

Seven Lessons from Inside the UK Supreme Court

Neill Lecture 2023*

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Given my unusual route to the UK Supreme Court, it is perhaps not surprising that sometimes I find myself, while sitting in the Supreme Court, looking in as an academic observer – a fly on the wall if you like - and thinking, “what would I as an academic make of all this?”. What I would like to do in this lecture therefore is to share with you some insights into – or one might say lessons that I have learned about - the work of a Supreme Court judge that strike me as important and yet may not be fully appreciated from the outside. I want to focus on seven of these insights or, as I shall term them, lessons.

I should add that some of these lessons are, perhaps, ones that can be gleaned from sitting in the Court of Appeal but, having never sat in the Court of Appeal, I can only comment on the Supreme Court.

1. Lesson 1: the huge importance of statutory interpretation

Before I started on the court, although I was very interested in statute law and devoted my 2017 Hamlyn Lectures to the topic, I had not fully appreciated just how much of a Supreme Court justice’s time is spent interpreting primary or secondary legislation. Since starting on the Supreme Court in June 2020, I would estimate that over two thirds of the cases that I have sat on have involved some issue of legislative interpretation. No doubt this reflects the fact that, in the famous words of Professor Guido Calabresi, we are “in the age of statutes”¹ so that the common law is being swallowed up by statutes. In many of the cases I have been in in the Supreme Court, the decision has turned almost entirely on statutory interpretation. This was the position in, for example, *TW Logistics Ltd v Essex County Council*,² a wonderful case on the law on town and village greens, which involved interpreting provisions in the Inclosure Act 1857, the Commons Act 1876, and the Commons Act 2006. Similarly, in *Kostal UK Ltd v Dunkley*,³ which concerned offers being made directly to trade union members, rather than through collective bargaining, the decision turned entirely on the correct interpretation of s 145B and 145D of the Trade Union and Labour Relations (Consolidation) Act 1992. Most recently, we had the interesting question in *News Corp UK & Ireland Ltd v HMRC*⁴ as to whether the exemption from VAT for newspapers under Item 2, Group 3 of Schedule 8 of the VAT Act 1994 included not only print newspapers but also digital editions of newspapers. In other cases I have been involved in on the Supreme Court, statutory interpretation has been the backdrop to, or an additional point to, the application of the common law, as in *Tinkler v HMRC*⁵ which concerned estoppel by convention in relation to dealings between HMRC and a taxpayer.

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¹ *A Common Law for the Age of Statutes* (1982) 181.

² [2021] UKSC 4, [2021] 2 WLR 383.

³ [2021] UKSC 47, [2022] ICR 434.

⁴ [2023] UKSC 7.

⁵ [2021] UKSC 39, [2022] AC 886.

In the light of this, one might assume that university law schools would spend a great deal of time on the study of statutes and statutory interpretation. Yet that is not so. In a survey carried out over 10 years ago for the Statute Law Society by Professor Stefan Vogenauer – and I do not think the position has changed since then – it was found that in fewer than one in five of UK law schools was there a dedicated course or teaching unit on legislation; and over half of such courses were for first years.⁶ Clearly particular statutes or statutory provisions within a particular area of substantive law (eg contract law or tort law or employment law or company law) are studied, albeit generally without much enthusiasm compared to the common law, but statute law as a coherent whole tends to be treated only at a basic introductory level in, for example, first year English Legal System or Legal Skills courses. Even where statute law as a whole is taken more seriously, this is often either at a theoretical level in jurisprudence courses or as a relatively small part of the constitutional law syllabus.

It follows that, if one were to ask most law students the basic question – “what is the present English law on how one interprets a statute?” - I fear that most of them would be ill-equipped to answer. Nor I think would they be conscious that last year, there was an important restatement of the relevant principles of statutory interpretation by the Supreme Court in the case, in which I was not sitting, of *R (on the application of O) v Sec of State for the Home Department*.⁷ The decision was that it was within a Minister’s powers, under section 1(4) of the British Nationality Act 1981, to charge £1012 for a child’s right to be registered as a British citizen. This was so despite many young applicants being unable to afford that fee. Lord Hodge, giving the leading judgment, said at para 51:

“The appropriateness of imposing the fee on children who apply for British citizenship under section 1(4) of the 1981 Act is a question of policy which is for political determination. It is not a matter for judges for whom the question is the much narrower one of whether Parliament has authorised the Secretary of state to set the impugned fee at the level [at] which it has been set.”

