside those infringing provisions, so as to respect the supremacy of EU law (Simmenthal II)[1]. In contrast, having a court overrule a statute was unheard of in the UK.

This difference in constitutional tradition came to a head in Factortame.[1] The applicants sought to challenge the legality of Part II of the British Merchant Shipping Act 1988 (MSA 1988) as being incompatible with the EEC Treaty by depriving them of enforceable Community rights. The Divisional Court made a preliminary reference to the ECJ under Art 177 of the EEC Treaty (now Art 267 of the Treaty of the Functioning of the European Union (TFEU)) as to whether UK and EU law were in conflict. Ultimately, the ECJ held that there was indeed such a conflict, and the Divisional Court granted a declaration to that effect. The UK government then had to take steps to make UK law compatible with EU law.

However, pending the ruling from the ECJ, the applicants sought to have the relevant provisions of the MSA 1988 disapplied as an interim measure. The UK courts thus had to consider whether it was constitutionally possible to disapply an Act of Parliament due to its alleged incompatibility with EU law. The Divisional Court held that the principle of supremacy of EU law (Costa v ENEL)[2] entailed that it had jurisdiction to disapply the relevant provisions of the MSA 1988, but this was overturned by the Court of Appeal. On appeal to the House of Lords (HL), Lord Bridge reasoned that the UK courts did not have the power to make an interim order that would 'irreversibly determine in the applicants' favour for a period of some two years rights which are necessarily uncertain until the preliminary ruling of the ECJ has been given.'[3] This was because 'if the applicants fail to establish the rights they

1 Case 106/77, Amminstrazione delle Finanze dello Stato v Simmenthal [1978] ECR

1 R v Transport Secretary, ex parte Factortame (No.1) [1990] 2 AC 85; R (Factortame Ltd) v Secretary of State for Transport (No 2) [1992] 1 AC 603
2 Case 6/64, Falminio Costa v ENEL [1964] ECR 585
3 Factortame (No.1), 142-143

claim before the ECJ, the effect of the interim relief granted would be to have conferred upon them rights directly contrary to Parliament's sovereign will'.[1] Moreover, there was no jurisdiction in English law to grant an interim injunction against the Crown.

Nevertheless, the HL acknowledged that the position might be different as a matter of EU law, and made a second preliminary reference to the ECJ: whether Community law obliged or gave the UK courts the power to grant interim protection of the rights claimed and to temporarily disapply an Act of Parliament that was thought to conflict with EU law pending a decision from the ECJ as to the existence of such a conflict. The ECJ held that national courts must set aside rules of national law that are obstacles to the protection of directly effective Community rights. The HL thus concluded that the UK courts had jurisdiction to disapply an Act of Parliament which was potentially in conflict with EU law, and issued an interim injunction requiring the Secretary of State to disapply the Part II of MSA 1988 pending a final determination as to its compatibility.

Factortame appears to be a revolutionary decision, which spawned a variety of explanations trying to reconcile it with parliamentary sovereignty. In Factortame (No. 2), Lord Bridge reasoned that the principle of supremacy of EU law had been 'well established in the jurisprudence of the ECJ long before the UK joined the Community. Thus, whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act (ECA) 1972 was entirely voluntary'.[2] On this view, the courts were simply implementing the Parliament's will, and Parliament was still sovereign as it could theoretically repeal the ECA 1972. However, such a repeal would be tantamount to a rejection of the principle of supremacy of EU law, and could only happen should the UK leave the EU.

An alternative explanation was offered by Laws LJ in Thoburn.[1] Therein, traders who were prosecuted for using imperial rather than metric units argued that no offence had been committed, because the Weights and Measures Act (WMA) 1985 as originally enacted, which permitted the continued use of imperial units of measurements, had impliedly repealed s.2(2) ECA 1972 to the extent that it was inconsistent. They argued that local authority had thus acted unlawfully in making the Units of Measurement Regulations 1994 in the exercise of powers conferred by ss.2(2) and (4) ECA 1972. Laws LJ, in rejecting their arguments, emphasised that the ECA 1972 was a constitutional statute and could not be impliedly repealed by the later WMA 1985, and dismissed their appeals from their convictions. Applying the reasoning in Thoburn to analyse Factortame, the MSA 1988 could not impliedly repeal the ECA 1972. Thus, since Parliament did not explicitly seek to derogate from the ECA 1972 in enacting the MSA 1988, the application of the ECA 1972 was consistent with Parliament's intention and sovereignty.

The reconciliation of the supremacy of EU law and parliamentary sovereignty is thus premised on Parliament's current acceptance of a limitation to its sovereignty, though this limitation by no means fetters its future actions. Thus, as Lord Denning MR in Mccarthys v Smith declared, 'if the time should come when our Parliament deliberately passes an Act with the intention of repudiating the Treaty or any provision in it or intentionally of acting inconsistently with it and says so in express terms then I should have thought it would be the duty of our courts to follow the statute in our Parliament.'[2]

Human Rights

The CJEU and ECtHR jurisprudence has also left a substantive mark on UK law. As Lord Denning MR vividly described in Shields v

1 Factortame (No.1), 143
2 Factortame (No.2), 658-659

1 Thoburn v Sunderland City Council [2002] EWHC 195
2 Macarthys v Smith [1979] 3 All ER 325 at 329.

v Coomes, 'the flowing tide of Community law is coming in fast. It has not stopped at high-water mark. It has broken the dykes and the banks. It has submerged the surrounding land. So much so that we have to learn to become amphibious if we wish to keep our heads above water.'[1]

