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Mazur v Charles Russell Speechlys LLP

Kevin Latham and Fraser Barnstaple



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Agenda



- Background facts of Mazur
- The relevant provisions of the Legal Services Act 2007
- The decision of Sheldon J and the reasoning underpinning the decision
- What is ‘conduct of litigation’
- Practical steps to minimise risk



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Warning slide?



- Opportunity to analyse the judgment;
- We are not giving legal advice;
- Looking at possible implications, particularly from a costs perspective.



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Background facts of *Mazur*



- The Respondent (Charles Speechlys LLP) carried out legal work for the Appellant (Mrs Mazur).
- ~£50K in fees were not paid by Mrs Mazur to CS and therefore instructed GBS to recover the debt
- Mr Middleton ('M') of GBS undertook many (28!) of the steps in the litigation. See the full list at §8. Included:
 - Signing Claim Form and POCS, which were filed and served on Mrs Mazur
- M was the “Head of Commercial Litigation” at GBS. He did not, however, hold a practising certificate and was therefore unqualified



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Background facts of *Mazur* continued



- Mrs Mazur took issue with M’s involvement and made app for M to be replaced with qualified sol
- DDJ Campbell made an order to stay proceedings and considered that M was taking part in “reserved activity” within the meaning of the Legal Services Act 2007 (‘the LSA’)
- Respondent applied to lift the stay and the qualified sol filed a WS, which stated all the work had been done under his supervision



Background facts of *Mazur* continued



- App heard by HHJ Simpkins, who held that M was authorised to conduct litigation under the supervision of the qualified sol, and ordered Mrs Mazur to pay the costs of the app, totalling >£10K
- Mrs Mazur appealed against the Order of HHJ Simpkins. 2 “core points” in the appeal:
 1. Did HHJ Simpkins err in deciding that M was authorised to conduct litigation under the supervision of a qualified solicitor?
 2. Did HHJ Simpkins err in ordering costs award on assessed basis rather than under CPR 45?



Context: LSA 2007



- s12: “reserved activity” includes “the conduct of litigation”
- Sch 4 para 2: “Conduct of litigation” =

(a) the issuing of proceedings before any court in England and Wales,

(b) the commencement, prosecution and defence of such proceedings, and

(c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).”



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Context: LSA 2007, continued



- s18: “For the purposes of this Act *“authorised person”, in relation to an activity (“the relevant activity”) which is a reserved legal activity, means (a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity”.*
- SRA is an approved regulator for conduct of litigation. *“It is necessary, therefore, for a person to be authorised to carry on the relevant activity by the SRA.” §56*



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Context: LSA 2007, continued



- Ss15-16- paraphrased
- *Section 15(2) of the LSA makes it clear that an employee (referred to as “E”) who carries on the activity as an employee is to be treated as a person carrying on the reserved legal activity, whether or not their employer (referred to as “P”) is entitled to carry on that activity. Section 15(3) deals with the circumstances in which P will be treated as carrying on the reserved legal activity by virtue of E carrying it on in their capacity as an employee of P (§53)*
- *S16: When E commits an offence under section 14 when carrying out a reserved legal activity P will also be committing an offence, even if P is entitled to carry on the relevant activity.*



Context: LSA 2007, continued



- s13(2): A person can *only* carry out a reserved legal activity (including conducting litigation) if:
 1. they are “an authorised person [defined in s18] in relation to that activity” OR
 2. if “the person is an exempt person [defined in s19] in relation to that activity”
- S21: (3) *In this section “regulated persons”, in relation to a body, means any class of persons which consists of or includes*
 - (a) *persons who are authorised by the body to carry on an activity which is a reserved legal activity;*
 - (b) *persons who are not so authorised, but are employees of a person who is so authorised.*
- (4) *In relation to an authorised person other than an individual, references in subsection (2) and (3) to employees of the person include managers of the person”.*

Respondents argued that section 21(3) of the LSA authorised M, as an employee of an authorised person, to carry out reserved legal activity under the authorised entity’s supervision.



