

LEGAL REFERENCES: A SIMPLE GUIDE

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1. Introduction

Clerical members of the Society have confessed to some confusion about the meaning of the references lawyers use to cite their source material. This is hardly surprising, as many of these references are abbreviations. This paper is an attempt to unravel, for the non-lawyer, the mysteries of some at least of these references, and at the same time to indicate the scope of legal source materials.

Due to the great bulk and expense of legal source materials, they will be found only in the largest public libraries and in university libraries, though most practising lawyers will have extensive libraries in their offices. The most practical course for a clergyman who wishes to have access to legal source materials is to speak nicely to a solicitor in his congregation.

2. Statutes

Statutes, or Acts of Parliament, are laws enacted by Parliament. They originate as Bills presented in either the House of Commons or the House of Lords, and are debated by each House before being passed. They become law on receiving the Royal Assent (though many Acts provide that they are not to come into force until a date specified either in the Act or in an Order made by a Secretary of State). Each Act has a 'short title' by which it may be cited (eg the Race Relations Act 1976), and a chapter number. Until the end of 1962 the numbering of the chapters began again at the beginning of each regnal year of the sovereign; since 1963 the numbering starts at '1' again at the beginning of each calendar year, thus:

Submission of the Clergy Act 1533 (25 Hen 8 c 19)
Race Relations Act 1976 (c 74).

An Act is divided into sections (abbreviated 's'), and may have Schedules appended (abbreviated 'Sch'). In the longer Acts there are also numbered Parts (and even numbered Chapters), containing groups of sections, but the sections are always numbered consecutively through the Act.

Statutes are published by H M Stationery Office. *Halsbury's Statutes of England* (published by Butterworths) is a multi-volume collection of statutes which are currently in force, and the text incorporates subsequent amendments. It is arranged by subject. Volume 14, published in 1986, contains Acts and Measures relevant to ecclesiastical law, but volumes are not sold separately.

3. Measures

A Measure is the ecclesiastical equivalent of an Act, and has the same authority. It is passed not by Parliament but by General Synod (or, before 4 November 1970, by the Church Assembly). When General Synod has passed a Measure it refers it to its Legislative Committee, which in turn submits the Measure to the Ecclesiastical Committee of Parliament. This committee is composed of members of each House of Parliament. It reports to Parliament on the

Measure, and Parliament either rejects the Measure or resolves that it be presented to the Queen for the Royal Assent. Parliament has no power to amend a Measure. A Measure, like an Act, has a short title, but instead of a chapter number it simply has a number (the numbering beginning at '1' each year), thus:

Ecclesiastical Jurisdiction Measure 1963 (No 1).

Before 1963 (as with statutes) regnal years were used in place of calendar years, thus:

Clergy Pensions Measure 1961 (9 & 10 Eliz 2, No 3).

Measures, like Acts, are divided into sections and Schedules, and are published by H M Stationery Office. Vol 14 of *Halsbury's Statutes of England* contains the text (in amended form) of Measures which are in force.

4. Statutory instruments

Statutes often delegate to Ministers of the Crown power to make subsidiary legislation in the form of orders, rules and regulations. This power is exercised by making 'statutory instruments' (abbreviated 'SI'). Before 1948 they were called 'statutory rules and orders' (abbreviated 'S R & O'). Orders, rules and regulations are all made in the form of statutory instruments, and there is no distinction in numbering or otherwise between them, save that orders are divided into articles (abbreviated 'art'), rules into rules (abbreviated 'r') and regulations into regulations (abbreviated 'reg'), and orders, rules and regulations may also have Schedules (abbreviated 'Sch'). Each instrument has a short title and a number, which incorporates the year, thus:

Church of England Pensions Regulations 1988, SI 1988/2256
Faculty Jurisdiction Rules 1967, SI 1967/1002.

They may also be cited as:

Church of England Pensions Regulations 1988, SI 1988 No 2256
Faculty Jurisdiction Rules 1967, SI 1967 No 1002.

They are published by H M Stationery Office, and for each year the statutory instruments for the year are produced in several massive bound volumes.