The dialogue between the UK courts and the ECtHR reflects the increasing receptivity of the UK courts to human rights arguments. This development may be seen in the tenant eviction cases, where the UK approach had traditionally favoured property rights. In Harrow LBC v Qazi ,[2] the majority of the HL (Lord Scott, Hope and Millett) held that the exercise of an established proprietary right to possession by the local authority was necessarily complaint with Art 8 of the European Convention on Human Rights (ECHR) since it would 'always be justified under Art 8(2) ECHR.' Even the minority of Lords Steyn and Bingham, who argued for a more detailed analysis and the need to justify the Art 8 ECHR interference as proportionate, acknowledged that it would only be in 'exceptional' circumstances that a possession order would be a disproportionate interference and violate Art 8 ECHR. Even the minority of Lords Steyn and Bingham, who argued for a more detailed analysis and the need to justify the Art 8 ECHR interference as proportionate, acknowledged that it would only be in 'exceptional' circumstances that a possession order would be a disproportionate interference and violate Art 8 ECHR. Although the ECtHR in Connors v UK[3] and McCann v UK[4] held that the termination of the gypsies' licence to occupy a local authority mobile home site and the eviction of a council tenant when the local authority requested the wife to sign a termination notice respectively violated Art 8 ECHR, the HL in Kay v Lambeth LBC; Leeds v Price and Doherty v Birmingham[1] confined the decision in Connor v UK to the narrow cases of gypsies since they were a vulnerable cultural group in need of positive protection, and held that the eviction of tenants was Art 8 ECHR-complaint.

Nevertheless, a shift towards protection of tenants and their Art 8 ECHR rights began to be perceptible. In Kay, Lord Bingham conceded that possession proceedings might 'exceptionally' be unjustified and amount to a disproportionate interference under Art 8 ECHR. Likewise, in Doherty, Lord Hope acknowledged that judicial review of the local authority's possession decision could be wider than on the traditional Wednesbury[2] unreasonableness grounds, and could take into account the impact of repossession on the victim's personal circumstances. Moreover, Lord Neuberger in Manchester CC v Pinnock[3] and Lord Hope in Hounslow LBC v Powell[4] exercised their duties under s.3 Human Rights Act (HRA) 1998 to interpret the statutory framework for demoted and unsecured tenancies respectively compatibly with the ECHR, holding that the court could 'assess the proportionality of the possession order [even where the evicted tenant had no legal right to remain in possession of the property] and resolve any relevant dispute of fact.'

However, the reception to the Human Rights Act (HRA) 1998, which gives effect to certain

1 Shields v E. Coomes (Holdings) Ltd [1978] 1 WLR 1408 at 1416.
2 Harrow London Borough Council v Qazi [2003] UKHL 43
3 Connors v UK (2004) 40 EHRR 189
4 McCann v UK [2008] ECHR 385

1 Doherty v Birmingham City Council [2008] UKHL 57
2 Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223
3 Manchester City Council v Pinnock [2010] UKSC 45
4 Hounslow LBC v Powell [2011] UKSC 8

rights under the ECHR, has not always been warm, especially in the prisoner and terrorist cases. The HL in the 'Belmarsh'[1] case held that the indefinite detention of foreign prisoners without trial under s.23 of the Anti-terrorism, Crime and Security Act 2001 was incompatible with Art 5 ECHR (right to liberty and security), and issued a declaration of incompatibility under s.4 HRA 1998. Moreover, in R (S) v SSHD,[2] the High Court held that Afghan nationals who had hijacked a plane could not be deported as there was a real risk that they would be targeted for assassination by the Taliban which would be treatment contrary to Art 3 ECHR.

Nevertheless, the language of respect for fundamental rights and proportionality has now become an integral part of UK law. Should UK leave the EU, it would no longer bound by the Charter of Fundamental Rights of the EU. However, unless the UK leaves the Council of Europe, it would still be signed up to the ECHR, which contains many similar provisions. Any dissatisfaction with the Human Rights Act (HRA) 1998 must be tackled head on, and there are proposals for a UK Bill of Rights to replace it in time for the 800th anniversary of the Magna Carta in 2015.

Free Movement

One of the main reasons why the UK joined the EU was to facilitate trade and economic growth, and this is realised through the free movement of goods, services, workers and capital. An illustration of how the UK has benefited can be seen in Commission v Italy (Chocolate).[3] The CJEU held that an Italian law requiring UK chocolate which contained vegetable fats to be sold under the name of 'chocolate-substitute' contravened Directive 73/241. This was because as long as the chocolate was lawfully produced in the UK in accordance with requirements as to the minimum content of cocoa-based ingredients laid down by the directive (albeit with the addition of vegetable fats), they could move freely and be sold throughout the EU. Thus, despite its differences and dissatisfaction, the UK does enjoy some benefits from being in the EU.

In conclusion, the UK and the EU have mutually benefitted from their relationship over the past 40 years. As with any relationship, the occasional difference may arise, and both parties need to compromise to resolve any disagreement. It would be a shame for the UK to pull out of the EU altogether. Instead, a closer examination of how the UK may renegotiate its involvement with the EU should be undertaken to reach a modified consensus that is acceptable and beneficial to both parties, and allow the UK and EU to reach their Sapphire and Golden anniversaries in the years to come.