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Judgment of Sheldon J



- M was not entitled to conduct litigation under the supervision of the qualified sol, and HHJ Simpkins had erred in law by finding otherwise (§48)
- *“It is clear from sections 15 and 16 that the LSA separates out the entitlement of employees (E) to carry out reserved legal activities from that of their employer (P). If E was entitled to carry out reserved legal activities merely because they worked for P, section 16 would make no sense.”*



Judgment of Sheldon J continued



- S21 LSA does not extend the definition of who is ‘authorised’ to carry out RLAs. Instead, it is saying that employees of an authorised person can be regulated (§61)
- Such an interpretation fits clearly with other provisions of the LSA. “Those other provisions make a clear distinction between persons who are entitled to carry out reserved legal activities and those who are not.” (§62)



Judgment of Sheldon J continued



- LSA Sch 3, para 1(7)(a) contemplates an exemption for the purposes of exercising a right of audience for persons who “assist” in the conduct of litigation
- However, there is nothing in the LSA which contemplates a person who conducts litigation under the supervision of an authorised sol (§65)
- There is a distinction between conducting litigation under supervision (which would not be permitted) and merely assisting or supporting an authorised person in the conduct of litigation



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The Definition



- Explanatory Note 65 – *“all activities that were regulated under previously enacted legislation”*;
- Why does LSA 2007 not contain an exception for people supervised by an authorised person?



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The Authorities



- *Agassi v Robinson (Inspector of Taxes) (Costs) [2006] 1 WLR 2126*
 - *Considering ss.28 and 119 of Courts and Legal Services Act 1990 (as they pre-dated the LSA 2007)*
 - *“...(a) to issue proceedings before any court; and (b) to perform ancillary functions in relation to proceedings (such as entering appearances to actions...”*



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The Authorities



- *Agassi v Robinson (Inspector of Taxes) (Costs) [2006] 1 WLR 2126*
 - “[53] Only a litigant in person or an authorised litigator may issue proceedings. But what is the scope of the right “to perform any ancillary functions in relation to proceedings (such as entering appearances to actions)”? The background material to the 1990 Act that we have been shown sheds no light on the meaning of these words.”



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The Authorities



- *Agassi v Robinson (Inspector of Taxes) (Costs) [2006] 1 WLR 2126*
 - “[55] *If Parliament had intended to introduce a broad definition of the right to conduct litigation, it could have defined it as the right “to issue and conduct proceedings before the court”. That would have been all-embracing and the second limb of the definition that was adopted would have been unnecessary. **Instead, Parliament decided to limit the first limb of the definition to the initial formal step in proceedings, namely their issue. It then added a second limb, which, if its meaning is ambiguous or otherwise unclear, should be construed narrowly.**”*



The Authorities



- *Agassi v Robinson (Inspector of Taxes) (Costs) [2006] 1 WLR 2126*
 - “[56] The word “ancillary” indicates that it is not all functions in relation to proceedings that are comprised in the “right to conduct litigation”. The usual meaning of “ancillary” is “subordinate”. A clue to what was intended lies in the words in brackets “(such as entering appearances to actions)”. **These words show that it must have been intended that the ancillary functions would be formal steps required in the conduct of litigation**...It is not necessary for the purposes of this case to decide the precise parameters of the definition of “the right to conduct litigation”. **It is unfortunate that this important definition is so unclear. But because there are potential penal implications, its very obscurity means that the words should be construed narrowly. Suffice it to say that we do not see how the giving of legal advice in connection with court proceedings can come within the definition.** In our view, even if, as the Law Society submits, **correspondence with the opposing party is in a general sense “an integral part of the conduct of litigation”, that does not make it an “ancillary function” for the purposes of section 28.**



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The Authorities



- *MSJ Associates Ltd v Brett Halliday (2013, unreported)*
- Held that the service of documents was administrative support and not a reserved legal activity.



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The Authorities



- *Heron Bros Ltd v Central Bedfordshire Council (No 2) [2015] EWHC 1009 (TCC)*
 - Held there was “...no reason to construe the definition of the conduct of litigation as extending to any activities that take place prior to the issue of proceedings and which do not involve any contact with the court. For example, advising on the merits of starting proceedings or drafting Particulars of Claim”.



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The Authorities



- *Ndole Assets Ltd v Designer M&E Services UK Ltd [2018] EWCA Civ 2865*
- Per Davis LJ: *“I consider that service of the claim form is indeed an aspect of ‘prosecution... of such proceedings’ and at all events that service of the claim form is “an ancillary function in relation to such proceedings.”*



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The Authorities



- *Ndole Assets Ltd v Designer M&E Services UK Ltd [2018] EWCA Civ 2865*
 - “[59] As stated by the Court of Appeal in paragraph 56 of Agassi, **it must have been intended that “ancillary functions” would be formal steps required in the conduct of litigation.** Service of the claim form is unquestionably, in my opinion, of such a kind. **There are rules of court relating to it. A legal action cannot be progressed, cannot be prosecuted, unless and until the claim form is properly served,** as the judge had noted. Service is the essential means by which a defendant is notified of the content of the court process which has been initiated against him and in respect of which he is ordinarily required to acknowledge service. **Thus service of the claim form falls within the ambit of the statutory language, naturally read.**”



