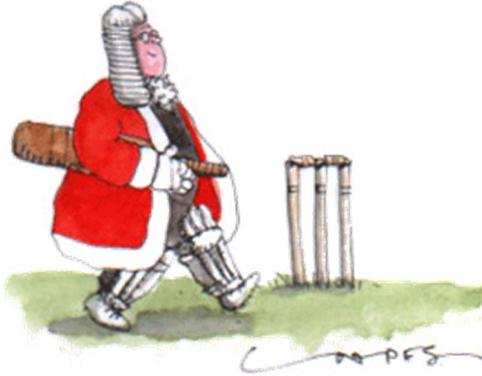


# No soft balls here

Tuesday, December 8, 2020

Justinian in Leverhulme, Supreme Court UK, Tom Denning

**Important cases from The Dart ... The law of cricket ... Adults using a proper cricket ball ... The defence of illegality ... Guns in court ... Leverhulme's tribute to lord justice of appeal Roy Beldam**



**In** the past few weeks from the depths of battling Britain, two very interesting cases have arisen.

The first, *Lewis v Wandsworth Borough Council*, was a successful appeal against a decision of Mr Recorder Riza about a cricket match.

We all know what a cricket match is in law and we have Lord Denning to thank for the definition.

*Miller v Jackson:*

*"In summertime village cricket is the delight of everyone. Nearly every village has its own cricket field where the young men play and the old men watch."*

That case was all about cricket balls landing in a newcomer's garden. He was no lover of cricket.

Recorder Riza awarded £16,911.84 in damages and £17,422.03 in costs (note the imbalance) to Ms Phoebe Lewis who walked on a path beside a cricket ground in Battersea Park and was struck on the eye by a fulsome shot.

She had complained among other things that the council had failed to warn her that a match was in progress and that a hard ball was being used.

Mr Justice Lawrence, overturning the decision, was unusually plain for judges from this neck of the woods.

*"What I frankly fail to understand is how the Recorder could envisage that a cricket match played by adult men could be assumed by any reasonable passer-by to be using a soft ball. This would have been particularly so if they were wearing whites and therefore playing what would appear to be a serious match."*

*There is no evidence as to whether the hard ball could have been heard, though it would be surprising given the distances involved if this was not the case. Nevertheless, and in any event, the strong presumption must be that adult men playing a cricket match will be using a proper cricket ball."*

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Young Roy Beldam, later Lord Justice Beldam

Then on the October 30, the Supreme Court sitting on camera rather than in, decided *Henderson* (you can watch it [here](#)) in which a paranoid schizophrenic woman who was detained under the care of the National Health Service and then released, killed her mother in a vicious stabbing.

As an aside, the online appeal was not without difficulty because the mild-mannered president was at times very hard to hear. Counsel for the appellant, Nicholas Bowen QC told Lord Reed he was coming and going and "sounding like a dalek." Imagine if someone had said that to Gar Bar.

Ms Henderson had pleaded guilty to manslaughter with diminished responsibility.

The parties agreed that the attack would not have occurred but for Dorset Healthcare's breaches of duty in failing to respond appropriately to Ms Henderson's worsening mental health.

Then Ms Henderson sued the local authority for a number of things including loss of liberty, costs of care and £61,944 from her mother's estate.

The court was asked to overrule *Clunis* ([1998] QB 978, 990) a decision of the Court of Appeal led by Beldam L.J.

His Lordship, on reasonably similar facts said:

*"The court ought not to allow itself to be made an instrument to enforce obligations alleged to arise out of the plaintiff's own criminal act ..."*

Or put another way, the criminal under the criminal law should not be the victim under the civil law.

*Henderson*, from the judgment at first instance through to the Court of Appeal and the Supreme Court is a great example for students of the law's clashes of principle and precedents.

It was in the highest court because of an apparent problem with a 6-3 decision of the Supreme Court in *Patel*, which favoured a broad, policy approach to defining the scope of the illegality defence.

Lord Sumption, dissenting in *Patel*, said the courts should not be given discretion to reject illegality defences with little regard for principle.

Delivering a crisp and elegantly written [decision in Henderson](#) on behalf of the entire court, one of the new Justices, Lord Hamblen, dismissed the appeal and *Clunis* survived.

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Trumper, photographed by Beldam LJ's father, George

Sadly, Sir Roy Beldam did not. At the age of 95, he died 14 days before the judgment. Forgive the cliché, but they do not make them like him anymore.

His Dad, George, was a pioneer of sport photography who took the celebrated (I refuse to use the word "iconic") picture of Victor Trumper playing his version of a fulsome shot.

On the May 4, 1945, Roy was on duty on the deck of the aircraft carrier HMS Formidable when it was attacked by a kamikaze. Eight men were killed and 47 wounded and Beldam's pilot Don Jupp DSC died of his injuries two weeks later.

On VJ Day, Beldam was based in Sydney and was officer of the day and told not to leave the base.

