

**ROVIGO  
CUR**

**LINGUA INGLESE  
GIURIDICA  
AVANZATA**

**ALISON RILEY**

**STUDENT FOLDER**

**2011-2012**

Name .....

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# PROGRAMMA DEL CORSO

## Lingua inglese giuridica avanzata - 6 crediti

a.a. 2011 - 2012

**Prof.ssa Alison Riley**

### Contenuti del corso

Il corso di Lingua inglese giuridica avanzata propone di approfondire la conoscenza della lingua giuridica inglese già acquisita nel corso base, sviluppando ulteriormente le competenze e le conoscenze linguistiche, giuridiche e culturali specifiche necessarie per acquisire una sempre maggiore autonomia nell'utilizzo di un'ampia gamma di testi giuridici originali in lingua inglese (sentenze, dottrina, trattati, testi normativi), migliorando la capacità di valutare e commentare i contenuti usando un linguaggio appropriato. Gli studenti avranno modo di impadronirsi di un buon lessico specialistico in materia, sviluppando le capacità di ricerca e consolidamento della terminologia, utilizzando una serie di strumenti adatti a questo scopo, comprese le risorse terminologiche multilingue dell'Unione europea disponibili sul sito web ufficiale. Le lezioni si basano sull'esame e sulla discussione di testi giuridici originali nonché sull'approfondimento del linguaggio, della terminologia e del diritto dell'ordinamento giuridico in oggetto. E' richiesta la partecipazione attiva degli studenti alle attività didattiche proposte, allo scopo di migliorare notevolmente le competenze linguistiche di partenza.

Il corso si articola nell'approfondimento dello studio della lingua giuridica dell'ordinamento interno con particolare riferimento all'ordinamento di *common law* inglese, e nell'approfondimento della lingua giuridica del diritto dell'Unione europea e della tutela internazionale dei diritti umani.

Verrà dedicata particolare attenzione alla sentenza in lingua inglese, esaminando e confrontando le sentenze delle Corti superiori inglesi (con attenzione ai metodi e le tecniche dei giudici di *common law* nella formazione della regola di origine giurisprudenziale), della Corte di Giustizia dell'Unione europea e della Corte europea dei diritti dell'uomo.

### Temi trattati

*Soltanto per chi non ha seguito il corso base, si consiglia di leggere, prima dell'inizio del corso avanzato: English in Legal Contexts (Legal English and the Common Law: Chapter One).*

#### **1) Sources of English law, the British constitution and supremacy of EU law**

Legislation and the courts: relative roles of legislation and judicial precedent, of the legislature and the courts; examples of legislation: Contract law and Criminal law. Constitutional legislation and EU law: legislation as a source of constitutional law; European Communities Act 1972; Parliamentary sovereignty and the supremacy of EU law.

*The English judgment - case studies:*

British constitution and the Treaty of Rome: *Blackburn v Attorney-General* (Court of Appeal)

Labour law, sex equality and the supremacy of EU law: *Macarthys v Smith* (Court of Appeal)

#### **2) European Union law and language**

Composition, jurisdiction and procedure of the Court of Justice of the European Union. Judgments of the Court of Justice. Sources and terminology: consulting resources on the official EU website. Examination of a selection of legal sources and official information. Use of parallel English and Italian texts for language study. Understanding case law: reading a judgment of the European Court of Justice.

*Judgment of the Court of Justice – case studies:*

Case 129/79 *Macarthys v Smith* (preliminary ruling procedure, equal treatment of male and female workers).

### **3) The Language of Civil Law and Common Law Method.**

The law of torts, the English judgment and the development of common law principles. Linguaggio e concetti dell'illecito civile (*law of torts*) con particolare riferimento alla *tort of negligence*. Il linguaggio del procedimento civile: *claims, claimants, remedies. The doctrine of binding precedent* - Lo sviluppo dei principi di *common law*.

*The English judgment - case studies:*

*Miller v Jackson* (Court of Appeal: remedies – the injunction; torts of negligence, trespass and nuisance)

*Donoghue v Stevenson* (House of Lords, landmark judgment: negligence)

### **4) Human rights protection and the European Convention on Human Rights**

The international human rights movement from the Universal Declaration of Human Rights to the Charter of Nice; focus on freedom of religion and prohibition of discrimination. European Convention on Human Rights (ECHR): Convention rights in the British constitution before and after the Human Rights Act 1998; rights protected in Section I ECHR; enforcement mechanisms in Section II ECHR; composition, jurisdiction and procedure of the European Court of Human Rights; examination of a selection of legal sources and official Court information. Understanding case law: reading a judgment of the European Court of Human Rights.

*Judgments of the European Court of Human Rights – case studies:*

*Chapman v The United Kingdom* (Application No. 27238/95) Press release of 18.1.2001 (right to respect for private and family life – gypsy families – discrimination),

*Lautsi v Italy* – (Appeal to the Grand Chamber - freedom of religion - right to education)

## **Preparazione linguistica**

Per seguire il corso di Lingua giuridica inglese avanzata con profitto è necessaria una buona conoscenza a livello intermedio dell'inglese generale e una discreta conoscenza della lingua inglese giuridica di base.