1 A v Secretary of State for the Home Department [2004] UKHL

2 R (S) v Secretary of State for the Home Department [2006] EWHC 1111 (Admin)

3 Case C-14/00 Commission v Italy (Chocolate) [2003]

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Careers in Law

Having a career in law doesn't necessarily mean working in London. Here are what some trainees and associates who work in regional offices had to say....

BURGES SALMON, BRISTOL

Choosing a law firm in Bristol was certainly 'swimming against the tide' (please excuse the pun) when I made my decision to apply to Burges Salmon in the second year of my degree, rather than the Magic Circle firms that the other law students at my college had chosen. I came across Burges Salmon at the Law Fair where I spoke to a trainee with a very similar background to my own: she had grown up in Manchester (another 'northerner'), had come to the south for an Oxford education and then had been tempted across to Bristol by its combination of quality work and quality of life.

Many of the companies that used to use large City firms have discovered that they can get as good a service outside of London for much less. I have so far acted for, among others, one of the largest landowners in the UK, a FTSE100 defence provider, a FTSE250 transport provider and a Central Government department.

I have never felt overwhelmed; Burges Salmon's collaborative and people-focussed culture is one of its biggest selling points. The firm invests a great deal in its trainees, leading to one of the best retention rates in the sector and an unparalleled level of 'home grown' talent among its partnership structure.

I still work as hard as most of my friends from Oxford who moved to London, it's just a nicer atmosphere once you leave the office.

ANNABELLE GOLD-CAUTION

EVERSHEDS, MANCHESTER

Manchester has an extremely diverse and vibrant legal community, from traditional corporate firms, like Eversheds, to small boutique firms specialising in niche areas of law. There is an established but ever growing financial district, proof of which being the newly built Co-operative Bank HQ and the sprawling Spinningfields area home to RBS and HSBC, and an expanding media and creative district which being MediaCity UK, the flagship of BBC and myriad other media home to the companies.

This paints a very healthy picture for Manchester going forward, and law firms like Eversheds are capitalising on this by ensuring that they offer high quality advice in all areas of law that the discerning corporate/commercial company expects. From the point of view of someone training or working at Eversheds this is also extremely beneficial as one is exposed to the opportunity to work in all areas of commercial and corporate law as well as other areas such as planning, real estate and employment.

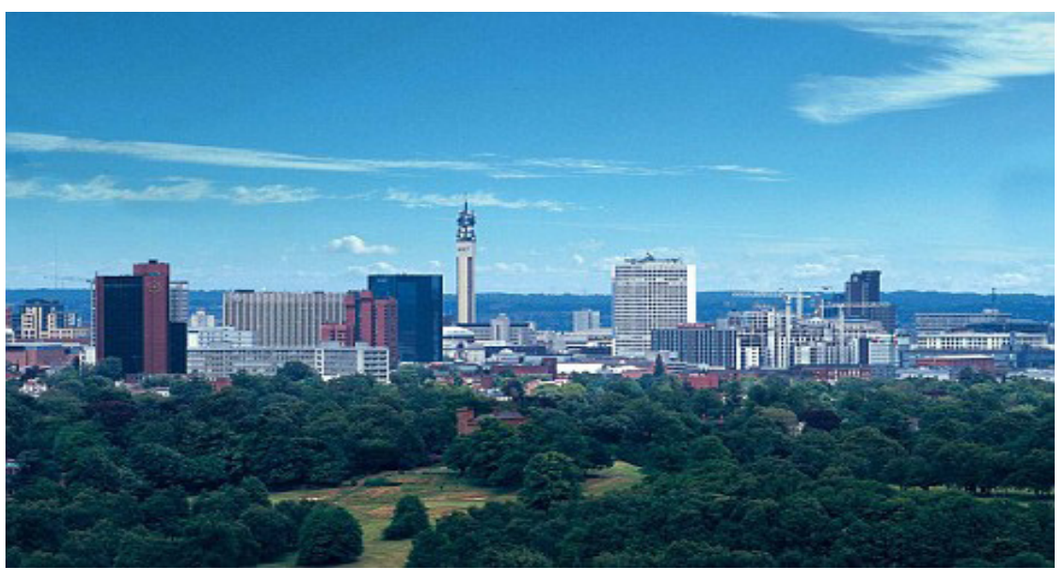
A benefit of Manchester life as a lawyer compared to say London is that despite the large size of the legal community, the city centre itself is perhaps smaller than some may think. This may of course not appeal to some people's sensibilities but it is extremely conducive to networking with clients, consultants and other lawyers as practically all the bars and restaurants can be reached on foot from wherever you are located. Also, for this reason, you find that many of your colleagues and junior contacts live either in the city centre or very close to, so there is a real collegiate feel to the city which you may not expect and would perhaps not get in other large UK cities.

CHRIS ROBINSON

MILLS & REEVE, BIRMINGHAM

Convinced London is the only place to be? Think again!

I graduated from Worcester College, Oxford 2 years ago and started my Training Contract at the Mills & Reeve Birmingham office at the beginning of September this year. I chose M&R in Birmingham because I loved the firm, their culture and the work that they do. I wanted a training contract where I could experience as many different types of law as possible. M&R's six seat contract allows for that and their wide variety of practice areas means you can try out lots of different fields. The size and structure of the M&R's Birmingham office means that proper work and responsibility really does get passed on to the trainees. You're not just a tiny cog in a massive wheel; you are a valuable member of one of the country's top law firms operating in a leading legal market. I enjoy working in Birmingham; the city centre is perfectly sized so that any after-work event is likely to be within 10 minutes walk of the office. Be it Brazilian dancing, Advocati (the illustrious lawyer-only choir) or the myriad of glittering legal events, Birmingham really does have something for everyone. If you want to do something a bit different and feel that London life is a little too predictable, I would recommend Birmingham as an exciting, fulfilling and challenging opportunity.