5. Canons

The Church has from the earliest times legislated by canon. Whilst it seems that Roman canon law never formed part of the law of England as such (though there are dissentient views), such parts of it as were not 'repugnant, contrariant or derogatory' to English statute or common law, or to the Crown prerogative, received statutory recognition at the Reformation. Since then the Church of England has legislated for itself by canon. In 1969 a new collection of canons, replacing the *Canons Ecclesiastical* (1603), was published under the title 'The Canons of the Church of England', and are amended from time to time by General Synod, but no canon may be promulgated without the Queen's licence and assent. The canons are divided into sections lettered A to H, and the individual canons are numbered within these sections. The longer canons are subdivided into paragraphs and sub-paragraphs. They may be cited eg:

Revised Canons Ecclesiastical, canon C 5, para 2(d).

The canons are published by Church House. The latest edition is the 5th edition of 1993, to which Supplements will be published as necessary.

6. Law reports

When a court in England is called upon to decide a point of law, it pays great attention to the way in which the courts have already considered related points of law. For example, if it is called upon to interpret a word used in an Act, it will look closely at the way in which the courts have already interpreted the same word used in a different Act. It is therefore necessary for both the courts and the lawyers arguing the cases before the courts to have access to earlier decisions. This access is provided by law reports, which are reports of decided cases, selected because they decide new points of law. Only a small fraction of decided cases are reported: this is because most decided cases do not involve points of law sufficiently novel and important to warrant a published report. Typically a law report sets out the facts of the case, followed by a verbatim transcript of the judgment, in which the judge sets out his reasons for his decision.

Until the late nineteenth century law reports were edited by individual law reporters, usually practising lawyers, and there are many series of early law reports, going under the name of the reporter. Thus:

Chetwynd v Lindon (1752) 2 Ves Sen 450

is a report of a case brought by Chetwynd against Lindon, heard in 1752, and found in the second volume of the reports edited by old Mr Vesey (there was also a Vesey Junior) at page 450. The number of these series of early reports is legion: a list of abbreviations of their names would extend to several pages.

The Incorporated Council of Law Reporting, set up in 1866 by the legal profession, then began a more systematic series of Law Reports. There are separate reports for the different courts. Thus, for example, Appeal Cases ('AC') reports cases before the House of Lords and the Judicial Committee of the Privy Council; Queen's Bench ('QB') reports cases in the Queen's Bench Division of the High Court and on appeal therefrom to the Court of Appeal; and Chancery ('Ch') and Family ('Fam') report cases in the Chancery and Family Divisions respectively, and on appeal to the Court of Appeal. The Family reports also include reports of cases heard in the Consistory Courts and of appeals to the Court of Arches and the Chancery Court of York. In 1936 Butterworths began to publish the All England Law Reports ('All ER'), covering cases in all courts, and the Incorporated Council in 1953 began the Weekly Law Reports ('WLR'), again covering cases in all the courts, including cases not important enough to reach the Law Reports proper. The same case may, of course, be reported in more than one of these different series. In each series there may be several numbered volumes for each year. In citing a case it is customary (and helpful) to add to the reference an indication of the court in which the case was heard. If no court is specified, the assumption is that the case was heard in the High Court (ie, in the Queen's Bench, Chancery or Family Division by a High Court judge sitting alone). Typical references for the reports referred to above are:

Duke v GEC Reliance Ltd [1988] AC 618, [1988] 1 All ER 626, HL
R v Lemon [1979] QB 10, [1978] 3 All ER 175, CA
Re Robinson, Wright v Tugwell [1892] 1 Ch 95
Re St Stephen, Walbrook [1987] Fam 146, [1986] 2 All ER 705, Cons Ct
Re St Mary the Virgin, Selling [1980] 1 WLR 1545, Commissary Ct.

Thus the first case (*Duke*) will be found in the 1988 volume of Appeal Cases at page 618, and in volume 1 of the 1988 All England Law Reports at page 626, and the case was heard in the House of Lords.

The astute reader will have noticed that in two of these cases the years are different. This is because a year in square brackets is the year of the publication of the report, not the year in which the case was actually heard. Years in square brackets are integral and essential parts of the reference. The old case cited above (*Chetwynd v Lindon* (1752) 2 Ves Sen 450) has the year in round brackets: this shows that it is the year of decision: it is added for interest and is not an integral part of the reference – ‘2 Ves Sen 450’ is sufficient to find the case.

