



LEGISLATION

WHY?

Where a case depends on any statutory provision(s), you must know the precise wording of the relevant provision(s). You must also consider how the court will interpret those words. It would be negligent not to read any relevant provision and check its interpretation.

HOW?

Read all relevant provisions;

Read the whole of any relevant provision(s).

Read any other provision(s) which might have an impact on the relevant provision(s) (e.g. where a provision states 'subject to the conditions in S X below', read S X; read any definition given within the Act).

Read the Extent of the Act (ie: does it extend to Scotland for example).

Read any Commencement provisions.

Check how the court will interpret the words

Check how any relevant provision 'fits into' the statute/statutory instrument generally: What is the general purpose of the statute/statutory instrument? Is it divided into Parts? Which Part is the relevant provision in and what is its general purpose?

The Explanatory Notes accompanying a statute offer some guidance as to the purpose of Parts and sections but do not rely on this alone; the law is within the provision itself not the Explanatory Note.

Check the interpretation section to see if any of the words on which you rely are defined there.

Where relevant, check case law to see if any of the words in any relevant provision on which you rely have been interpreted.

A practitioner text may well be a useful tool in helping you interpret legislation.

Make sure that the legislation you are proposing to rely upon is in force and that you have taken into account any amendments which have been made to it.

CASES

WHY?

The Common Law tradition is based on the development of case law. Case law is used by practitioners to interpret statutes and other written rules and to develop the existing common



law during the presentation of argument. If you do not or cannot read cases you should not be seeking to practise at the Bar.

By reading cases, you will not only understand the law applicable in your particular case, but you will also improve your own ability to reason. Judges of the higher courts, particularly the House of Lords, tend to set out well structured arguments in a logical and coherent way. They isolate the issues and come to clear conclusions in relation to each issue raised.

By reading these judgments you will learn to improve your own structure and learn how to deal with the relevant issue(s) and leave out the irrelevant. Reading and using cases is also relevant to the presentation of written and oral argument.

HOW?

In order to be able to read cases quickly and efficiently, you must practise. By reading cases regularly, you will learn how to read quickly over the passages which are not relevant to the issue you are concerned with and to focus on the main passages which deal with the issue(s) which you are researching. Once you have learnt this skill you will be much more efficient in your research.

Try to read cases of interest to you which you hear about in the media e.g. a Court of Appeal or House of Lords judgment which is mentioned in the news. Find the judgment through Lexis Library or Westlaw and read it.

When reading a case, identify the following:

The Parties – Who is the claimant and who is the defendant. Whose appeal is it?

The Proceedings – Is it a first instance case or an appeal? Which court is the appeal being made to? What type of appeal is it (case stated, appeal to Court of Appeal or House of Lords etc)? What has happened in the earlier proceedings? Make sure you understand the appeal process and the hierarchy of the courts. Put the case into a context.

The Facts – You must make sure that you understand the facts clearly. Isolate the main factual issues. Make notes or diagrams if they help.

The Issues for the Court - What is the court being asked to decide, e.g. what are the grounds of appeal? If there are a number of questions being asked of the court, which are relevant to the issue which you are researching? You don't have to read about issues which are of no relevance to you.

What are the arguments of the parties? – These are usually set out but it is not always necessary to read them in detail. They may however assist you in developing your skills.

What is the Decision and the Reasoning of the Court? – You should be able to find this fairly quickly. Learn to find which judge(s) is (are) giving the main judgment. Note any dissenting judges. Be able to explain in your own words what the Court has decided and why.

Who won? – This is useful to know, but a party may win on some issues and not on others. Be careful to isolate the grounds upon which a party succeeded. It is often more important to know why they won (see above).

For further tips on researching the law see the *Case Preparation* manual, in particular Chapter 7 on Reading and interpreting a case.