In other words, the role of the judges is to interpret what Parliament has laid down and it is irrelevant whether the judges agree or disagree with the policy of the Act. As regards the approach to statutory interpretation, Lord Hodge clarified that, under the modern approach, statutory interpretation is concerned to identify the meaning of the words used by Parliament and that, in ascertaining that meaning, the context and purpose are important. Although he described them as playing a secondary role – which Lady Arden in her concurring judgment cast some doubt on – Lord Hodge accepted that explanatory notes, Law Commission reports and Government White Papers may be helpful. Lord Hodge also confirmed that statements in Parliament reported in *Hansard* may exceptionally be relied on provided the three conditions laid down in *Pepper v Hart*⁸ are satisfied. Those three conditions are (i) that the legislative provision must be ambiguous, obscure or lead to absurdity; (ii) that the relevant statement is of a Minister or other promoter of the Bill; and (iii) that the statement made in Parliament is clear and unequivocal. On the facts, it was held that a Ministerial statement could not be relied on in this case because the first condition in *Pepper v Hart* had not been satisfied ie the legislative provision was not ambiguous, unclear or leading to absurdity.

⁶ *Teaching Legislation in UK Law Schools: Summary of Survey Results* (2011) (carried out for the Statute Law Society by Professor Stefan Vogenauer) showed that in only 19% of UK law schools (who responded to the survey, there being a response rate of 47.04%) was there a dedicated course or teaching unit on legislation; and 56% of such courses were for first years.

⁷ [2022] UKSC 3, [2022] 2 WLR 343.

⁸ [1993] AC 593.

Sometimes students are taught that there are three rules of statutory interpretation which the courts can choose between: the literal rule, the golden rule and the mischief rule. In my view, that is very misleading because there is only one correct modern approach – that one must ascertain the meaning of the words in the light of their context and the purpose of the provision - and none of those three rules quite captures that approach.

2. Lesson 2: the large amount of time spent sitting in the Privy Council

I have been very surprised at the amount of time that Supreme Court Justices spend sitting on Privy Council appeals. There are over 30 jurisdictions, primarily present or former countries of the British Commonwealth, which retain the Judicial Committee of the Privy Council as a final Court of Appeal. Although all Court of Appeal judges are also Privy Counsellors, the Judicial Committee of the Privy Council, which normally sits as a panel of five, is almost always comprised of at least four and usually five Supreme Court justices.

Since I started on the Supreme Court I have spent nearly half of my time on Privy Council appeals. In Trinity Term 2022, there were more appeals being heard in the Privy Council from one jurisdiction, Trinidad and Tobago, than there were to the Supreme Court in appeals from England and Wales.

Some, albeit by no means all, of these are extremely interesting not least from a private lawyer's perspective raising issues on commercial law and trusts on appeals from, eg the British Virgin Islands or the Cayman Islands or the Isle of Man. There are also some very interesting constitutional cases involving interpretation of written constitutions, such as the fascinating constitution of Trinidad and Tobago.

It is also noteworthy that in some of those jurisdictions, most obviously Mauritius, we are not even dealing with a common law system. Mauritius is essentially a civil law system with a code based on French law. So we are deciding as the apex Mauritian court, difficult questions on a very different system from the common law. For example, we had a case last year on water rights in Mauritius where the system of property and analogous rights is very different from those in common law jurisdictions.⁹

I have elsewhere stressed that a major contrast from being an academic lawyer is that a Supreme Court judge has to be able to deal with every aspect of law so that one has to be a generalist rather than an expert on a narrow area. In the case of Privy Council sittings on appeals from civil law systems that generalisation extends even beyond a common law system.

3. Lesson 3: the relevance and difficulty of the law/fact distinction

In our work, the law/fact distinction arises in two distinct ways. The first is in relation to permissions to appeal. All cases coming to the Supreme Court need permission to appeal and this is almost always determined by the Supreme Court itself sitting in panels of three with, almost invariably, the question being decided on the papers without a hearing. According to the Supreme Court Rules, permission is only given on "an arguable point of law of general public importance". It is clear that in this respect what counts as a point of law is very wide. There is no good reason to give a narrow meaning to what counts as a point of law because the Supreme Court in any event has discretion to decide what is an *arguable* point of law of *general public importance* and hence whether permission to appeal should be given.

⁹ *Ciel Ltd v Central Water Auth* [2022] UKPC 2.