## **Esame**

L'esame si svolge in lingua inglese. La valutazione si basa sulla conoscenza e comprensione dei testi giuridici, della terminologia e delle nozioni e fonti inerenti il programma e sulla capacità di commentare gli argomenti proposti, esprimendosi con un linguaggio appropriato, con particolare riguardo al linguaggio giuridico. Si valuterà positivamente anche l'illustrazione in sede d'esame di testi giuridici originali. L'esame consiste in una prova scritta e una prova orale. Gli **studenti regolarmente frequentanti** (2/3 delle lezioni) potranno scegliere un unico argomento dal programma da approfondire per la prova orale. Un esempio della nuova prova scritta sarà reso disponibile ad ottobre 2011. Consisterà in domande aperte riguardanti le tematiche principali del corso.

## Testi

A) Testo in adozione: *Legal English and the Common Law*, Alison Riley, Cedam, Padova, 2008, completo del *Legal Grammar Handbook* di Patricia Sours, consigliato per la consultazione grammaticale.

- **From Chapter Two** - The Language of a Legal System: 2.5 Legislation and the Courts: Advanced; 2.6 Constitutional legislation and EU Law: Advanced.

- **From Chapter Three** - The European Dimension: 3.2 Languages in international legal contexts. 3.4 The European Convention on Human Rights (*approfondimento*). 3.6 L'Italia e la Convenzione europea per i diritti dell'uomo, di Serena Forlati.

- **Chapter Five** (*l'intero capitolo*) 5.1 Introduction. 5.2 Civil law and language. 5.3 Introduction to Common Law Method. 5.4 Understanding Case Law: Reading a Civil Judgment. 5.5 Understanding Case Law - Advanced: *Donoghue v Stevenson*. 5.6 *Donoghue v Stevenson* and Common Law Method: Advanced.

B) Disponibile in biblioteca: *English for Law*, Alison Riley, Longman, Harlow, UK, 1991.

- **From Unit 5 - Section Two**: Language of EC Law (pages 90-99 + key 217-220) for *Macarthy's Ltd v Smith* [1981] 1 All ER 111.

C) Reperibili online dai siti web ufficiali, i seguenti testi autentici in lingua inglese:

- **European Convention on Human Rights (ECHR/CEDU)**: Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 14, Rome, 4 Nov 1950 + ECHR Protocol, Paris, 20 March 1952 (**First Protocol**) sul sito web del Consiglio d'Europa: [www.echr.coe.int/echr/](http://www.echr.coe.int/echr/) (Click *Basic texts*). E' disponibile anche una traduzione italiana. Inoltre, *Chapman v The United Kingdom* (Application No. 27238/95) Press release of 18.1.2001.

- **Universal Declaration of Human Rights** adopted by the UN General Assembly on 10 December 1948, sul sito web dell'ONU: [www.un.org](http://www.un.org) (E' disponibile anche una traduzione italiana);

- <http://europa.eu/> **Charter of Fundamental Rights of the European Union** (2007/C 303/01) (Charter of Nice) sul sito web dell'Unione Europea. Si consiglia di scaricare anche la versione italiana. Inoltre, *Macarthy's Ltd v Smith*, Case 129/79 (1981) CGCE.

D) Giurisprudenza in lingua inglese, reperibile online dal sito [www.bailii.org](http://www.bailii.org)

- *Blackburn v Attorney-General* [1971] EWCA Civ 7 (Court of Appeal Civil Division England and Wales).

E) **Law Dictionary**, per la consultazione individuale si consiglia l'acquisto di un dizionario monolingue di termini giuridici, ad es. *The Oxford Dictionary of Law* Oxford University Press, Oxford, UK; da consultare in biblioteca il *Dizionario giuridico bilingue*, Law Dictionary, di Francesco De Franchis, Giuffrè Editore, Milano, Vol I Inglese-Italiano, Vol II Italiano-Inglese e altri dizionari specialistici.

## Case log \*

	KEY INFORMATION	OTHER POINTS
Name of case	<i>Blackburn v. Attorney General</i>	
Citation in law reports		
Parties: plaintiffs (new: claimant)		
Parties: defendants		
Court		
Stage of action		
Branch of law		
Specific grounds for legal action		
Facts of the case		
Legal history of case		
Legal sources		
Issue[s] for decision		
Decision		
Grounds [reasons] for the decision		
Judgment		
Award granted		

\* The case log is a framework developed by Alison Riley to assist the foreign reader of an English judgment to focus on key information and reach a full understanding of the text, including its legal significance, first published in lecture notes for Padua University Law students in *English Legal Language and Common Law Method*, CLEUP, Padova, © Alison Riley 1996. Members of the public may photocopy and use the blank case log sheet for private purposes of study. Teachers may make multiple copies for their students. Kindly acknowledge original authorship.



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# England and Wales Court of Appeal (Civil Division) Decisions

You are here: [BAILII](#) >> [Databases](#) >> [England and Wales Court of Appeal \(Civil Division\) Decisions](#) >> Blackburn v The Attorney General [1971] EWCA Civ 7 (10 May 1971)  
URL: <http://www.bailii.org/ew/cases/EWCA/Civ/1971/7.html>  
Cite as: [1971] CMLR 784, [1971] 1 WLR 1037, [1971] EWCA Civ 7, [1971] 2 All ER 1380

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JISCBAILII\_CASE\_CONSTITUTIONAL

Neutral Citation Number: [1971] EWCA Civ 7  
Case No.:

IN THE SUPREME COURT OF JUDICATURE.  
COURT OF APPEAL.

Appeal by plaintiff from judgment of Mr. Justice Eveleigh  
on 27th February, 1971.

Royal Courts of Justice.  
10th May 1971.