ANGELIKA KETZER

DWF, GLASGOW

With an interest in commercial law and with aspirations to potentially work across the UK, DWF seemed like a very attractive place to start my career. Despite the obvious differences between Scots and English law, the firm very much feels unified across all of our offices. The trainees are given the chance to interlink and experience different locations through our biannual Trainee Dinner with CEO Andrew Leitherland which gives us a great insight into the direction the firm is heading. I am now in month fourteen of my traineeship and am thoroughly enjoying my experience.

One thing that sets DWF apart from other firms with Scottish offices is the opportunity to experience six different seats rather than the norm of four. To date I have had seats in Real Estate; Construction, Infrastructure and Projects; Corporate and am currently working in Employment. My current seat gives me the chance to experience my team in action at tribunals as well as to attend regular client meetings; no two days are the same! Trainees at DWF are encouraged to take on their own files and have responsibility for their tasks, this means that my experience so far has been very practical and I have by no means been left to simply shadow others or stand by the photocopier all day!

As well as my workload, I am a member of the Glasgow Office's Corporate Social Responsibility Committee. This keeps me busy organising fun events for my colleagues to raise money for our locally nominated charity Cancer Research UK. In Scotland, both the Edinburgh and Glasgow offices also have their own Young Professionals Groups, this means that as well as attending external networking events we get to arrange and host our own! Joining committees is a great way to meet people in every department and at all levels.

KIRSTEN MCKELLAR

Liam McLoughlin,
DLA Piper

LIFE OF A

Typical Day in the Life of a DLA Piper Trainee

08:30- I aarrive at my desk. My morning routine is based around a double espresso, setting my voicemail and turning on my computer to check my emails. When I was in Litigation and Regulatory, my supervisor extolled the virtues of preparing a daily to-do list to help structure my day and prioritise work according to the deadlines I had been set. Once I have been through my emails, I draw up my to-do list which invariably changes over the course of the day! The work you are given as a trainee is incredibly varied and will depend on your department. During my time in Finance and Projects, I have been asked to prepare the corporate authorisation documents for multi-million pound acquisitions and have drafted a suite of security documents on a nine figure deal.

13:00- I go for lunch and if we do not have a training session or team meeting, I will head to the gym for a quick workout. On average, we have lunchtime training once a week and the subject matter of the sessions will range from legal updates in relation to developments in the law of relevance to your department or a review of departmental policies and procedures for key clients.

14:00- I am back at my desk (resembling a beetroot if I have been to the gym).

18:30/19:00- I leave work on quieter days but stay later if required. Like any international firm, the hours are variable and you have to be responsive.

Evening- There is a good sense of togetherness among the trainees so we try and get together for a drink or something to eat once a week. During the Autumn/Winter months, DLA Piper has a number of sports teams and the fixtures tend to be played on a Wednesday evening. I'm the captain of the football team and it's a great way to bring the office together .

TRAINEE

Tell us more about the work you do.....

Have you worked on any international cases yet? How are they different?

At DLA Piper you are exposed to international work right from the beginning of your training contract. For example, in Finance and Projects, I have worked on a number of international transactions, the largest being the accession of guarantors to an amended facility agreement for a large UK based PLC. There were eighteen companies in thirteen jurisdictions. My role was to draft and review corporate authorisation documents in respect of the UK entities as well as managing the flow of documents and information between our overseas lawyers and the Lender's overseas legal team.

One of the biggest challenges was appreciating the nuances and approach of each jurisdiction. For example, in some countries the concept of a deed is not recognised and in others, approval of the shareholders of a company is not required in order for that company to sign up to a loan or provide security over its assets. The fact that DLA Piper has such an extensive and truly international presence makes co-ordinating large international projects much easier.

What's the most exciting part of the work you do? And the part of work you enjoy the least?

For me, the most exciting part of the work I do is its variety. One of the main benefits of being a trainee at DLA Piper is that any one department comprises a number of distinct specialisms within a particular area of law. For example, in Finance and Projects, I have worked with our Financial Markets team in relation to a large scale derivatives project. I have also worked on a number of high profile acquisitions with our Real Estate and Debt Finance teams. This injects a healthy amount of diversity into your workload and means you are constantly learning because of your exposure to different work.

There are, of course, some jobs which are not as engrossing but they are extremely important nonetheless. Although Companies House filings and the pagination of trial bundles are not rocket science, if you were to do them incorrectly or approached them nonchalantly, there can be serious consequences. The key is to remember that every task you are given as a trainee is an opportunity to impress and demonstrate that you can be trusted.

Work Experience

My first taste of legal work experience came at the age of 15, when I spent 2 weeks with a high street conveyancing firm as part of an initiative promoted by my school. Although this introduced me to the basic organisational and practical aspects of what it's like to be a solicitor, I realised that I wanted to become involved in bigger business than just high street property transactions.