Much more difficult is the second way in which the law/fact distinction arises which is in relation to what may be termed the standard of review. That is, what test is the Supreme Court (or the Privy Council) applying in deciding whether it can reverse a lower court? Is it a 'correctness' standard or a different, less interventionist, standard?

In relation to what one may term pure questions of law, a correctness standard applies. If the lower court's reasoning has taken a wrong view of the relevant law, ie it has misinterpreted the rules laid down in the common law or legislation (eg a point of statutory interpretation), it is plainly appropriate for the highest appellate court to reverse that and to apply its own view as to the correct law in question. Matters of law are for the higher courts to determine.

In contrast, findings of fact are pre-eminently matters for the first instance judge not least because the first instance judge will have seen all the relevant evidence and will have heard from relevant witnesses. In general terms, therefore, an appellate court will not interfere at all with the judge's findings of fact but will defer to what the judge has found. However, it is well-established by a line of authority which includes *Edwards v Bairstow*¹⁰ in the House of Lords and *Henderson v Foxworth Investments Ltd*¹¹ in the Supreme Court that, even in relation to findings of fact, an appellate court can interfere where, for example, the finding of fact is perverse or irrational or one which no reasonable judge could have reached or where crucial evidence has not been taken into consideration. This has sometimes been referred to as where the judge was 'plainly wrong'.

But the most difficult area may be said to fall between questions of law and questions of fact. This is the area which can be referred to in various synonymous ways such as the area of mixed law and fact or requiring an evaluative judgment or requiring the application of a legal standard. Examples are boundless but include: the standard of reasonable care in the tort of negligence, what constitutes unreasonable interference with another's land in the tort of private nuisance, whether an invention is obvious so that it cannot be patented, whether consideration is inadequate in relation to the regime for the protection of creditors, whether a presumption of advancement has been rebutted, whether the threshold for taking a child into care has been crossed (which depends on the likelihood of serious harm to the child), whether an exclusion clause is fair and reasonable, and, under the Human Rights Act 1998, whether a measure taken is a proportionate interference with a Convention right. Across all those questions, there is no simple answer to what standard of review should be applied (whether a correctness standard or one showing deference).

It is helpful to think of a sliding scale – or, as May LJ has described it “a spectrum of appropriate respect”¹² - from law at one end to facts at the other. Greater deference should be shown at the factual end of the scale and lesser deference at the law end of the scale. But in applying this scale what often underpins the decision as to the standard of review is not so much an a priori distinction between law and facts but rather whether, in relation to the issue in question, there is any advantage in having seen and heard the relevant evidence or whether the judge of a lower court may be said to have particular relevant expertise.

¹⁰ [1956] AC 14

¹¹ [2014] UKSC 41, [2014] 1 WLR 2600

¹² In *El Du Pont de Nemours & Co v ST Dupont* [2003] EWCA Civ 1368, at [94]. See also the reference in *Whitehouse v Jordan* [1981] 1 WLR 246, 270 by Lord Bridge to there being a “wide spectrum” in this context; and the reference to a spectrum by Hoffmann LJ in discussing the application of a standard (in that case conduct appropriate to be a person fit to be a director) in *Re Grayan Building Services Ltd* 1995] Ch 241, 255-256.

I can illustrate what I mean by a Privy Council case I was sitting in. The question at issue was whether there had been an appearance of bias by a judge.¹³ Both the lower courts had held that there was no appearance of bias. In overturning that decision, we treated the appearance of bias as a question of law – or at least at the law end of the scale – so that a correctness standard was applied. That was essentially because we considered ourselves to be in as good a position as the lower court to assess the evidence as to whether there had been the appearance of bias. We therefore substituted our view on the appearance of bias for that of the lower court.

4. Lesson 4: the reliance on practical legal scholarship

I believe it is fair to say that my colleagues have great respect for the work of academic lawyers and, in particular, rely to a significant degree on the work of academic lawyers who engage in what I have elsewhere described as practical legal scholarship but is sometimes called doctrinal legal scholarship. That is, legal scholarship that is focused on what judges decide and say and what statutes lay down, that is the details of the content of the law and presenting a coherent bigger picture of that content. Perhaps because of my background I certainly rely heavily on that sort of academic work especially so that I can see the dispute in question in its wider context and especially where the area of law is not one that I know much about.