Before:

THE MASTER OF THE ROLLS (Lord Denning),  
LORD JUSTICE SALMON and  
LORD JUSTICE STAMP.

Between:

ALBERT RAYMOND BLACKBURN

and

THE ATTORNEY-GENERAL

Plaintiff  
Appellant

Defendant  
Respondent

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(Transcript of the Shorthand Notes of The Association of Official Shorthandwriters, Ltd.,  
Room 392, Royal Courts of Justice, and 2, New Square, Lincoln's Inn, London, W.C. 2.)

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The Appellant, Mr. Blackburn, appeared in person.  
Mr. GORDON SLYNN (instructed by the Treasury Solicitor) appeared on behalf of the  
Respondent\*

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### HTML VERSION OF JUDGMENT

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**THE MASTER OF THE ROLLS:** In this case Mr. Blackburn - as he has done before - has shown eternal vigilance in support of the law. This time he is concerned about the application of Her Majesty's Government to join the Common Market and to sign the Treaty of Rome. He brings two actions against the Attorney-General, in which he seeks declarations to the effect that, by signing the Treaty of Rome, Her Majesty's Government will surrender in part the sovereignty of The Crown in Parliament and will surrender it for ever. He says that in so doing the Government will be acting in breach of the law. The Attorney-General has applied to strike out the Statements of Claim on the ground that they disclose no reasonable cause of action. The Master and the Judge have struck them out. Mr. Blackburn, with our leave, appeals to this Court. He thinks it is important to clear the air.

Much of what Mr. Blackburn says is quite correct. It does appear that if this country should go into the Common Market and sign the Treaty of Rome, it means that we will have taken a step which is irreversible. The sovereignty of these islands will thenceforward be limited. It will not be ours alone but will be shared with others. Mr. Blackburn referred us to a decision by the Court of Common Market *Costa v. E.N.E.L.* (1964 Common Market Law Reports, 425) in February, 1964, in which the European Court in its judgment said that:

".....the member states, albeit within limited spheres, have restricted their sovereign rights and created a body of law applicable both to their nationals and to themselves".

Mr. Blackburn points out that many regulations made by the European Economic Community will become automatically binding on the people of this country: and that all the Courts of this country, including the House of Lords, will have to follow the decisions of the European Court in certain defined respects, such as the construction of the Treaty.

I will assume that Mr. Blackburn is right in what he says on those matters. Nevertheless, I do not think these Courts can entertain these actions. Negotiations are still in progress for us to join the Common Market. No agreement has been reached.

No Treaty has been signed. Even if a treaty is signed, it is elementary that these Courts take no notice of treaties as such. We take no notice of treaties until they are embodied in laws enacted by



Parliament, and then only to the extent that Parliament tells us. That was settled in a case about a treaty between the Queen of England and the Emperor of China. It is Rustomjee v. The Queen (1876 2 Q.B.D. 69). Lord Coleridge, the then Chief Justice said at page 74:

"She" - that is The Queen - "acted throughout the making of the treaty and in relation to each and every of its stipulations in her sovereign character, and by her own inherent authority; and, as in making the treaty, so in performing the treaty, she is beyond the control of municipal law, and her acts are not to be examined in her own Courts".

Mr. Blackburn acknowledged the general principle, but he urged that this proposed treaty is in a category by itself, in that it diminishes the sovereignty of Parliament over the people of this country. I cannot accept the distinction. The general principle applies to this treaty as to any other. The treaty-making power of this country rests not in the Courts, but in the Crown; that is, Her Majesty acting upon the advice of her Ministers. When Her Ministers negotiate and sign a treaty, even a treaty of such paramount importance as this proposed one, they act on behalf of the country as a whole. They exercise the prerogative of Crown. Their action in so doing cannot be challenged or questioned in these Courts.

Mr. Blackburn takes a second point. He says that, if Parliament should implement the Treaty by passing an Act of Parliament for this purpose, it will seek to do the impossible. It will seek to bind its successors. According to the Treaty, once it is signed, we are committed to it irrevocably. Once in the Common Market, we cannot withdraw from it. No Parliament can commit us, says Mr. Blackburn, to that extent. He prays in aid the principle that no Parliament can bind its successors, and that any Parliament can reverse any previous enactment. He refers to what Professor Maitland said about the Act of Union between England and Scotland. Professor Maitland in his Constitutional History of England said at page 332:

"We have no irrepealable laws; all laws may be repealed by the ordinary legislature, even the conditions under which the English and Scottish Parliaments agreed to merge themselves in the Parliament of Great Britain".

We have all been brought up to believe that, in legal theory, one Parliament cannot bind another and that no Act is irreversible. But legal theory does not always march alongside political reality. Take the Statute of Westminster, 1931, which takes away the power of Parliament to legislate for the Dominions. Can any one imagine that Parliament could or would reverse that Statute? Take the Acts which have granted independence to the Dominions and territories overseas. Can anyone imagine that Parliament could or would reverse those laws and take away their independence? Most clearly not. Freedom once given cannot be taken away. Legal theory must give way to practical politics. It is as well to remember the remark of Lord Sankey, Lord Chancellor, in British Coal Corporation v. The King (P.C. 1935 A.C. 500) at page 520:

"The Imperial Parliament could, as matter of abstract law, repeal or disregard Section 4 of the Statute of Westminster. But that is theory and has no relation to reality".