Two days sitting and observing in Reading Magistrates Court gave me an insight into the role of the criminal barrister and court procedure, but it was my time spent shadowing the General Counsel of a major Japanese technology company that I found most beneficial. This was invaluable experience inside a corporate law department, which introduced me to new areas of law and gave me a real flavour for the commercial aspects of the profession. This large Japanese technology company are a major client of Baker & McKenzie's, which meant during my time there, I was able to see the real value of the firm's advice from the client's perspective. The in-house team there spoke incredibly highly of Baker & McKenzie, both in the quality of their people and their work, so this is something that attracted me to the firm in the first place.

The summer vacation scheme is undoubtedly one of the best in the City. Most notably, this is down to the people you meet and the amount of time those at the firm invest in you. It gives you a fantastic opportunity to come to the firm, sample the work in a number of departments and find out whether you'd enjoy life at Baker & McKenzie full time. Getting a place is of course competitive, but highly worthwhile.

Jonathan Shaw- Baker & McKenzie

I did various vacation schemes during my third year (of a four year course) - a week at Simmons & Simmons over Easter, a month as a "stagiaire" at Hogan Lovells in Paris and then a month at Linklaters over the summer.
Prior to this, I didn't actually have much legal work experience. Instead, I thought carefully about how the non-legal work experience I did have (e.g. working in a restaurant and as a teaching assistant on my year abroad) could be tailored to fit a vac scheme application. There are some skills that the firms that are on the always on the lookout for: commercial awareness, the ability to work in a team and commitment (to name a few). Although legal work experience is undoubtedly beneficial, experience in any working environment can be helpful if you are able to show how you benefitted and what you learnt from it.

Laetitia Cooke - Simmons & Simmons

Top Tips for Interviews

1. SHOW PERSONALITY - this is your chance to sell yourself. Don't just show that you're bright, show us that you're also someone we want to work with going forward. Confidence and a sense of humour goes a long way.

2. Firms are generally interested in how you think rather than any specific legal knowledge – luckily for you, you'll be used to this approach from tutorials. **KEEP CALM AND ADDRESS ANY HARDER QUESTIONS LOGICALLY** - every interviewee will be faced with a tricky question or two, but the firm isn't looking for you to get it 100% correct all the time.

3. DO SOME HOMEWORK - don't force it into conversation, but if called upon, showing us you have a decent knowledge of the firm, its offices, its clients and any major deals going on is going to impress. You don't want to shoot yourself in the foot by asking an obvious question.

4. REREAD YOUR APPLICATION – make sure you can justify/explain everything you've written.

5. "COMMERCIAL AWARENESS" – the buzz words. To an extent, "commercial awareness" covers anything and everything – but you could start by understanding how any law firm works as a business, thinking about the commercial implications of the work a lawyer does and reading recent business news.

Advice for In

At the beginning of my training contract I was reactive, as soon as I spotted a problem or an issue my first thought was to raise it with my supervisor and wait for instructions. One of the things I have learned is to slow down and not simply react to what is going on around me but to also be part of finding a solution. Now when I there is an issue or a problem, I take time to think about the problem, identify possible solutions and ways in which those solutions can be implemented. When I approach my supervisor, I am able to show that not only have I identified the issue but I have also grappled with it. By not only identifying the problem but also taking time to think about the possible solutions I take more ownership of the work that I am doing and I add more value to the team I am working with.

Vee Kawa, Trainee- Cleary Gottlieb

When studying law at university or on the GDL, it's often the case that students are encouraged to explore the legal aspects of a particular issue in great detail, with seemingly endless references to case law, textbooks, statutes and journals. What I've learnt since starting my training contract at Addleshaw Goddard, however, is that while such academic analysis is important for legal research, when it comes to the crunch, clients want legal advice that gets to the heart of their problem and solves it in a commercially viable way. To do this, a solicitor needs a genuine, practical knowledge of their client's business, in particular, its structure, commercial objectives, position in the market and future strategy. This commercial knowledge should work in harmony with a solicitor's understanding of the law. Although it can be challenging, keeping your "commercial awareness" up to date beyond those assessment centre deadlines should help you hit the ground running in your first seat and impress your future clients and colleagues alike.

Beth Staniland, Trainee- Addleshaw Goddard

coming Lawyers

The start of your training contract can be an overwhelming experience, particularly in a large corporate firm like BLP where you are heavily involved from day one. I am currently in my third seat here and am still learning all the time; inevitably there is no substitute for experience and nobody starts their training contract knowing it all. However, here are some bits of advice I think would have been useful to know before starting my training contract:

1. Be positive. People enjoy working with enthusiastic trainees who are keen to get involved, and really appreciate that "can do" attitude when they are feeling the pressure.
2. Everyone makes mistakes. The first time you do something wrong it may seem like the end of the world, but don't forget everyone else (even the most senior partners!) has been in your shoes. If you are proactive and offer solutions, you will find people are very supportive. It's stressful, but it's the way you learn and develop as a solicitor.
3. Don't be afraid to ask. You are not expected to know everything and, in my experience, everyone is very willing to sit down and talk through issues with you.

Charlotte Butler, Trainee- Berwin Leighton Paisner

Essay Competition

Should there be devolution of legislative powers within the UK?

Winner: Miranda Elvidge

This question is misleading: the use of the word 'should' is slightly misapplied, given that there has already been devolution of legislative powers within the UK. The current constitutional architecture is made up of a central parliament, Westminster, and three devolved institutions – the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly. This structure faces criticism on several fronts though, as is illustrated by the call for the Scottish referendum on independence in September. The question, then, is taken to be referring to a need for further devolution: be it through a larger English voice within parliament, the creation of an English committee to decide 'English' laws, or the development of full federalism. This essay will identify problems with the current level of devolution and assess whether increases of various degrees of devolution could offer solutions, ultimately concluding that there is no single superior constitutional system.