I would suggest that, in general, what the judges find less helpful – albeit of course very interesting – is theoretical work as to, for example, the economic or moral underpinnings of the law. Following on from this, my fear is that in our law schools, in particular in postgraduate study, too much weight is now being put on theory and not enough on practical legal scholarship. I am not in any sense wishing to devalue the merits of theoretical work. But I do fear that the pendulum in our law schools, especially in postgraduate work, is now in danger of swinging too far away from practical legal scholarship. If you are a law student, and particularly a postgraduate law student please consider the exciting and intellectually demanding career of being a legal academic engaged in practical legal scholarship.

As the Hon Chief Justice Susan Kiefel AC of the High Court of Australia, in her 2020 article, “The Academy and the Courts: What do they Mean to Each Other Today?”¹⁴ said:

“Today, there are pressures on the academy which may have the effect of limiting the kind of research and writing which is useful to judges and professional lawyers. Funding may divert academic resources away from doctrinal law. It would be a great pity if judge-directed academic writing were substantially to decline. I say that not only from the point of view of judges, but also from that of the academy, and in particular young academics who may never experience what can be a kind of collaboration with the courts. It is my purpose here to encourage the continuance of that collaboration.”

Lesson 5: the process by which most judgments are produced is a collegiate one

Writing individual judgments used to be the predominant position in the House of Lords (although there were periods when this was the exception). The disadvantage of multiple judgments, although fun for academics and law students to analyse, is that it is sometimes difficult to work out the ratio of a decision where there are, let us say, five judgments reaching the same decision for different reasons. Not surprisingly, such uncertainty in what has been laid down by the highest court does not appeal to practitioners.

¹³ *Smith v A-G for Trinidad and Tobago* [2022] UKPC 28.

¹⁴ (2020) 44 Melbourne University Law Review 1, 2.

The difficulties were brought home to me when hearing the case and writing the joint judgment (with Lord Sales) in *TW Logistics Ltd v Essex County Council*.¹⁵ This was the case on town and village greens that I mentioned earlier. The peculiarity of the facts was the registered village green in question comprised not a lush area of grass but a 200 square metre area of concrete close to the water's edge in the working port of Mistley in Essex across which port vehicles, including heavy goods vehicles, were often driven. The question was whether the valid registration of that area of the port as a town and village green meant that the commercial activities of the landowner, the port authority, had to stop because of the criminal legislation governing town and village greens. In answering that question in the negative, it was of some importance to be clear as to the ratio of the leading Supreme Court decision in this area of *R (Lewis) v Redcar and Cleveland BC (No 2)*.¹⁶ However, that was extremely difficult to work out because of the number of different judgments and views expressed even though all the Justices came to the same conclusion. In any event, it is time-consuming and off-putting for a reader to have to wade through several judgments instead of a single definitive judgment.

On the Supreme Court, the present approach therefore is one of trying, if possible, to achieve a single judgment (whether written by one judge or, increasingly common, by two or more). I am told by Professor Alan Paterson, who is the guru on these matters, that in 2021 the proportion of single judgments in the Supreme Court was 72% which was the highest for 30 years; and last year, 2022, it was 83%. Although dissenting judgments are permitted, and are not discouraged in so far as a Justice feels duty-bound to dissent, the overall effect of the trend towards single judgments is that, if asked to write, one has a keen eye on gaining the agreement of colleagues.

I have often been asked since I started on the Supreme Court, how is it decided who writes the judgment in a case and what is the actual process of judgment-writing. The process really starts with the private post-hearing meeting that immediately follows the close of the oral hearing in a case. In that meeting, each of the Justices sitting is required to give orally on a provisional basis (one can of course change one's mind) the decision one has reached, ie whether to allow or dismiss the appeal, with a summary of one's main reasons. The others listen to that summary without intervening. In line with the long-established practice, the order of giving those summaries or, as one might otherwise call them, mini judgments is in reverse order of seniority so that the most recently appointed Justice goes first and so on upwards to the presiding judge who will be the most senior judge. I have to say that, at the start, I found that somewhat daunting although, of course, you have had the opportunity to read the papers, and to think about the issues, in advance. After that relatively formal part of the post-hearing meeting, there will often be a general discussion although that may depend on whether, or not, there is a large measure of agreement between the Justices.

Towards the end of that meeting, the presiding judge chooses which justice, or it could be more than one justice, should write the first judgment or one or more justices may, if the presider asks for volunteers, volunteer to write the first judgment. The choice, or decision to volunteer, may depend on all sorts of factors but will principally turn on the particular justice's workload, his or her expertise, his or her own degree of interest in the particular case, and the justice's view as to what the correct decision is in the case at hand and the reasons for that.