What are the realities here? If Her Majesty's Ministers sign this treaty and Parliament enacts

provisions to implement it, I do not envisage that Parliament would afterwards go back on it and try to withdraw from it. But, if Parliament should do so, then I say we will consider that event when it happens. We will then say whether Parliament can lawfully do it or not.

Both sides referred us to the valuable article by Professor H.W.R. Wade in the Cambridge Law Journal, 1955, at page 196, in which he said that "sovereignty is a political fact for which no purely legal authority can be constituted". That is true. We must wait to see what happens before we pronounce on sovereignty in the Common Market.

So, whilst in theory Mr. Blackburn is quite right in saying that no Parliament can bind another, and that any Parliament can reverse what a previous Parliament has done, nevertheless so far as this Court is concerned, I think we will wait till that day comes. We will not pronounce upon it today.

A point was raised as to whether Mr. Blackburn has any standing to come before the Court. That is not a matter upon which we need rule upon today. He says that he feels very strongly and that it is a matter in which many persons in this country are concerned. I would not myself rule him out on the ground that he has no standing. But I do rule him out on the ground that these Courts will not impugn the treaty-making power of Her Majesty, and on the ground that insofar as Parliament enacts legislation, we will deal with that legislation as and when it arises.

I think the statements of claim disclose no cause of action, and I would dismiss the appeal.

**LORD JUSTICE SALMON:** Whilst I recognise the undoubted sincerity of Mr. Blackburn's views, I deprecate litigation the purpose of which is to influence political decisions. Such decisions have nothing to do with these Courts. These Courts are concerned only with the effect of such decisions if and when they have been implemented by legislation. Nor have the Courts any power to interfere with the treaty-making power of the Sovereign. As to Parliament, in the present state of the law, it can enact, amend and repeal any legislation it pleases. The sole power of the Courts is to decide and enforce what is the law and not what it should be - now, or in the future.

I agree that this appeal should be dismissed.

**LORD JUSTICE STAMP:** I agree that the appeal should be dismissed; but I would express no view whatsoever upon the legal implications of this country becoming a party to the Treaty of Rome. In the way Mr. Blackburn put it I think he confused the division of the powers of the Crown, Parliament and the Courts. The Crown enters into treaties; Parliament enacts laws; and it is the duty of this Court in proper cases to interpret those laws when made; but it is no part of this Court's function or duty to make declarations in general terms regarding the powers of Parliament, more particularly where the circumstances in which the Court is asked to intervene are purely hypothetical. Nor ought this Court at the suit of one of Her Majesty's subjects to make declarations regarding the undoubted prerogative power of the Crown to enter into treaties.

Mr GORDON SLYNN: My Lord, there has been leave to appeal on each of these appeals, and these appeals will be dismissed?

**THE MASTER OF THE ROLLS:** Yes.

Mr GORDON SLYNN: I ask that the appeals both be dismissed with costs.

**THE MASTER OF THE ROLLS:** The appeals must be dismissed with costs, Mr. Blackburn.

Mr GORDON SLYNN: I am much obliged, my Lord.

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URL: <http://www.bailii.org/ew/cases/EWCA/Civ/1971/7.html>

## Case log: *Blackburn v Attorney-General*

	KEY INFORMATION	OTHER POINTS
Name of case	Blackburn v. Attorney-General Same v Same	2 civil actions considered jointly, same parties
Citation in law reports	[1971] W.L.R. 1037	Published in Weekly Law Reports
Parties: plaintiffs (new: claimant)	Mr Blackburn	A private citizen
Parties: defendants	The Attorney-General	Chief law officer and legal advisor of of the Crown, who represents Crown in litigation
Court	Court of Appeal	Civil Division
Stage of action	Appeal	2 <sup>nd</sup> appeal by plaintiff
Branch of law	Constitutional law	
Specific grounds for legal action	H.M. Government is accused of acting <i>ultra vires</i> if it signs the Treaty of Rome; the Crown in Parliament will act <i>ultra vires</i> if it passes an Act limiting its sovereignty for the future.	The plaintiff seeks declarations that the Government would be in breach of the law if it signs the treaty and Parliament would be in breach of the law if its enacts legislation because it would surrender part of the sovereignty of Parliament irreversibly
Facts of the case	The UK is negotiating entry to the Common Market (EEC). The Government proposes to sign the Treaty of Rome.	Common Market membership entails a limitation of sovereignty ( <i>Costa v Enel</i> )
Legal history of case	1) At first instance, the Master struck out the statements of claim on the grounds that they disclosed no reasonable cause of action 2) Appeal to Eveleigh J. upholding the Master's decision	High Court proceedings
Issue[s] for decision	Whether the Government is acting <i>ultra vires</i> in signing the Treaty of Rome; whether by signing the Treaty of Rome the Government will irrevocably surrender part of Parliament's sovereignty, in breach of the law.	Because according to the Treaty of Rome, the UK would need the consent of other Member States to withdraw from the EEC. Because no UK Parliament can bind its successors, according to the doctrine of parliamentary sovereignty.
Held	The claims disclose no reasonable cause of action and were struck out.	
Grounds [reasons] for the decision	The treaty-making power of the Crown (Her Majesty acting upon the advice of her Ministers) is part of the Royal Prerogative and cannot be challenged by the courts. The English courts take no judicial notice of treaties, but only of laws enacted by Parliament. The courts will not pronounce on Parliament's powers to pass legislation; their role is to interpret laws once they have been made.	Dicta from <i>Rustomjee v The Queen</i> (1876) applied. When Ministers negotiate a treaty they are exercising the Crown Prerogative.  See Stamp LJ on the division of powers in the constitution. Parliament can enact, amend, repeal any legislation it pleases. Lord Denning admitted that EEC membership might imply limitations on the sovereignty of the UK Parliament.
Judgment	For the appellant (A-G)	Appeals dismissed with costs
Award granted [damages etc]	Claims struck out	

Link: *English for Law*, Unit 5, Section 2.

