



VOISIN LAW

In September I found myself sat in full gowns in the States' Chamber (for the purposes of renewing my Advocates' oath), listening to the Bailiff and *Bâtonnier's* annual exchange of views.

This year the speeches highlighted the tension between maintaining tradition and embracing the modern world.

In essence, whether Advocates should be required to renew their oaths annually, given that many of us watch the ceremony via television link from the States Chamber. However, there was also a reference to the restatement of the contract law, where the Bailiff expressed the view that we should not forget our legal roots.

Having been in the legal profession for many years I have watched the tension between new and old evolve. Recently there has been the involvement of new technology to carry out tasks that would previously had been done manually and, if I am honest, the reticence from some quarters to see this as the future.

So how does this relate to me finding myself sat in the States Chamber listening to the debate? Well the debate over the contract law is very much one of new vs old. Jersey contract law is, as with the contract law of many jurisdictions, not statutory based but instead the law has evolved as a part of our customary law from our Norman French origins. This comes as a surprise to many. To quote Alan Binnington *"It would no doubt come as a surprise to the average purchaser of goods in a supermarket in Jersey to be told that their contractual relationship with the supermarket is to be ascertained by reference to 17th century works written in a language totally alien to them"*.

That is not to say that it remains unchanged from the 17th century, indeed the Royal Court commented in *Selby v Romeril* [August 11th 1995, unreported] that *"Our law cannot be regarded as frozen in the aspic of the 18th Century"* and it certainly hasn't.

It has been a rich battleground of new and old, French vs English, together with a thorough exploration of the Norman law origins of Jersey contract law.

The issue is that this battle has led to uncertainty in some small but often litigated areas and so the battle continues. This summer the former Bailiff stated in *Booth v Viscount* [2019]CA 122 that *"The current state of the authorities in Jersey is, in my view, wholly unsatisfactory. It should not be the case in a modern, developed jurisdiction such as Jersey that something as fundamental to its commercial law as the correct approach to the determination of contractual consent should be uncertain."*

The solution to this is that we are to restate the law of contract in Jersey to provide the much needed clarity. My hope is that as lawyers we don't get lost in the history of the law and use this as an opportunity to define our contract law in a manner that truly embraces the Island's needs, future proofs it and provides certainty.

As for the annual renewal of my oath, although at times I struggle to see the relevance of sitting in an anteroom overheating, out of all of my swearing in ceremonies I loved the ceremony of being sworn as an Advocate the most, it was my choice, but I do worry it makes us less approachable.