Once the first judgment has been written and circulated by email, which usually takes several weeks, it will be commented on by email by the other judges sitting on the panel who may choose to agree with it, or to write their own concurring judgment, or to disagree with it and to write a dissenting

¹⁵ [2021] UKSC 4, [2021] 2 WLR 383.

¹⁶ [2010] UKSC 11, [2010] 2 AC 70

judgment. Occasionally, where there continues to be disagreement as to the outcome or reasons, there will be a further meeting to try to reach a consensus or to clarify the precise disagreements.

So as you can tell from this, the modern process does rely heavily on working closely with one's colleagues to try to achieve the best judgment possible.

Lesson 6: the role of counsel in determining the scope of the decision

In deciding a case the Supreme Court is to some extent limited by the issues raised by the parties.¹⁷ If a judge were to rely on a particular issue in deciding a case and that issue had not been raised by the parties and the parties had not been given the opportunity to make submissions on it, the decision would be regarded as procedurally irregular and unfair.¹⁸

In the Supreme Court, the best-known controversy over this was in relation to *Assange v Swedish Prosecution Authority*,¹⁹ and the ultimately unsuccessful submission by Dinah Rose QC that the Supreme Court had decided the case on an issue that she had had no opportunity to address.

Therefore, in so far as an issue arises after (or during) the hearing that is regarded as important for the decision in the case which the parties have not dealt with, the normal practice is to ask the parties to make further submissions, in writing (or orally) after the hearing. As regards asking for additional written submissions, this occurs quite frequently.²⁰

In a case in 2021,²¹ we had a very striking variation of this situation where, on one of the central issues, counsel did not run what, at least at first sight, appeared to be a clear winning point. At the end of the hearing, the parties were asked by the court to make written submissions on that point but the counsel who, at first sight, would stand to benefit chose not to do so (and counsel on the other side therefore had nothing to respond to). Although this was commented on in the judgments,²² it was felt to be inappropriate to decide the case on an issue that neither party had chosen to deal with. This shows starkly that, in a rare case, the Supreme Court is not deciding the case according to the correct law as it sees it but is rather constrained by the submissions of counsel.²³

Linked to this is that, I have sometimes been asked, not least by barristers who appear before us, as to what effect advocacy has in the determination of cases. Does it make any difference to the result whether we have good or bad advocacy? I find this a very difficult question to answer. Certainly good advocacy is greatly welcomed because the good advocate can quickly and clearly cut through to the questions that are of real importance in the case and will have provided the materials that can assist the judges. One does not want to spend a long time trying to understand unclear and muddled submissions. But while recognising that good advocacy improves efficiency, I am not entirely convinced that the good advocate is more likely to succeed in his or her submissions than the bad

¹⁷ There is an interesting and full discussion of this in Alan Paterson, *Final Judgment* 15-29 (dialogue with counsel).

¹⁸ This was made clear, albeit in the analogous context of arbitration, in *Zermatt Holdings SA v Ni-Life Upholstery Repairs* [1985] 2 EGLR 14, 15 (per Bingham J).

¹⁹ [2012] UKSC 22, [2012] 2 WLR 1275.

²⁰ For examples, see *Akers v Samba* [2017] UKSC 6, [2017] AC 424; *Evergreen Marine (UK) Ltd v Nautical Challenge Ltd* [2021] UKSC 6, [2021] 1 WLR 1436.

²¹ *FS Cairo (Nile Plaza) v Lady Brownlie* [2021] UKSC 45, [2022] AC 995.

²² *Ibid* at paras 85-86, 216.

²³ See also *R (on the application of DN (Rwanda)) v Sec of State for the Home Department* [2020] UKSC 7, [2020] AC 698.

advocate although I accept that, rather like the effect of advertising, it can be hard to know what is influencing one's thinking.

Lesson 7: the reasoning process by which Supreme Court justices decide cases

This, of course, is the million dollar question which has been puzzled over and written about so much. Since joining the court, I have been pondering on it in the light of my own reasoning process and those of my colleagues. What dictates or guides our thought-process when we formulate our decision and summary of reasons in the post-hearing meeting or more fully when we write our judgments?

In his famous Maccabean Lecture, the great Lord Goff said the following:²⁴

“If I were asked what is the most potent influence upon a court in formulating a statement of legal principle, I would answer that in the generality of instances it is the desired result in the particular case before the court. But ... when we talk about the desired result ... we can do so at more than one level. ... At [one] level, there is the gut reaction, often most influential. But there is a more sophisticated, lawyerly level, which consists of the perception of the just solution in legal terms, satisfying both the gut and the intellect.”