**Case log: Macarthy's Ltd. v Smith**

Continue the case log using the extracts from the Court of Appeal judgment on pp. 92-93.

CASE LOG	KEY INFORMATION	OTHER POINTS
Name of case	<i>Macarthy's Ltd. v Smith</i>	
Citation in law reports		
Parties: plaintiffs (new: claimant)	Mrs. Wendy Smith	An employee of the defendant company
Parties: defendants		
Court	Court of Appeal, Civil Division	A reference was also made to the European Court of Justice
Stage of action		
Branch of law		
Specific grounds for legal action		
Facts of the case		
Legal history of case		
Legal sources		
Issue[s] for decision		
Decision		
Grounds [reasons] for the decision		
Judgment		
Award granted		

## **CASE STUDY: Macarthys Ltd v Smith**

Extracts from *English for Law*, Alison Riley, 1991, Macmillan, London.

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### **Reading for rapid information and understanding the organisation of themes in a text**

You are going to read part of the judgment of an English court case. The judgment is the process of reasoning by which the court arrives at a decision in a particular case and the decision itself.

#### **1 Reading for rapid information (suggested time: 2–3 minutes)**

Scan the whole text on pages 92–3 to find the following information about the case as quickly as you can. Do not try to read the whole text for this activity.

- a) The name of the case
- b) Two different courts which heard the case
- c) The names of the judges who heard the case in the English court
- d) If the case involved a man or a woman
- e) The UK Acts of Parliament referred to
- f) The Article of the EEC Treaty referred to in the case
- g) If all the English judges agreed on the decision
- h) The exact date of the final judgment

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#### **C 3 Reading for detail**

Read the parts of the text containing the answers to the following questions carefully:

- a) Why did Mrs Smith take proceedings against her employers?
- b) What was the position under English law?
- c) Why did the English court refer the case to the European Court of Justice?
- d) What was the decision of the European Court on the interpretation of Article 119?
- e) In what way did national law and EEC law conflict?
- f) Did the Court of Appeal apply European law (Article 119 EEC) or national law (Equal Pay Act 1970)? Why?
- g) What secondary issue of the case did the court decide on 17 April 1980?
- h) Why did the losing party claim that they should *not* pay costs?
- i) What was the Court's decision on this issue?

## CASE STUDY: Macarthy's Ltd v Smith

English for Law

1

### Macarthy's Ltd v Smith

(Case 129/79)

5 COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
JUDGES KUTSCHER (PRESIDENT), O'KEEFE, TOUFFAIT (PRESIDENTS OF CHAMBERS), MERTENS DE WILMARS,  
PESCATORE, LORD MACKENZIE STUART, BOSCO, KOOPMANS, DUE  
30th JANUARY, 28th FEBRUARY, 27th MARCH 1980

COURT OF APPEAL, CIVIL DIVISION  
LORD DENNING MR, LAWTON AND CUMMING-BRUCE LJ  
17th APRIL 1980

10 *Employment – Equality of treatment of men and women – Like work – Comparison of woman's work with  
duties of former male employee – Substantial interval between respective employments – Whether comparison  
restricted to comparing woman's work with that of man in contemporaneous employment – Equal Pay Act 1970  
(as amended by the Sex Discrimination Act 1975), s 1(2)(a)(i) – EEC Treaty, art 119.*

15 *Costs – Order for costs – Action concerned with construction of legislation – United Kingdom law inconsistent  
with EEC law – Litigant arguing case on basis of meaning of United Kingdom law – Whether litigant required to  
have regard to EEC law – Whether litigant required to pay costs of action when United Kingdom law on which  
he relied is struck down as being inconsistent with EEC law.*

LORD DENNING MR. Although this application is only about costs, I will say a word about it; because it is  
of public importance.

20 The applicant, Mrs Wendy Smith, was employed by wholesale dealers in pharmaceutical products. She was  
paid a salary of £50 a week. She discovered that a man (who had left) had previously been performing her task.  
He had been paid £60 a week. She took proceedings under our English statute, the Equal Pay Act 1970 (as  
amended by the Sex Discrimination Act 1975). She claimed that her pay should be equal to his. An objection was  
taken that her application was bad in point of law, because our English statute did not apply in the case of  
25 successive employment, and it only applied when the man and the woman were employed together at the same  
time contemporaneously.

That point was argued before this court. The majority of the court held that the objection was well founded.  
They interpreted it as meaning that the equal pay provisions only applied when the man and the woman were  
employed at the same time contemporaneously. But then the point arose: what was the position under  
30 Community law? We were referred to art 119 of the EEC Treaty. The Court of Justice of the European  
Communities sitting at Luxembourg had decided that art 119 of the Treaty was directly applicable in the  
national courts of each country. It was submitted that under art 119 there was no requirement that the man and  
the woman should be employed contemporaneously at the same time, and that, under that article, the woman  
was entitled to equal pay even though the man had left before she joined and the woman had taken his job  
35 afterwards.

