

Introduction to The Rt. Hon. Lord Justice Males’ Speech in Honour of Professor Malcolm Clarke

Sir Richard Aikens*

I first met Malcolm Clarke in October 1971, when I started to read law as a ‘not for honours’ graduate student at St John’s, having read history as an undergraduate. Malcolm was my contract law supervisor. He had returned to St John’s as a teaching fellow when appointed a lecturer by the university a year earlier; having been an undergraduate at St John’s, a research fellow at Fitzwilliam and, briefly, a lecturer in Singapore. Malcolm stayed at St John’s for the rest of his life, becoming successively university senior lecturer, reader and, after some unwarranted delay, professor then Emeritus Professor. (Once a Fellow of St John’s, always a Fellow). BILA has produced an excellent summary of his career so I need not dwell on the formal parts of it now. I want to fill in some gaps.

Whilst researching for his doctoral thesis, Malcolm had thought of going to the Bar. He once told me that he had arranged to be the pupil of Michael Mustill, at that time the busiest junior at the Commercial Bar, a Johnian who became a Law Lord. Michael Mustill was subsequently Goodhart Professor in Legal Science at Cambridge for a year, when he returned to St John’s and worked with Malcolm. But in the end, Malcolm did not do pupillage and stuck with academia.

Malcolm’s doctoral thesis was a comparative study of how English law and French law had treated the Hague Rules 1924. Those rules governed (and, as the Hague-Visby Rules, they still govern) at least four fifths of the contracts for the international carriage of goods by sea. Malcolm won the Yorke Prize for his thesis in 1974. His first book, of which I still have a copy, was ‘Aspects of the Hague Rules: A comparative study in English and French Law’, published in 1976 at the Hague. Malcolm subsequently published other text books, frequently consulted by practitioners, on international carriage of goods by land, and air; but not carriage by sea!

I have vivid memories of Malcolm as a teacher: both as supervisor and lecturer. As supervisor he made you think very hard about the topic under discussion. One of his supervisees recalls Malcolm’s sense of humour too. In an essay on contracts with minors, the student had written that an Oxford undergraduate (under 21) had avoided liability because the waistcoat he had bought was not a ‘necessary’. The student had heavily underlined the word ‘Oxford’. Malcolm’s marginal note (written in his characteristically neat but tiny script) was “presumably not an issue for his Cambridge equivalents”. As a lecturer, Malcolm was unusual at the time in that he always lectured sitting down – very sensible. His lectures were (like all his speech) delivered

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at a very fast pace. There was so much information to get down; and in those days there were no handouts of lecture notes or recordings of the lecture for the idle. His lectures were always packed.

Malcolm's interest shifted from the law of carriage of goods to insurance law and it was in the field of insurance law that he became a total master and leader of the field. He first published 'The Law of Insurance Contracts' in 1989. The hardback version has gone through six editions. The loose leaf version is still regularly updated. It quickly became the work that all practitioners and judges would consult on the many issues that the courts had to deal with on insurance law in the 1990s and 2000s; a time when insurance disputes occupied the commercial bar and court considerably. The book's reputation and distinction remains. Malcolm also wrote on liability insurance and an original monograph entitled 'Policies and Perceptions of Insurance', on the legal philosophy of insurance. His articles and case notes are too numerous to mention.

To do all the academic work that he achieved, Malcolm had to have – and did have- a Stakhanovite work ethic. He would get up at 4 am and work through the day. But he always had time for visitors and I recall that I was always welcomed if I was in the college and made my way to his rooms. I am eternally grateful to him because it was he who sparked my interest in commercial law when I was his pupil and it was he who suggested where I should look for a pupillage in that area.

Malcolm was not just a worker. When younger he was an enthusiastic hockey player and he was a lifelong cyclist. (In that he followed a commercial lawyer tradition; Scrutton LJ had been a keen cyclist when at Cambridge in the 1870s and was an early member of the Cambridge University Bicycling Club). Malcolm was renowned for cycling at speed around Cambridge, as well as much further afield. There were the inevitable accidents as a result. He even had a tandem, which I gather he had bought together with Professor John Spencer.

Malcolm was also a talented photographer; who recorded many events and there is an album that he donated to the Law Faculty. He enjoyed a drink now and again and I recall that in his youth he smoked a pipe. But he was, I think, by nature more observer than participant.

It is very good that Eva, Malcolm's wife for well over 50 years, is here today and also their son, Tim. I miss Malcolm's smile, his searching questions and that keen and enthusiastic look in his eye that always greeted you when you met him.

Now for our lecturer this evening. Lord Justice Stephen Males and I were both taught by Malcolm, as were two other current members of the Court of Appeal: Baker and Fraser LJJ). Stephen (and Jonathan Baker) also had the misfortune to be supervised by me; or perhaps it was the other way round really!

After a stellar Cambridge career, Stephen was called to the Bar and was a pupil in my chambers: Brick Court. Very foolishly we let him go off to what was then 3 Essex Court, which had stars who later became Lord Lloyd, Lord Justice Christopher Staughton, and Lord Justice Bernard Rix. Stephen's practice in international trade, shipping, banking and international arbitration boomed. He took silk in 1998 and became a High Court Judge in 2012. He was in charge of the commercial court but also a Presiding Judge of the North Eastern

Circuit, so dealing with crime as well as civil cases. In 2019 Stephen was appointed to the Court of Appeal. If he will permit me to say so, his judgments, whether on commercial law topics or others, are always brilliantly clear, concise and interesting to read. (And almost invariably right too!). I put that down to his being taught by Malcolm Clarke! Stephen: over to you!