It can be assumed that a generally desired state of affairs would be stable and efficient, whilst promoting economic prosperity. The present situation is thus primarily problematic because it is asymmetrical: the level and nature of devolution in Scotland, Wales, Northern Ireland and England is different to the point that Bogdanor terms the state 'quasi-federal' – illustrating the range of available powers. Whereas Scotland has some financial leverage via its ability to vary the rate of income tax (if only by 3p / £), for example, Northern Ireland and Wales possess no such faculty (outside of the Wales Bill currently being negotiated[1]). This negatively affects stability by introducing a competitive element between devolved institutions over their level of influence[2] and, more importantly, raising the 'West Lothian' question[3] (WLQ) as to whether it is acceptable for Scottish MPs to vote on 'English' bills, given that English MPs are prevented from voting on 'Scottish' bills. Moreover, there is a dual concern over national identity: on the one hand, whilst the English parliament remains the central parliament, devolved states may struggle to maintain a sense of cultural identity but, on the other hand, concern is raised for the English sense of identity due to its lack of individual institution. Finally, it is important to consider the impact of further legislative devolution on executive powers. A

1 http://www.bbc.co.uk/news/uk-wales-politics-30004665
2 Birrell, 2012, p76
3 McKay Commission Report, 2013, p12

large portion of the Scottish and Welsh campaigns for increased devolution is focused on finances and appropriations - which are essentially executive interests. Economically though, whereas devolved bodies are looking for revenue to finance their expenditure plans, central government by contrast is responsible for macroeconomic impetuses such as stabilizing the economy, borrowing, or maintaining low taxation to sharpen incentives in the private sector.

Bogdanor states that the only way to overcome the West Lothian question is for Britain to become a 'thoroughgoing federal state' .[1] The term 'federal state' is taken to imply total devolution: it should entail the formation of an exclusively English institution with overriding legislation enshrined in a written constitution that's immune from unilateral amendment by a single institution. This system would address the WLQ by removing the scenario where Scottish MPs gain a vote on English-only issues as such issues would be resolved by the English institution. Thus stability would be promoted by protecting devolved powers from alterations, devolved institutions would be placated due to having aligned powers (removing the element of competition) and more fiscal autonomy, and efficiency would be maximized by combining the responsibility for spending and raising money. However, such a change would jeopardise the union of England, Northern Ireland, Scotland and Wales – thus undermining stability. Given that England makes up 85% of the British population,[2] asymmetry would effectively still exist in terms of influence and non-English opinions may hardly enter into political affairs.

Alternatively, we may consider the option of a devolved English institution without full federalism – that is, where Westminster parliament exists as a central authority over devolved powers, but England has its own institution to vote on English-only matters. In this case, the WLQ and problem of asymmetry are overcome without unity being so drastically affected. In fact, unity is arguably improved by relieving supporters of full federalism of their grievances without completely separating nations. However, this level of increased devolution is likewise problematic insomuch as it may result in political deadlock through the creation of two distinct classes of MPs: those who could vote on all matters before the House and those whose voting rights would be curtailed by virtue of constituency location. Furthermore, collective government would be inefficient, if not impossible, given a potential bifurcation[1] of the Commons, whereby the Lower House would have a UK majority (presumably Labour) for foreign affairs, defence and economic policy, but an English majority (presumably Conservative) for health and education, where Scottish MPs would be prevented from voting – the 'in/out' phenomenon.[2]

1 Bogdanor, 2001, p228
2 http://ukconstitutionallaw.org/2014/09/19/mark-

1 http://www.theguardian.com/commentisfree/2014/sep/24/english-votes-english-laws-absurdity-separatist
2 McLean, 2012, p172

Keating suggests that the only third option, then, is to extend legislation purely in terms of exposure to English opinions on English matters.[1] This is partially in line with the McKay Commission Report, which concludes that views from England must be expressed and known before a final decision is made about something with a separate or distinct effect for England – most likely through the formation of some committee of English MPs.[2] Although here the WLQ is only partially overcome, as Scottish MPs would still be able to vote on English-only affairs without the opposite holding true, parliamentary unity is maintained and Scottish MPs should at least be forced to take English views into account before severely swaying the vote, without de-unionisation taking place.

'Finance is the spinal cord of devolution.'[3] Although finance is arguably as much concerned with the executive as it is with the legislative aspects of government, current political attitudes suggest that it is increased fiscal responsibility that holds the most sway over politicians with regard to the devolution debate – with yesterday's Parliamentary debate centred on a review of the Barnett formula and its impact on the WLQ .[4] If we consider Britain as whole, rather than the devolved institutions on a separate basis, this focus links directly to the notions addressed at the beginning of this essay: stability and efficiency, both of which are fundamental for economic progress. Ultimately, extended devolution of legislative powers does little to promote either of these factors and often disrupts them. In conclusion then, although the present system itself is imperfect, there is no strong case for increased devolution providing any source of improvement.