The majority of this court felt that art 119 was uncertain. So this court referred the problem to the European  
Court at Luxembourg. We have now been provided with the decision of that court. It is important now to  
declare, and it must be made plain, that the provisions of art 119 of the EEC Treaty take priority over anything  
in our English statute on equal pay which is inconsistent with art 119. That priority is given by our own law. It is  
40 given by the European Communities Act 1972 itself. Community law is now part of our law; and, whenever  
there is any inconsistency, Community law has priority. It is not supplanting English law. It is part of our law  
which overrides any other part which is inconsistent with it. I turn therefore to the decision given by the  
European Court. The answer they gave was that the man and the woman need not be employed at the same time.  
The woman is entitled to equal pay for equal work, even when the woman is employed after the man has left.  
45 That interpretation must now be given by all the courts in England. It will apply in this case and in any such case  
hereafter.

Applying it in this case, the applicant was right. Although she was employed subsequently to the man, she was  
entitled to be paid the same as the man. She was entitled to be paid not £50, but £60. That is the result of the  
Community law as applied to our present law. So that must be the decision.

50 The appeal that the employers brought to this court must therefore be dismissed.

The argument before us today was as to costs. It was argued before us that at the hearing before the tribunals,  
and indeed before this court, the employers were entitled to look solely to our English statute on equal pay. It  
was said that, in that statute, our parliamentary draftsmen thought they were carrying out, and intended to carry

55 out, the provisions of the EEC Treaty. So much so that, before the European Court at Luxembourg, the United Kingdom government argued that, in order for the woman to be entitled to equal pay, her employment had to be contemporaneous. Accordingly the employers said that they were entitled to go by the English statute, and not the EEC Treaty, and so the costs should not fall on them of the appeal to this court.

60 The answer is this: the employers had no right to look at our English statute alone. They ought throughout to have looked at the EEC Treaty as well. Community law is part of our law by our own statute, the European Communities Act 1972. In applying it, we should regard it in the same way as if we found an inconsistency between two English Acts of Parliament; and the court had to decide which had to be given priority. In such a case the party who loses has to pay the costs. So it seems to me that the employers should pay all the costs of the appeal to this court.

LAWTON LJ. I agree.

65 CUMMING-BRUCE LJ. I agree. I would only add a word in view of that fact that counsel for the applicant has drawn the attention of this court to the existence of a note by Professor Hood Phillips in the Law Quarterly Review ((1980) 96 LQR 31) which apparently expressed the view that the decision of this court has created a doubt about the constitutional position arising from a conflict between an English statute and European law. In my view there is no real room for doubt, and, if anything that I said in my judgment has given rise to doubt  
70 which is based on misunderstanding, I repeat what I said on the last occasion, that 'If the terms of the Treaty are adjudged in Luxembourg to be inconsistent with the provisions of the Equal Pay Act 1970, European law will prevail over that municipal legislation'. I went on to say this: 'But such a judgment in Luxembourg cannot affect the meaning of the English statute' (see [1979] 3 All ER 325 at 335-336).

75 Perhaps I expressed myself a little too widely there. The majority in this court took the view that there was no ambiguity about the words of the Equal Pay Act 1970 which we had to construe; and, as there was no ambiguity, the majority took the view that it was not appropriate, according to English canons of construction, to look outside the statute at art 119 as an aid to construction. In my view that was clearly right, but I would make it clear that had I been of the view that there was an ambiguity in the English statute, I would have taken the view that it was appropriate to look at art 119 in order to assist in resolving the ambiguity.

80 I only add those words because of the doubt which has arisen in the article in the Law Quarterly Review.

*Appeal dismissed.*

Solicitors: *Baileys, Shaw & Gillett* (for the employers); *John L Williams* (for the applicant).

Sumra Green Barrister.

Case 129/79 *Macarthy's Ltd v. Smith* [1981] 1 All ER 111

## 2 Understanding the organisation of themes in the text

Do not read the case in detail. Quickly skim the text to find the following sections and make a note of them, using line numbers:

*Example:* the summary in note form of the issues involved in the case

*Answer:* lines 10-17.

- a) the summary of the facts of the case
- b) two sections of the text which discuss what happens when UK and EC law conflict
- c) two sections of the text which give Lord Denning's decision in this case
- d) the section in which Cumming-Bruce LJ discusses the interpretation of English statutes

- 3 Read the relevant sections of the text to find the two main practical issues in the case.
- What do you think is the most interesting legal issue?



6 Oral practice

- i) Use these cues to describe the facts and decision in *Macarthy's*:  
*Facts*: applicant worked for Macarthy's Ltd / £50 a week / man before / £60 a week  
*UK law*: Equal Pay Act 1970/ Sex Discrimination Act 1975/ not employed at same time  
*EEC law*: Art. 119 EC / directly applicable / interpretation uncertain / referred to European Court of Justice / EC and UK law inconsistent  
*Decision*: EC law prevails / applicant right / £60 a week / employers pay costs.

Start like this: 'In the case of *Macarthy's Ltd v. Smith* the applicant, Mrs Smith, worked for Macarthy's Ltd for £50 a week. She found out that . . .'