I would agree with that but I would want to express the position more fully in the following way.

In deciding a dispute – and I am going to confine myself here to a dispute on the common law rather than statutory interpretation - there are two requirements guiding or dictating judicial reasoning.

The first is the requirement to reach a decision in the instant dispute that “feels right”.

The second is the requirement to rationalise that decision by legal reasoning. Legal reasoning is dependent on the use of rules, principles and policies to explain rationally the decision. The decision must be one that can be fitted into – or one might say, must be shown to be coherent with - the bigger picture of the law by legal reasoning. That legal reasoning typically involves, for example, careful attention to precedent, analogical reasoning, the consideration of hypothetical examples, and sometimes the policy implications of the decision so far as judges are competent to take these into account.

A major question with regard to the second requirement is how wide the coherence net should be cast. At the very least one needs coherence with the immediate area of law with which one is concerned. So, for example, if one is dealing with sex abuse by a schoolteacher and the question is whether the employer is vicariously liable for that sex abuse, one will at the very least wish to consider other decisions on vicarious liability dealing with sex abuse. The materials on that immediate area of law will have been supplied by counsel and some judges may be content to seek coherence within those relatively narrow confines. Others will also want to consider cases on vicarious liability that have nothing to do with sex abuse but assist in providing the bigger picture of the law on vicarious liability. Still wider, one may wish to consider how vicarious liability fits with, let us say, the liability of an employer for its independent contractors or a principal for its agents. Famously Ronald Dworkin thought that it was incumbent on judges to cast the net ever wider still by seeking to fit the particular decision into the whole of the common law and also, so far as based on principle, constitutional and statutory provisions. So he wrote in *Taking Rights Seriously*.²⁵

²⁴ Robert Goff, “The Search for Principle” Maccabean Lecture 1983, reprinted in *The Search for Principle: Essays in Honour of Lord Goff of Chieveley* (eds Swadling and Jones, 1999) 313, 325.

²⁵ (1977) 116-117.

“You will now see why I have called our judge, Hercules. He must construct a scheme of abstract and concrete principles that provides a coherent justification for all common law precedents and, so far as these are to be justified on principle, constitutional and statutory provisions as well.”

While I agree with Dworkin that Herbert Hart was incorrect to regard judicial reasoning in hard cases as turning on a discretionary choice, analogous to that of a legislator, once the existing rules run out – as Dworkin made clear this is to misconceive what legal reasoning in hard cases involves - it is clear that Dworkin’s description of the super-judge Hercules goes well beyond the judicial reasoning process that occurs in practice. Judges certainly often cast the net wider than the immediate area of law with which they are concerned but the desire for coherence is limited and practically-constrained and I doubt whether any judge, even in the Supreme Court, is trying to produce the wide coherence envisaged by Dworkin.

It is important to stress that the two requirements that I have articulated are difficult to separate out in the judge’s mind. They tend to coalesce at one and the same time. What ‘feels right’ is not the intuitive feel of the non-lawyer but what “feels right” to the judge who has been immersed in law and legal reasoning for decades. What “feels right” is inextricably bound up with fitting the decision within the bigger picture of the law. So for example we had a case in the Privy Council last year on whether a duty of care should be owed to a third party beneficiary under a trust being operated by the customer of the bank who was the trustee.²⁶ A judge approaches the facts of that case with a feel for the difficulties involved in the claim, not least because the fact that the loss is pure economic loss immediately alerts the trained lawyer to the well-established need for restraint. The wider picture of the law cannot be cleanly separated from the decision that “feels right”. In general, the two go hand in glove.

This is not to deny that there can be cases where what feels right and the legal rationalisation of the outcome clash at least at first sight. Where there is such a clash it is incumbent on a judge to try to produce a rationalisation, by legal reasoning, that justifies what feels right. But where he or she cannot do so, correct legal reasoning is dictating a result contrary to what feels right and, in that relatively unusual situation, what feels right must be put to one side. One’s judicial oath is to apply the law.

Conclusion

Those then are my seven lessons from inside the Supreme Court. I hope that they may have given you some insight into the work of a Supreme Court Justice, which I have found demanding and fascinating in equal measure. Thank you very much for listening.

²⁶ *Royal Bank of Scotland Ltd v JP SPC 4* [2022] UKPC 18.