VOISIN LAW

The nuances of Jersey Law | 1

Jersey law is an unusual beast. As a customary law jurisdiction our law is not based in the strict codified world of the civil law nor in the stringent case law bound world of the common law. As such it can, to an outsider, seem somewhat intimidating and uncertain especially when you stray away from the familiarity of statute.

I am a corporate, banking and funds lawyer and as such the vast majority of my practice relies on legislation, written codes of practice, guidance notes. Many of these have taken elements of the best legislation from around the world and slotted it into a modern workable framework suitable for Jersey. It is often ground breaking and usually cutting edge. It is something which we should be immensely proud of as a jurisdiction.

That said, Jersey being a small jurisdiction, sometimes may not have a case come before court on point. In my practice I am used to looking at other jurisdictions with similar legislation to see how they have interpreted a similar or indeed identical legislative provision. So for me the lack of case law was never problematic. Explaining this to clients, however, sometimes was.

Before I became an Advocate I was, of course, aware of the debate which surrounded certain of Jersey's laws such as contract and partnerships and whether we should adopt legislation to incorporate the laws of other jurisdictions. As a commercial lawyer and English solicitor had you asked me 2 years ago, I would have said we should absolutely adopt codified law which is drawn from other jurisdictions so that we have certainty. I was used to certainty and legislation, being able to look at other jurisdictions and see what they have done. However today as an Advocate my answer is somewhat different. Over the past 2 years I have seen a side of Jersey law that in my day to day practice I was not fully exposed to. I had of course dabbled in the nuances of contract law and the history of partnerships but I had never had cause to look further that the question that was bothering me on that particular day. What I have discovered is that, whilst not perfect, Jersey has a legal system that isn't flawed, a legal system which we should fight to preserve and develop. We aren't restricted in the same way as England and Wales bound by sometimes erroneous previous judgements unless you have the time and money to make an application to a higher court nor the strict codes of the civil law. With customary law, whilst we do follow previous judgements, if custom changes, if times change, we have the flexibility to move and change with times. It is something that we should be immensely protective of because it allows Jersey as a jurisdiction, to change, to move with the times and to give pragmatic solutions to questions placed before court. That is not to say that the court makes it up as it goes along, Jersey prides itself on a stable legal system based upon previous rulings of the Royal Court, however the flexibility that we have when it is clearly no longer right to follow a judgement and there is good reason not to we can depart and thus make justice both fair and accessible.

That together with our fast moving legislation, and bodies such as Jersey Finance and the Law Officers Department who always have one eye on the future, allows us as a jurisdiction to lead and innovate. When I started my Advocate's exams I felt that the customary law was outdated, that we should legislate to get rid of it, I felt that it was rooted in times no longer applicable. What I failed to appreciate is that it was applied by a group of Advocates and judges who took its best elements and its flexibility to provide Jersey with something truly worth having. So next time the debate arises as to whether to adopt the English laws, next time we are told it is outdated and anarchic, I for one will be fighting for our heritage, not because I believe that we should remain 'set in aspic' but because I believe it gives us our greatest chance of

remaining cutting edge.