- ii) Choose A or B:  
 A Ms Jones is paid £120 a week. Mr Adams is paid £150 a week.  
 Both work for Industrial Holdings Ltd now and do the same work.  
 B Ms Felps was paid £160 a week. Mr Wilson is paid £145 a week.  
 Ms Felps left her job at Brain and Co. a month ago.  
 Mr Wilson is now employed to do the same job there.
- iii) Imagine the facts and decision of the case you have chosen in detail, and write simple cues as in i) above, of the *Facts*, *UK law*, *EEC law* and *Decision*. You will find all the legal information you need in the text and in your answers to the comprehension exercises.
- iv) Use your cues from iii) to describe the facts and decision in the case you have chosen, then refer to the key to check your decision and legal reasoning.
- Work in pairs with someone who has not prepared the same case as you. In turns, use your cues to describe the facts and decision in each case. Do you agree with your partner's legal reasoning? When you have finished, check your decisions in the key.

d 3 Discussion points

Use the text of *Macarthy's Ltd v. Smith* and your own knowledge to decide the following.

- ◆ For what reason did Lord Denning hold that EC law prevails over UK law?
- ◆ Is his decision consistent with the doctrine of parliamentary sovereignty?
- ◆ Did Lord Justice Cumming-Bruce agree with Lord Denning about the supremacy of EC law?
- ◆ The Court of Appeal had two alternatives:
  - to use the EEC Treaty to help interpret the English Equal Pay Act
  - to look at the meaning of the Equal Pay Act and the EEC Treaty quite separately.
 Which alternative did they choose? In your opinion, why?
- Confirm your ideas in the key.

Exercise D 3

- Because under the European Communities Act 1972, EC law is part of UK law, and that Act provides that in cases of conflict EC law has priority (40-42).
- Yes. He explains that EC law is part of UK law and is given priority by a statute enacted by the UK Parliament (the European Communities Act). Therefore the question of conflict between law enacted by the UK Parliament and law imposed on the UK Parliament by another body without the consent of Parliament is avoided.
- Yes (65, 70-72)
- They looked at the meaning of the English Act and European law separately. Cumming-Bruce LJ explains that the court did not use the EEC Treaty to help interpret the Equal Pay Act because the words of the Equal Pay Act were not ambiguous. (Therefore according to English rules of construction it was correct to apply the literal rule of interpretation and look only at the words of the statute itself) (74-7).

Exercise C 3

- a) Because she discovered that a man employed to do the same job before her was paid £10 a week more than her (lines 20-23).
- b) Under the Equal Pay Act 1970 (as amended by the Sex Discrimination Act 1975) the man and the woman were only entitled to the same pay if they were employed at the same time. Therefore under English law Mrs Smith was not entitled to equal pay (23-9).
- c) Because they were not sure about the interpretation of Article 119 of the EEC Treaty. They asked the European Court to decide whether Article 119 applied in the case of successive employment (36-7).

## Legal sources: U.K. Legislation and Treaty Law in *Macarthy v Smith*

**Link:** *English for Law*, Unit 5, Section 2

The texts below are the legal sources referred to by the Court of Appeal in the case of *Macarthy Ltd v Smith*. For the text of the English court's judgment, see pages 92-93 of *English for Law*.

The judgment of the European Court of Justice in case 129/79 giving the Court's preliminary ruling on the interpretation of Article 119 EEC can be downloaded from the website of the ECJ in any of the official languages of the European Community : <http://curia.eu.int>

Treaty texts and EC secondary legislation (regulations, directives), again in any official language, can be downloaded from the European Union website: <http://europa.eu.int>

### A) National Law

In *Macarthy Ltd v Smith* the applicant claimed that she was entitled to equal pay under s1(2)(a)(i) of the **EQUAL PAY ACT 1970**

*The Court of Appeal held that under the UK statute Mrs Smith was not entitled to equal pay for equal work when the work was not performed at the same time. What can you find in the UK Act to support that interpretation of the law by the English judges?*

**Section 1 (1)** "If the **terms of a contract** under which a woman is employed at an **establishment** in Great Britain do not include (directly or by reference to a **collective agreement** or otherwise) an **equality clause** they shall be deemed to include one."

**Section 1 (2)** "An equality clause is one which relates to terms (whether concerned with **pay** or not) of a contract under which a woman is employed (the "woman's contract") and has the effect that – (a) where the woman is employed on **like work** with a man in the same employment – (i) if (apart from the equality clause) any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, that term of the woman's contract shall be treated as so modified as not to be less favourable

### B) Community Law

In *Macarthy Ltd v Smith* a question of Community law arose during the proceedings before the English Court of Appeal. What was the correct interpretation of Article 119 EEC concerning the question of whether a man and a woman employed to do like work should receive equal pay where they were not employed at the same time, but the woman was employed after the man had left? The Court of Appeal **referred the question** to the European Court of Justice for a **preliminary ruling**.

#### Article 141 EC (ex Article 119)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
- (b) that pay for work at time rates shall be the same for the same job.