1 Keating, 1998, p62
2 McKay Commission Report, p60
3 Bogdanor, p235
4 http://www.bbc.co.uk/news/uk-politics-30012556

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Runner-Up: Lillian Jewell Von Seggern

The phrase "devolution of legislative power in the UK" immediately brings to mind thoughts of the Welsh Assembly and Scottish referendum. However, the flip side of this, as has emerged post the referendum, is the drive for England to

also benefit from some degree of devolution. Yet within these calls there are renewed calls for arguments for devolution of legislative powers within regions of England itself. Although these have existed for decades, the recent discussion surrounding the Scottish referendum has given this debate new fervor. In 2003 the Regional Assemblies Act attempted to introduce regional assemblies within the north of England,[1] however, this was rejected by the public vote. Yet now, there is a renewed desire within England for devolution of legislative powers. The effect of devolution on one level is inevitably the call for devolution at the level below. It is the potential outcome of the calls for devolution at a regional level which will now be examined, using the case of Cornwall as an example.

One region in which the calls for devolution have always been particularly strong is Cornwall. Here the Cornish independence party, Mebyon Kernow, has been campaigning for devolution of legislative and other powers to Cornwall since 1951. Following the Scottish referendum the impetus behind the drive for devolution to Cornwall has only increased. In its consultation document "Towards a national assembly for Cornwall" Mebyon Kernow repeatedly cites the devolution of power to Northern Ireland, Scotland and Wales, the other key Celtic countries of the UK[2], as a precedent which should be followed with regards to Cornwall. However, support for Cornish independence is not limited solely to fringe parties, but has enjoyed long term support from the Liberal Democrat Party. In 2009 Dan Rogerson MP unsuccessfully introduced the Government of Cornwall Bill to Parliament, and on 8 September 2014 the same party published their pre-manifesto which requests "devolution on demand"[1] for any areas within England, but specifically cites Cornwall as an example of one such area that could benefit. The Liberal Democrat MP, Andrew George, has referred to the Scottish referendum as a "major opportunity for Cornwall". Furthermore, the impetus of the campaign for devolution to Cornwall has benefitted from support from within the other Celtic countries, for example, the Welsh MP Jonathan Edwards brought an early day motion requesting a Cornish assembly in 2011, which received support from not only the Liberal Democrat party, but also from Labour, Plaid Cymru and the Scottish National Party. Thus, it would not be fallacious to argue that a consequence of broad devolution within the UK would be more narrow devolution within England itself. Whether this process ought to occur is a question which must be addressed. On the one hand, there are significant cultural arguments which set Cornwall apart from

1 The Regional Assemblies (Preparations) Act (2003)

2 Mebyon Kernow, Towards a national assembly for Cornwall, Section 4, September 2014

1 Liberal Democrat Party, Policy paper 121, 7.2 (8/09/2014)

England and on a level with the other Celtic countries, on the other hand, there are significant economic and practical arguments against facilitating such change. The balance which has to be struck is one which allows devolution where it is both desired and practicable, but not where it would be little more than a publicity stunt.

The calls for devolution from within Cornwall and recognised within Westminster are not entirely illogical. The Cornish were recognised as a distinct national minority group for the first time earlier this year.[1] The Government have supported the Cornish Language Partnership with £120,000[2] and when road signs are replaced the new ones are bilingual.[3] By many, both within and outside of Cornwall, it is coming to be viewed as something apart from a mere region of England, on a par with Wales, Northern Ireland and Scotland. By many, both within and outside of Cornwall, it is coming to be viewed as something apart from a mere region of England, on a par with Wales, Northern Ireland and Scotland. The emotive arguments used to support devolution to Cornwall echo those from the Scottish Yes campaign, they are both cultures that are set apart from the UK and from England especially, united by their Celtic heritage. Andrew George MP stated "if Scotland and Wales can be offered further powers then Cornwall must be next in line. After all, Cornwall is already recognised … as a separate people and for its distinct language."[1]

However, while the above arguments are inevitably very emotive, and while it is undoubted that a large number of people identify culturally as Cornish and not British, these emotive arguments do not suffice if a major decision regarding the constitutional make up of the UK is to be made. As is the case with the Scottish referendum, the economic ramifications would have to be considered. It is acknowledged from both sides of the independence argument in Cornwall that the county is in a unique economic position: it is the only area of the UK which qualifies to receive the European Regional Development fund, which is awarded to areas where the economic performance is below 75% of the European average. This has led to the investment of €458.1 million between 2007 and 2013.[2] A large amount of this money has been invested in infrastructure, but, for example, Cornwall still remains one of only nine counties in England with no motorways.

While the aspirations of Cornish devolutionists seem to tend towards an Assembly rather than independence entirely, the calls from within Plaid Cymru for the Welsh to at least attempt to follow the Scottish and attempt to secede from the UK indicate that the same calls would be echoed in Cornwall. As a sovereign state, Cornwall would almost definitely fail. It would be highly unlikely to meet the economic accession criteria to the EU and, with an

1 HM Treasury, Department for Communities and Local Government, 24/04/2014, Cornish granted minority status within the UK, https://www.gov.uk/government/news/cornish-granted-minority-status-within-the-uk

2 BBC News, 21/03/2014, Cornish language gains £120,000 government funding,

3 http://www.magakernow.org.uk/default.aspx?page=374

1 Andrew George MP, 08/09/2014, Scottish Referendum – Major opportunity for Cornwall

2 http://www.erdfconvergence.org.uk

industry which is almost entirely seasonal, would suffer severely on an economic level. If a referendum were to be held it would seem likely that the Cornish would favour independence, an informal poll conducted by the radio station Pirate FM found that 64% of participants believed that Cornwall should be next for devolution".[1] Devolution within the UK at large leads to calls for devolution from areas such as Cornwall which, over time would very likely lead to calls for independence. If these were successful, it could be disastrous.