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The Authorities



- *Ndole Assets Ltd v Designer M&E Services UK Ltd [2018] EWCA Civ 2865*
 - The delegation problem
 - “[67] In my view this is where **substance has to prevail over form.** I acknowledge that it is not always appropriate to talk in terms of degrees of agency. **But it all depends.** In my view the pragmatic solution here, which is the one proffered by Mr Darling, is the correct solution. **That distinguishes between those who merely perform an administrative or mechanical function in connection with service of documents and those who undertake, or who have assumed, legal responsibility with regard to service as prescribed by the rules.** This in fact, I consider, accords with the acceptance by the court in *Agassi* in paragraph 43 of the judgment that the statutory prohibition does not extend to “what might be termed purely clerical or mechanical activities.”



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The Authorities



- *Ellis v Ministry of Justice [2018] EWHC 798 (QB)*
 - May J rejected a submission that motivation was a relevant element: “the driving force behind proceedings” vs those acting on instructions e.g. barristers not authorised to conduct litigation;
 - Adopted the more straightforward analysis that drafting fell outside the reserved legal activity.



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The Authorities



- *JK v MK [2020] EWFC 2*
 - “[27] It is clear from this passage that **the giving of legal advice per se by someone who is not a qualified lawyer is not prohibited** under paragraph 4. **What if the advice extended to drafting a claim form such as a petition, or an application for decree nisi or the statement in support?** It would be surprising if this were forbidden.”



The Authorities



- *JK v MK [2020] EWFC 2*
 - “[29] In my judgment nothing that is done by amicable transgresses paragraph 4. However, I consider that the covering letter sending the documents to the court needs to be changed so that it is not on amicable’s notepaper. I cannot see that taking the fee on amicable’s account is objectionable.”



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The Authorities



- *O'Connor v BSB (A decision of the Visitors to the Inns of Court (Sir Andrew Collins, Mr Mark Mullen, Mrs Kate Warnock-Smith, 17 August 2012))**
- Held, signing a statement of truth on behalf of a client did not amount to the conduct of litigation.

* <https://www.barstandardsboard.org.uk/static/f72a0aa1-c74a-4889-9d2301c503fef13e/3f215edb-5e1a-4355-82b09fafb0cdc5cc/oconnorvbsb.pdf>



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The Authorities



- *Baxter v Doble [2023] EWHC 486 (KB)*
 - CILEX Member- Advanced Paralegal (previously referred to as ‘CILEX Graduate Member’) but not authorised to conduct litigation’;
 - Cavanagh J – four key points: -
 - starting point must be the statutory language itself;
 - must be borne in mind that this is penal legislation;
 - substance must prevail over form; and
 - the question is one of fact and degree in every case.



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The Authorities



- *Baxter v Doble [2023] EWHC 486 (KB)*
 - “[211] [Mrs Doble] did everything...in relation to the proceedings that a solicitor or other authorised person would have done. **They gave full-service assistance... including drafting all of the documents required to comply with formal requirements, giving instructions to counsel, making a payment to court, corresponding with the other side, and ensuring that all procedural steps complied with the CPR. Someone must have conducted this litigation,** and it would be wholly artificial to say [Mrs Doble's client] did it himself, albeit with support and guidance from [Mrs Doble]”



The Authorities



- *Mazur v Charles Russell Speechlys*
 - “[48] Was Mr Middleton entitled to conduct litigation under the supervision of Mr Ashall? The short answer to this question is ‘no’”
 - “[67] I do not need to decide for the purposes of this appeal whether, in fact, Mr Middleton was conducting litigation under the supervision of Mr Ashall or was merely assisting or supporting Mr Ashall in the conduct of litigation.”



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The Future



- Review office procedures to establish the extent to which – as a whole – it might be said that unauthorised persons are conducting litigation;
- Take legal advice on your specific circumstances;
- Sensible to ensure that “formal steps” are taken exclusively by authorised persons (per *Agassi*).



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The Future



- Consider who is taking “legal responsibility” for formal actions (per *Ndole*)
- Steps already taken?
- Costs draftsman?
- Costs recovery?



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Thank You

Speakers: Kevin Latham and Fraser Barnstaple

Date: 29 September 2025



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