*"Disappointed at not being able to join in the local victory celebrations, I was pleased to discover, while perusing the regulations, that part of my duty was to investigate any 'disturbances in town' and so off I went to do some investigating - and, therefore, managed, very briefly, to experience some of the jubilation of our hard won victory."*

It was much to his commanding officer's displeasure who barked, "You'll be a bloody lawyer".

Little wonder that many years later when presiding at a criminal appeal he was unfazed by a woman pointing a gun at him. She threatened to shoot someone unless her appeal was heard and her children returned. He said calmly:

*"Madam, justice cannot be dispensed at the barrel of a gun."*

He was most concerned for the safety of his colleague Mrs Justice Bracewell and the pregnant shorthand writer.

His junior in many cases, former judge Simon Brown QC, said:

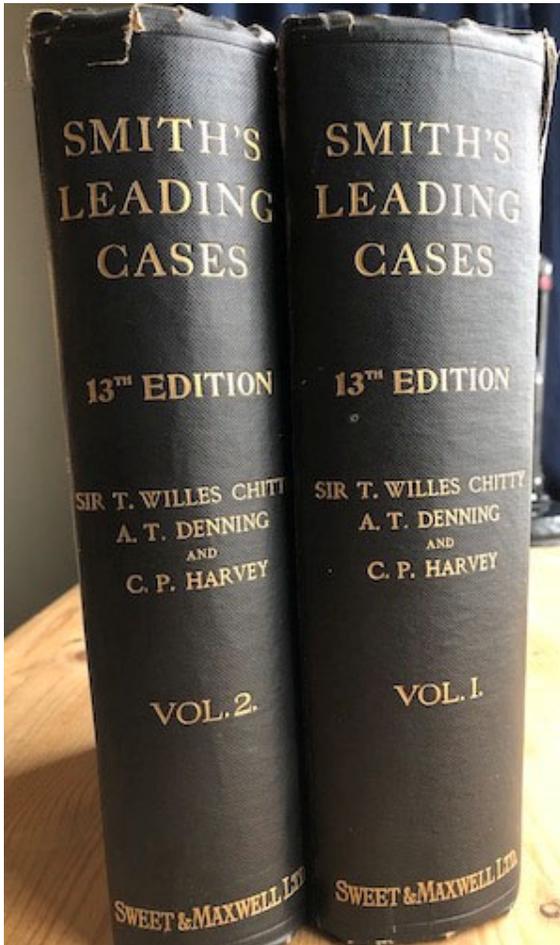
*"He had all the attributes: intellectual and emotional intelligence and a focussed hard-working sense of purpose which was clothed in natural charm and humanity."*

*However, what elevated him above his peers was his mastery of the most difficult art of all for any advocate: the cross-examination of expert witnesses.*

*As a pupil in his chambers, I sat behind him in the Royal Courts of Justice incredulously watching him in case after case demolishing expert witnesses from all fields ranging from insurance underwriters to neurosurgeons.*

*It was done with such speed and style without ever giving offence, save to his opposing counsel vexed by his seemingly easy success."*

Beldam greatly enjoyed giving judges and his opponents nicknames which pinpointed a personal characteristic. They were often taken from the Irish playwright Richard Brinsley Sheridan; names such as Captain Jack Absolute or Sir Lucius O'Trigger.



13th edition Smith's leading Cases, kindly supplied by Sir Roy's

grandson, Jake Coleman of Hailsham Chambers. Brown said:

*"Jury advocacy was not really his metier but with judges he would research Who's Who and find out their interests to use in his submissions. In one case we had a lot of allusions to sailing knots that enabled the benighted judge to understand some complex expert evidence.*

*My favourite recollection was his jousting with Lord Denning - or 'Old Tom' as he called him.*

*In one Chancery easements case in 1978 about the meaning of 'at all times hereafter', he sent me to the library for a week to dig out all the cases for an appeal against the decision he had miraculously won.*

*On the evening before the hearing in the Court of Appeal we learned that we had drawn the Master of the Rolls.*

*Roy handed me his precious leather-bound copy of Smith's Leading Cases (13<sup>th</sup> Edition 1929) and instructed me to flag it up at particular pages.*

*During Roy's submissions, Denning was sceptical so Roy turned to his trump card with the beguiling words: 'May I take to your Lordship to the most erudite 13<sup>th</sup> edition of Smith's Leading Cases? ...'*

*'Oh no, Mr Beldam,' came the retort, 'I am not falling for that. I was a young man when I edited it and thought it was right but now, older and wiser I think I was wrong!'*

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The Larn  
Whitehurst  
Hants

10 Jun '943

My dear Roy,

How nice to hear from  
you - as on such a  
subject - The 13<sup>th</sup> Ed of  
Smith's has cover on = 1929.  
So it is more than 50 years old.  
My own copy is very dilapidated  
now - it is a piece! -

As I shall be delighted to  
sign yours - see I am  
and a letter. Next

Thurs 14 Jun we expect

