Working in the UK Supreme Court

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1. Working as a Justice of the UK Supreme Court

As you may know, I am the first and so far only person to have been appointed to the highest UK court, whether House of Lords or Supreme Court, direct from a full-time position as a legal academic. Perhaps not surprisingly, therefore, people have often asked me what are the main features that differentiate working as a Supreme Court Justice from being an academic.

Of course, there are some very obvious differences between being a judge and being an academic. On the Supreme Court, one is principally concerned with sitting as one of a panel, normally of five, to hear disputes between parties in which each side's lawyers present oral arguments in addition to their written submissions. And having sat through and taken part in the often highly interactive hearing, which normally lasts one day but can extend over several days, a Supreme Court judge must decide the dispute by the application of the law and must write a judgment, whether jointly or alone, or, at the very least, must make comments agreeing with a judgment written by one or more colleagues. Deciding cases by legal reasoning set out in a judgment after oral argument is the central role of a Supreme Court judge. In contrast, an academic lawyer spends his or her time researching the law, writing about the law and teaching the law.

However, behind those obvious differences in role, there are a number of perhaps less obvious but important contrasts. I want to mention five of these this evening.

(1) You have to become a generalist

By way of slight digression, I should explain that a case begins for us when we start to read the papers. For most cases I will have spent at least one to two days pre-reading before the hearing. The electronic bundles, which have largely replaced paper bundles but without any reduction in length, often run to thousands of pages. Obviously, we are not trying to pre-read all of that. But we have to pre-read, to be properly prepared for a case, the key documents bundle and this comprises the agreed facts, the written statements of case of both sides – that is the skeleton arguments – and the judgments of the courts below, in particular the Court of Appeal judgment which is being appealed. We are dealing entirely with points of law, not fact, and the issues are often complex and sometimes the arguments being put have to be read several times in order to appreciate what is being said. Even in the key documents bundle there are hundreds of pages to read and to digest.

What makes the exercise particularly challenging is that most of us come to the court with specialist expertise in particular areas of the law. I have spent most of my life primarily teaching, researching and writing in the areas of contract, tort and unjust enrichment. But many, and probably most, of the cases I have been sitting on since I joined the court have had nothing to do with contract, tort or unjust enrichment. I am therefore often outside my comfort zone. The Supreme Court deals with appeals on points of law in every area of law, civil and criminal, private and public. So it can be a big challenge, and takes considerable time, to prepare for a hearing.

Therefore, the biggest challenge for me in becoming a Supreme Court Justice has been that I have had to become a generalist lawyer deciding on all aspects of the law, at a high level, rather than being a specialist as most of us have tended previously to be. But I have discovered that I love almost all matters legal, and I therefore enjoy that challenge. I enjoy learning about and thinking about almost all areas of law. Almost all of it is fascinating.

(2) You have to work collegiately

While some academics choose to do so, there is no requirement for an academic to act in a collegiate way when writing about the law. That is, one does not have to take into account the views of others. One can write as an individual expressing purely one's own views and expressed in the way one thinks best. Although I did occasionally co-write, almost all of my academic books and articles were written alone.

Writing individual judgments (or speeches as they were then known) used to be the predominant position in the House of Lords (although there were periods when this was the exception). The disadvantage of multiple judgments, although fun for academics to analyse, is that it is sometimes difficult to work out the ratio of a decision where there are, let us say, five judgments reaching the same decision for different reasons. In any event, it is time-consuming and off-putting for a reader, especially busy practitioners, to have to wade through several judgments instead of a single definitive judgment.

On the Supreme Court, the present approach therefore is one of trying, if possible, to achieve a single judgment (whether written by one judge or, as has become increasingly common, by two or more). Although dissenting judgments are permitted, and are not discouraged in so far as a Justice feels duty-bound to dissent, the overall effect of the trend towards single judgments is that, if asked to write or contribute to the single judgment, one has a keen eye on gaining the agreement of colleagues.

We are at the moment in a remarkable phase of unanimity on the Supreme Court. In 2024, it would appear that 91% of Supreme Court decisions were unanimous and last year 92% were unanimous. The statistics on the writing of joint lead judgments is also of interest. In 2024, it would appear that 47% of lead judgments in the Supreme Court were jointly written and in 2025 the figure was 53%.

(3) You have to develop a judgment writing style

Judgment writing is a very interesting form of literature that is relatively unexplored as such in this jurisdiction. It has some similarities with, but significant differences, from academic writing albeit that, in very general terms, one can say that the modern trend has been for the style of Supreme Court judgments to have moved some way towards the style of academic articles, in particular, by the use of headings and sub-headings. It seems surprising now that, as recently as 25 years ago, the use of headings and sub-headings in a House of Lords speech (ie judgment) was rare.

But there are also clear differences. Most obviously, a judgment is focused on a specific and usually narrow point and it has to be decisive. Unlike a law article, a judgment cannot, on the central questions, sit on the fence.

There is also some constraint on the materials one can use to answer that question. If a judge were to rely on a particular issue in deciding a case and that issue had not been raised by the parties and the parties had not been given the opportunity to make submissions on it, the decision would be regarded as procedurally irregular and unfair.

As law students you may not realise just how much ignorance there is about judgments. In a recent discussion with MPs, one MP asked whether in deciding a case we simply voted or did we ever give judgments with reasons.

