

A Supreme Court

*Practice Direction (Citation of Authorities)

Practice — Civil proceedings — Citation of authorities — Categories of judgments to be cited only if clearly purporting to develop law — Requirement to justify citation of judgments purporting not to develop law — Method of citation — Authorities from other jurisdictions

This practice direction is made with the concurrence of Lord Phillips of Worth Matravers MR, Dame Elizabeth Butler-Sloss P and Sir Andrew Morritt V-C.

Introduction

1 In recent years, there has been a substantial growth in the number of readily available reports of judgments in this and other jurisdictions, such reports being available either in published reports or in transcript form. Widespread knowledge of the work and decisions of the courts is to be welcomed. At the same time, however, the current weight of available material causes problems both for advocates and for courts in properly limiting the nature and amount of material that is used in the preparation and argument of subsequent cases.

2 The latter issue is a matter of rapidly increasing importance. Recent and continuing efforts to increase the efficiency, and thus reduce the cost, of litigation, whilst maintaining the interests of justice, will be threatened if courts are burdened with a weight of inappropriate and unnecessary authority, and if advocates are uncertain as to the extent to which it is necessary to deploy authorities in the argument of any given case.

3 With a view to limiting the citation of previous authority to cases that are relevant and useful to the court, this practice direction lays down a number of rules as to what material may be cited, and the manner in which that cited material should be handled by advocates. These rules are in large part such as many courts already follow in pursuit of their general discretion in the management of litigation. However, it is now desirable to promote uniformity of practice by the same rules being followed by all courts.

4 It will remain the duty of advocates to draw the attention of the court to any authority not cited by an opponent which is adverse to the case being advanced.

5 This direction applies to all courts apart from criminal courts, including within the latter category the Court of Appeal (Criminal Division).

Categories of judgments that may only be cited if they fulfil specified requirements

6.1 A judgment falling into one of the categories referred to in paragraph 6.2 below may not in future be cited before any court unless it clearly indicates that it purports to establish a new principle or to extend the present law. In respect of judgments delivered after the date of this direction, that indication must take the form of an express statement to that effect. In respect of judgments delivered before the date of this direction that

indication must be present in or clearly deducible from the language used in the judgment. A

6.2 Paragraph 6.1 applies to the following categories of judgment

Applications attended by one party only

Applications for permission to appeal

Decisions on applications that only decide that the application is arguable B

County court cases, unless (a) cited in order to illustrate the conventional measure of damages in a personal injury case; or (b) cited in a county court in order to demonstrate current authority at that level on an issue in respect of which no decision at a higher level of authority is available.

6.3 These categories will be kept under review, such review to include consideration of adding to the categories. C

Citation of other categories of judgment

7.1 Courts will in future pay particular attention, when it is sought to cite other categories of judgment, to any indication given by the court delivering the judgment that it was seen by that court as only applying decided law to the facts of the particular case; or otherwise as not extending or adding to the existing law. D

7.2 Advocates who seek to cite a judgment that contains indications of the type referred to in paragraph 7.1 will be required to justify their decision to cite the case.

Methods of citation E

8.1 Advocates will in future be required to state, in respect of each authority that they wish to cite, the proposition of law that the authority demonstrates, and the parts of the judgment that support that proposition. If it is sought to cite more than one authority in support of a given proposition, advocates must state the reason for taking that course. F

8.2 The demonstration referred to in paragraph 8.1 will be required to be contained in any skeleton argument and in any appellant's or respondent's notice in respect of each authority referred to in that skeleton or notice.

8.3 Any bundle or list of authorities prepared for the use of any court must in future bear a certification by the advocate responsible for arguing the case that the requirements of this paragraph have been complied with in respect of each authority included. G

8.4 The statements referred to in paragraph 8.1 should not materially add to the length of submissions or of skeleton arguments, but should be sufficient to demonstrate, in the context of the advocate's argument, the relevance of the authority or authorities to that argument and that the citation is necessary for a proper presentation of that argument. H

Authorities decided in other jurisdictions

9.1 Cases decided in other jurisdictions can, if properly used, be a valuable source of law in this jurisdiction. At the same time, however, such

A authority should not be cited without proper consideration of whether it does indeed add to the existing body of law.

9.2 In future, therefore, any advocate who seeks to cite an authority from another jurisdiction must (i) comply, in respect of that authority, with the rules set out in paragraph 8 above; (ii) indicate in respect of each authority what that authority adds that is not to be found in authority in this jurisdiction; or, if there is said to be justification for adding to domestic authority, what that justification is; (iii) certify that there is no authority in this jurisdiction that precludes the acceptance by the court of the proposition that the foreign authority is said to establish.

B 9.3 For the avoidance of doubt, paragraphs 9.1 and 9.2 do not apply to cases decided in either the Court of Justice of the European Communities or the organs of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Because of the status in English law of such authority, as provided by, respectively, section 3 of the European Communities Act 1972 and section 2(1) of the Human Rights Act 1998, such cases are covered by the earlier paragraphs of this direction.

LORD WOOLF CJ

D 9 April 2001

E

Queen's Bench Division

***Edmunds v Simmonds**

2000 Oct 3, 4

Garland J

F *Conflict of laws — Tort — Choice of law — British residents' hire car colliding with Spanish lorry in Spain — Seriously injured passenger suing car driver in England — Applicable law for determination of liability and quantification of damages — Private International Law (Miscellaneous Provisions) Act 1995 (c 42), ss 12, 14(3)(b)*

G The defendant driver was carrying the claimant as a passenger in a car which they had rented while on holiday together in Spain. The car collided with a Spanish lorry, as a result of which the claimant sustained serious injuries. She brought an action in negligence in England, where both parties were normally resident. Preliminary issues were directed to be tried to determine (1) whether liability and quantification of damages were to be decided according to the law of Spain or England by virtue of sections 11 and 12 of the Private International Law (Miscellaneous Provisions) Act 1995¹ and (2) liability.

H On the preliminary issues—
Held, giving judgment for the claimant, that the general rule under section 11 of the 1995 Act, that the applicable law for determining issues relating to a tort was that

¹ Private International Law (Miscellaneous Provisions) Act 1995, s 11: see post, p 1008F–G.

S 12: see post, pp 1008G–1009B.

S 14(3)(b): see post, p 1009E–F.