7. **European Community law**

European Community law is part of English law. It is not very likely to arise in an ecclesiastical context, but it requires some brief mention here. The basis of Community law is the EEC Treaty (sometimes unhelpfully called ‘The Treaty of Rome’ – unhelpfully because there are other Treaties of Rome!). The EEC Treaty is divided into articles. There are many other Community treaties, such as the Euratom Treaty, the ECSC Treaty and the Single European Act.

The secondary legislation of the Community comprises regulations, directives and decisions, made by either the EC Council or the EC Commission. Regulations have binding effect in all member states. A directive requires member states to pass national legislation giving effect to the directive. A decision binds only those people or bodies to whom it is addressed. Unfortunately they do not have short titles, indicating their subject matter, but are referred to merely by abbreviated years and numbers (or, confusingly in the case of regulations, numbers and abbreviated years), thus:

EC Council Regulation 729/70
 EC Commission Regulation 556/89
 EC Council Directive 88/361
 EC Commission Directive 80/723
 EC Council Decision 88/591
 EC Commission Decision 67/426

(ie regulations no. 729 of 1970 and no. 556 of 1989, directives no. 361 of 1988 and no. 723 of 1980, and decisions no. 591 of 1988 and no. 426 of 1967). The legislation is published daily in the *Official Journal*, which builds up into an extremely bulky and unwieldy publication. A citation may include a reference to the *Official Journal*, thus:

EC Commission Regulation 556/89 (OJ L61, 4.3.89, p 1)

which indicates that the text of this regulation may be found in Part 61 of the Legislation (‘L’) series of the *Official Journal* dated 4 March 1989, at page 1.

Questions arising under Community legislation are determined by the Court of Justice of the European Communities, often called ‘The European Court of Justice’, (‘ECJ’) in Brussels. It should never be called simply ‘the European Court’, because this could also mean the European Court of Human Rights at Strasbourg, a completely different court set up under the European Convention on Human Rights, or even the International Court of Justice, which sits at The Hague. The court sits either as the full court or as the Court of First Instance (‘CFI’).

Cases may be brought before the court direct, or may be referred from the national courts of the member states. Cases before the court are reported in the European Court Reports ('ECR'), in the Common Market Law Reports ('CMLR') and in national law reports. Each case has a number as well as a name, thus:

Marshall v Southampton and South West Hampshire Area Health Authority (Teaching) (Case 152/84) [1986] ECR 723, [1986] 1 CMLR 688, [1986] QB 401, [1986] 2 All ER 584, ECJ.

8. Text books

Hitherto we have considered primary legal source materials: the places where the law itself may be found. There is also, of course, a great deal of secondary material: places where one can read about what the law provides. These sources do not have the binding authority of the law itself, but are usually a great deal more digestible and understandable. A bibliography was published in (1987-1988) 1 Ecc LJ (1, 2) pp 41, 42.

The great classic texts are Gibson *Codex Juris Ecclesiastici Anglicani* (2nd edn, 1761), Burns *Ecclesiastical Law* (9th edn, 1842) in four volumes, Phillimore's *Ecclesiastical Law of the Church of England* (2nd edn, 1895) in two volumes, and Cripps *The Law relating to the Church and Clergy* (8th edn, 1937), all highly authoritative but of course very out of date.

A modern commentary is *Halsbury's Laws of England* (4th edn, 1975, vol 14, title ECCLESIASTICAL LAW), by, among others, the late Chancellor Arthur Phillips and Mr (now Chancellor) Rupert Bursell. A General Synod edition of this work was published. Much of this too, alas, is now out of date, but a new edition will come eventually. A more modest and manageable publication is Dale's *Law of the Parish Church* (6th edn, 1989). Two excellent specialist books are Newsom's *Faculty Jurisdiction of the Church of England* (2nd edn, 1993), and *Moore's Introduction to English Canon Law* by Garth Moore, Timothy Briden and Brian Hanson (3rd edn, 1992). The Legal Advisory Commission of General Synod publishes from time to time its opinions on a wide variety of points of ecclesiastical law, and a new 7th edition of *The Opinions of the Legal Advisory Commission* is in the final stages of preparation.

This brief account of legal references would be incomplete without a reminder that articles on, and regular updating on developments in, ecclesiastical law, together with brief reports of cases in the ecclesiastical courts, may be found in the *Ecclesiastical Law Journal*, cited eg (1993) 3 Ecc LJ 1.