(4) You have to develop a thick skin

With academic written work, one is often unclear whether one's thinking is having any impact on others. Indeed, I would go so far as to say that an academic' s greatest fear is being ignored. There is no such fear on the Supreme Court. On the contrary, what one writes is subject to intense scrutiny, both by practitioners and academics. The usual reaction from practitioners is that they not so much bothered about the merits of the answer but are simply grateful that the law has been clarified. Not so, of course with the academics. Many judgments are correctly subjected to challenge as to whether they are right or wrong. I regard the academics as the true analysts as to the strength or weakness of what we are doing and certainly I have them in the forefront of my mind when writing a judgment.

Sometimes I have agonised about a particular decision and reasoning and then been very surprised that an academic has chosen to criticise an aspect of the judgment that I had regarded as non-controversial while saying nothing about what I did regard as controversial. It can be very frustrating – and one has to develop a thick skin - because, at least in general, we feel bound to adhere to the convention that one should not try to defend one's judgment by further arguments. So even if someone has misinterpreted what one was saying, one normally has to grin and bear it.

There is an interesting linked question that I am sometimes asked. Does the work of an academic or a Supreme Court Justice have the biggest impact over the long term? The answer I think is that it depends on the academic work and on the judgment. I certainly think some of the great law academics have had far more impact on our understanding of the law and hence on its development over the long-term than most judgments of a Law Lord or Supreme Court Justice. Take my hero Lord Goff. I recall being at his memorial service where, despite his many great judgments, time and again reference would be made to his academic work, namely the path-breaking *Goff and Jones, The Law of Restitution*. That was seen as his principal legacy.

(5) You have to accept some loss of freedom

As an academic I could say what I liked and could work on what I liked. Now as a Supreme Court Justice I have to sit on cases whether they are interesting or not. And outside court I cannot just simply say whatever I like about the law. Rather I have to abide by certain constraints. So, for example, shortly after appointment, I was giving a talk and students asked me about a case in which I had given a concurring judgment and they asked why I thought my judgment was better than the majority's. I was about to launch into an analysis of precisely what I thought was wrong with the majority's judgment, when I felt duty bound to hold back and to say that I could not go much beyond what I had written in the judgment.

2. Working as a Judicial Assistant at the Supreme Court

That is all I wanted to say about my own work at the court. In the time that remains to me, I wanted to draw attention to the job of being a Judicial Assistant ("JA") at the Supreme Court. Each year, we are usually looking to appoint 11 JAs each assigned to a particular Justice (with the 12th being the President's JA who has an extended contract). A few years ago, we expanded the criteria so that you do not need to have qualified as a solicitor or barrister before you start working as a JA.

What does a JA in the Supreme Court actually do?

There are two aspects although the two often merge. The first is the work for the court as a whole and the second is the work for the Justice to whom you are assigned (each JA is assigned to a particular Justice).

The work for the court as a whole principally involves writing bench memos for the Permission to Appeal applications. This is complex and fascinating work in summarising what a case is about, what are the grounds on which a party is seeking to appeal and what are the objections to permission from the other side. Each Bench memo is about 6 pages long. It is a great lawyerly exercise in setting out in a succinct and straightforward way what the Justices need to know in order to decide whether permission to appeal should be granted or not. PTAs are dealt with once a month by a panel of 3 Justices and

the relevant JAs attend those meetings. The JAs are asked for their views as to whether or not PTA should or should not have been granted but, very importantly, not until the decision has already been made.

The JAs also write the press summaries (or at least write the first drafts) for the judgments that are handed down. This is a rather different exercise and involves putting into simple language for the benefit of the press and others (including students) what has been decided and the reasons for that.

The second aspect of the work of a JA is working for the Justice to whom they are assigned. This involves a close working relationship with a Justice. The precise work that a JA is required to do for his or her Justice can vary but, in my case, I like to discuss the cases that we hear before and after we hear them. So the JA has to read all the papers for a hearing and attends the hearing. I want to hear what the JA thinks the decision should be and why, both before and after the hearing. I find it very helpful to articulate my own thinking and to subject it to the critical comments of the JA. It is a frank and confidential exchange of views.

Additionally and very importantly, I will ask my JA to carry out detailed research on points about the case that are bothering me. This is focussed legal research that may feed directly into a judgment.

I have also often asked my JA to read through and comment in detail on a draft judgment. The comments may be stylistic or substantive.

Sometimes, instead or in addition to oral discussions, I ask my JA to prepare a note for me in advance of a hearing as to what the arguments are and what he or she thinks of them.

It is important to make clear that, in the UK Supreme Court, JAs never draft judgments but they often play an important role as a sounding board and editor in relation to judgments.

I also sometimes use my JAs to help with outside lectures or to prepare answers for the questions that we are asked in our Sixth Form programme of online meetings called “Ask A Justice”. I also sit with my JA on the Bench for moots and they may assist me in choosing the winning team.

As you can imagine, a Justice has a close working relationship with his or her JA. Not surprisingly these relationships often continue after the year’s end. The JAs belong to an ever-increasing cohort and once a year all past JAs are invited to a reception, whether drinks or a dinner, with the Justices. It is therefore a happy family to belong to.

The main attributes we are looking for when choosing a JA are threefold. First, a sharp first class legal mind ie someone who is analytically rigorous. Secondly, someone who

loves discussing law and legal points. And thirdly, someone who can articulate their views clearly particularly on paper but also orally. A good sense of humour also helps.

If you want to know more about working as a JA, and about the applications process, there is lots more information on our website (including links to videos).

Thank you for listening. I hope I have given you some insights into what it is like to work in the UK Supreme Court, whether as a Justice or as a Judicial Assistant.