**CASE LOG KEY: *Macarthy's Ltd. v. Smith***

<b>CASE LOG</b>	<b>KEY INFORMATION</b>	<b>OTHER POINTS</b>
Name of case	<i>Macarthy's Ltd. v. Smith</i> Case 129/79	English cases are cited by name. The numerical citation refers to the judgment given by the European Court of Justice (ECJ)
Citation in law reports	[1981] 1 All ER 111 Case 129/79	Citation in the All England Law Reports ECJ citation
Parties: plaintiff (new: claimant)	Mrs. Wendy Smith	An employee of the defendant company
Parties: defendant	Macarthy's Ltd	A limited liability company (Ltd.), the employer of Mrs Smith.
Court	<b>Court of Appeal</b> , Civil Division <b>(European Court of Justice)</b>	A reference was also made to the European Court of Justice under the preliminary ruling procedure.
Stage of action	Appeal	[following the ECJ judgment, the employers conceded that they had lost the case, but made a last application about costs]
Branch of law	Contract, labour law, sex discrimination, European Community law	[Several branches of law or legal sectors are involved]
Specific grounds for legal action	Main action: Mrs Smith claimed equal pay with a man previously employed in her job.	This application: Macarthy's claimed that because they lost the case under EC law, not English law, they should not pay the costs of the action.
Facts of the case	Mrs Smith was employed by Macarthy's for £50 a week. A man previously employed to do the same job had been paid £60 a week. She claimed equal pay.	[The man had left 3 months before Mrs Smith got the job]
Legal history of case	1. [At first instance <b>an industrial tribunal</b> found in favour of the plaintiff... 2. The employers appealed to the <b>Employment Appeal Tribunal</b> : appeal dismissed... 3. The employers appealed to the <b>Court of Appeal</b> which found against the plaintiff under the English Act. 4. The Court of Appeal referred the question for a preliminary ruling to the <b>ECJ</b> 5. The employers conceded that they had lost the case but applied to the <b>Court of Appeal</b> for costs	1.... under the English Act: it was only because she was a woman that she was paid less. 2... again under the English Act. 3 But a question of interpretation of Community law arose 4. The ECJ decided the question in plaintiff's favour in case 129/79 5. In this part of the judgment Lord Denning explains the grounds for the decision and the Court decides costs.
Legal sources	<b>National law:</b> the Equal Pay Act 1970 (EPA) as amended by the Sex Discrimination Act 1975 (SDA); the European Communities Act 1972 <b>EC Law:</b> Article 119 of the EC Treaty (now numbered Article 141 EC)	The EPA was enacted <i>before</i> and the Sex Discrimination Act <i>after</i> Britain joined the EC in 1973. The European Communities Act 1972 gave effect to Community law in national law.
Issue[s] for decision	<b>Main action:</b> whether Mrs Smith was entitled to equal pay for equal work given that she was employed after the man doing like work had left, not at the same time. <b>Application for costs:</b> whether Macarthy's should not, as the losing party, pay costs given that under the English legislation (EPA) they would have won the case.	There was no question that if employed at the same time, she would be entitled to equal pay under national legislation.  The general rule is that the losing party must pay costs.
Decision	<b>Main action:</b> Mrs Smith was not entitled to equal pay under national legislation, but she was entitled to equal pay under Article 119 EC. <b>Costs:</b> Macarthy's must pay costs	

Grounds [reasons] for the decision	<p><b>Main action:</b> the national legislation, does not apply in cases of successive employment. Applying the decision of the ECJ, Article 119 covers cases of successive employment. The conflict between national law and EC law is resolved by applying another British statute, the European Communities Act 1972, which makes EC law part of national law.</p> <p><b>Costs:</b> Since EC law is part of national law, the employer's argument is false – they have not won the case under national law and must therefore pay costs, following the general rule</p>	<p>The Court gave a literal interpretation of the English statute. Because the words of the Act were not ambiguous, they would not use EC law as an aid to interpretation.</p> <p>Under Community law, EC law prevails over conflicting provisions of national law. This supremacy is given effect in the UK legal order by virtue of the EC Act 1972. The Court of Appeal is thus able to concede supremacy, applying a UK statute – the EC Act 1972.</p>
Judgment	For the respondent/plaintiff (Mrs Smith)	
Award granted	Equal pay	Mrs Smith did not claim damages. Her right to equal pay was recognised.

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### **Websites of general interest and newspapers**

[www.bbc.co.uk](http://www.bbc.co.uk) the BBC (British Broadcasting Corporation – an enormous website that includes video clips, podcasts, language activities and courses and access to BBC World Service and radio.

[www.cnn.com](http://www.cnn.com) CNN (American broadcasting company, also offering live video)

[www.guardian.co.uk](http://www.guardian.co.uk) The Guardian (The Guardian newspaper is also available internationally in The Guardian Weekly edition)

[www.timesonline.co.uk](http://www.timesonline.co.uk) The Times (The Times newspaper also contains daily law reports – giurisprudenza)

[www.independent.co.uk](http://www.independent.co.uk) The Independent (another quality British newspaper)

<http://global.nytimes.com/> The Herald Tribune, global edition New York Times (newspaper)

### **Institutional websites**

<http://europa.eu> The European Union multilingual website (UE)

[www.un.org](http://www.un.org) The United Nations (ONU)

<http://www.un.org/en/documents/index.shtml> United Nations documentation centre

[www.coe.int](http://www.coe.int) The Council of Europe with access also to the European Court of Human Rights (Consiglio d'Europa)

[www.amnesty.org](http://www.amnesty.org) Amnesty International (the non-governmental independent human rights organisation)

[www.direct.gov.uk](http://www.direct.gov.uk) British government website

[www.usa.gov](http://www.usa.gov) USA government web portal

### **Monolingual learner's dictionaries (examples only)**

Macmillan English Dictionary for Advanced Learners [www.macmillandictionaries.com](http://www.macmillandictionaries.com)

Oxford Advanced Learner's Dictionary (also encyclopedic edition) [www.oup.co.uk](http://www.oup.co.uk)

Longman Dictionary of Contemporary English [www.pearsonlongman.com](http://www.pearsonlongman.com)

Collins COBUILD English Dictionary *or* Advanced Dictionary [www.cobuild.collins.co.uk](http://www.cobuild.collins.co.uk)