1 http://www.piratefm.co.uk/vp/-/news/-/latest-news/1398586/vote-should-cornwall-be-next-for-devolution/

Wordsearch

P	A	R	T	N	E	R	U	E	Z	P	O	P	L	C	F	H	O	Q	T
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- Drafting
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Solutions Overleaf.....

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Highlights from the Term


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Treasurer

Farewells

The sobering downside of being Treasurer of Oxford Law Society, especially if you don't feel particularly egotistical, is that you understand you are dealing with amounts of money you will never see again in your life, at least before you put a deposit on your house (which is probably the result of years of hard toil). The extraordinary speed with which we have made this term especially successful in terms of sponsorship is therefore testament to the strong spirit of personal and collective belief on the executive this term. Belief in our capabilities, but also belief in our members' expectations: it would be callous to sit on extra cash, so we have used it to pull out the stops to create what we hope has been the most socially vibrant termcard in the University, delivered by the enthusiasm of our dedicated Michaelmas committee.

Akshay, Izzy and Richard have been tremendous company through work and play; together, I'm convinced we can be satisfied in looking back on one of the most successful terms in the Society's recent history.

Xin Fan, Treasurer

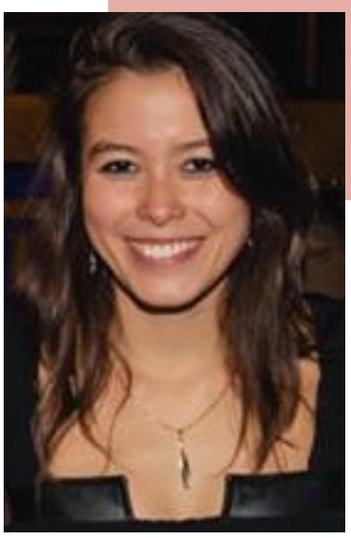
Vice-President

I have absolutely loved my time as Vice-President of the Law Society, we have crammed in so much this term that there has hardly been time to breathe! It has been so exciting to be part of this incredible society, but the spectacular events could not have happened without the hard work of everyone on committee. So firstly, my thanks goes out to them, for stepping up when needed and carrying out those tasks which seem menial but actually in the long run make such a difference to the success of events and the society.

Secondly I would like to thank the rest of the exec team: Richard, Akshay and Xin – I am so grateful to you all, for being such an excellent team and so on the ball. You are such wonderful friends; thanks for putting up with all of my demands (especially regarding food). You have definitely made this the best term on Lawsoc ever! Finally, I just have to say an extra thanks and congratulations to Richard Bach, as President you have literally put in so much hard work, and it has really paid off with such a successful term.

Good Luck to next term's committee, and to this term's: it has been a pleasure working with you.

Izzy Hunt, VP



President

As I write this piece I am struck by how quickly the last eight weeks have passed, and the sheer number of social events, presentations, dinners and committee meetings that have gone by in that time. It has been a stressful experience at times, but I can honestly say that running for LawSoc committee all those terms ago is one of the best decisions I ever made at Oxford, while my presidency of the Society is something that I will look back on fondly for years to come.

However this term's success would not have been possible without both the generous support of this term's sponsors, and the enthusiasm of our members who attended our presentations and social events.

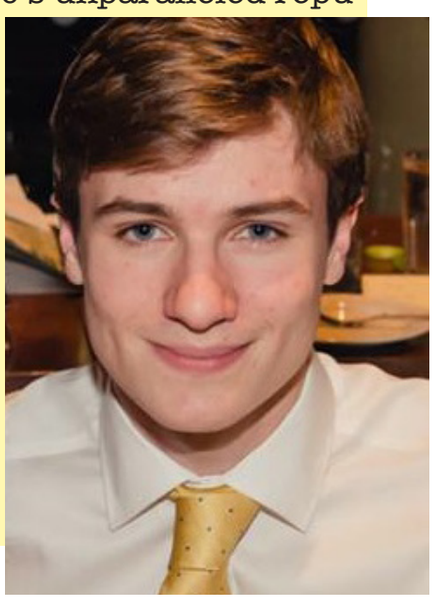
I also want to thank all the members of the Michaelmas Term 2014 committee for their hard work and commitment, and particularly Issy and Michael who produced the magazine you are reading. The quality of this term's Verdict stands testament to the huge amount of work they both put into it. Equally I appreciate the frequent help and advice that I received from members of previous executive committees.

I am also grateful for all of the support I have received from my friends and family, who have had to tolerate more than their fair share of LawSoc chat this term as well as my own delusions of grandeur!

However my greatest thanks must go to my irreplaceable executive committee: Izzy, Xin and Akshay. They have been with me every step of the way over the last seven months, and have each contributed an incredible amount of time and effort to the Society. Without their help, ingenuity and constant good humour nothing achieved this term would have possible, let alone as enjoyable.

Finally I would like to close by wishing the best of luck to the Hilary Term 2015 executive committee. I have no doubt that Beth, Phoebe, Chloe and Ellie will do a fantastic job, and will continue to uphold LawSoc's unparalleled reputation at Oxford.

Richard Bach, President



Edison had 10,000 lightbulb moments before he saw the light

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