

“Chitty at 200”

Conference on “Contract Law: Past, Present and Future” University College London: 12 June 2026

Lord Leggatt

It is a pleasure to be asked to introduce this special bi-bicentenary event, marking 200 years since the start of both *Chitty on Contracts* and UCL. We are here today to talk about contract law. But I should like to say something first about the foundation of UCL and its law school.

The great name associated with UCL and law is of course that of Jeremy Bentham. Here we are in Bentham House. And, as you probably know, the great man is at UCL himself, now located in the Student Centre, sitting in a glass case as what he called an “auto-icon”. It is only right to mention that Bentham was not a lawyer, was not involved in founding UCL and, contrary to what you might have thought, did not bequeath his corpse to UCL – he merely left some of his books to the Library.¹ How he ended up on display here is a story for another day. But it is fitting that he did, as he heavily influenced the founders of UCL.

Their aim was to establish a new university which would offer education at “*a moderate expense*”² and – unlike Oxford and Cambridge, the only existing universities in England at that time – would admit and award degrees to students who were not members of the Church of England. All others – including Catholics, Jews and nonconforming Protestants – were excluded from university degrees until the University of London (as UCL was originally called) opened its doors.³ Bentham expressed some typically trenchant views on the subject in a letter that he wrote in August 1825 to Simon Bolivar – “Bolivar the liberator”, who led several countries in South America to independence from Spain and at that time was President of Columbia and Peru as well as of his namesake Bolivia. Commenting in his letter on the current state of education in England, Bentham described Oxford and Cambridge as “*the two great public*

¹ See CFA Marmoy, “The ‘Auto-Icon’ of Jeremy Bentham at University College, London” (1958) 2(2) *Med Hist* 77.

² Deed of Settlement dated 11 February 1826.

³ See eg William Twining, “Imagining Bentham: A Celebration” (1998) 58(1) *CLP* 1, 11.

nuisances ... storehouses and nurseries of political corruption in its most baleful forms". He also referred to the planned foundation of UCL, saying that:⁴

"an association of liberals are about to set up, in or near London, a seat of instruction ... in which the pupils are to be left to pursue each his own notions in respect of religion".

As well as the need for a university which did not discriminate on religious grounds, there was also a pressing need for a university that would teach English law. The Inns of Court had long ceased to perform that function. At Oxford and Cambridge degrees were awarded only in Roman law, and the vast majority of law graduates became clergymen.⁵ Students who wanted to practise as lawyers studied classics or mathematics. One of the founders of UCL, Henry Brougham, summed up the situation when he gave evidence a few years later to a Parliamentary Select Committee. He was asked for his opinion on the present state of legal education in England. His answer was:⁶

"I am sorry to say that it is at as low an ebb as it is possible for education to be in any country".

A slight exaggeration perhaps, but the Select Committee's own conclusion was much the same. The Committee reported that:⁷

"the present state of legal education in England ... is extremely unsatisfactory ... and exhibits a striking contrast and inferiority to such education ... at present in operation in all the more civilized states of Europe and America".

When UCL was founded, two chairs in law were created. The great English legal historian of our age, Sir John Baker – himself a UCL alumnus – has described the two individuals appointed to those chairs in an article marking the 150th anniversary of legal education at UCL published in 1976 – a mark, one may say, of John Baker's own longevity.⁸ He said of those first two professors that *"two more different characters could scarcely be imagined"*.⁹

⁴ *The correspondence of Jeremy Bentham: Vol 12 July 1824 to June 1828* (ed Luke O'Sullivan and Catherine Fuller), p 147.

⁵ JH Baker, "University College and Legal Education 1826-1976" (1977) 30(1) CLP 1.

⁶ Report of the Select Committee on Legal Education (1846) p xxix.

⁷ Select Committee Report, p lvi.

⁸ JH Baker, "University College and Legal Education 1826-1976" (1977) 30(1) CLP 1.

⁹ JH Baker (1977), p 2.

Andrew Amos, who was appointed Professor of English Law, was a practising barrister. Amos described his lectures as largely “*clinical*”, such as “*no person is competent to teach but a barrister, familiar with the practice of the Courts*” and illustrated by “*examples drawn from actual trials*”. His lectures were extremely popular and drew packed audiences of articled clerks and Bar students, between 100 and 150 at a time. His students wrote grateful testimonials to his teaching and, when he left, presented a marble bust of him to the College.¹⁰ You can see it downstairs at the entrance to this building. After Amos had been professor of law at UCL, he went on to become Downing Professor of the Laws of England at Cambridge, thus establishing what Paul Davies tells me is a precedent.

His colleague, appointed to the Chair of Jurisprudence and the Law of Nations, was John Austin. He was a young neighbour, friend and disciple of Jeremy Bentham. Austin was a tortured soul. He was prone to neurotic illness which often prevented him from lecturing at all. His approach was purely theoretical. He prepared conscientiously for his teaching duties by visiting German law schools and was inspired by their approach. He much admired the fact that in German law schools, in his words, “*little or no attention is given by the Law Faculty to the actual law of the country*”.¹¹

Unlike Amos, Austin was a tremendously dull lecturer. He was one of those lecturers, whom we have all known, who starts the term with a large audience, only to see it dwindle, until there are just one or two students who continue to attend out of sympathy or embarrassment. Austin found the experience so distressing that after only four years he resigned his chair – an event which his wife described as “*the real and irremediable calamity of his life - the blow from which he never recovered*”.¹²

But Austin’s *Lectures on Jurisprudence* were more popular in print than they were in person. They are still in print today – a great and enduring intellectual achievement, while Andrew Amos has faded into obscurity. I am sure there must be a moral in this comparison, though I am not sure what it is. And I leave it to others to say who among today’s academics is an Andrew Amos and who is a modern-day John Austin, and which of them – if you had to choose – you would rather be.

¹⁰ JH Baker (1977), pp 3-4.

¹¹ JH Baker (1977), p 3.

¹² Oxford Dictionary of National Biography: Austin, John.

I turn to *Chitty*. The author of the book published in 1826 called himself “Joseph Chitty Junior” – though as both his father and grandfather were also called Joseph Chitty, he might have called himself Joseph Chitty III. The father, Joseph Chitty Senior, was himself a prolific legal writer, as well as a barrister who had a large practice as a special pleader. A special pleader was not someone who argued that a special exception to legal rules should be made for their client – although some may have done for all I know. Special pleaders were practitioners who specialised in drafting pleadings, which at that time was a highly technical skill. Unfortunately, Joseph Chitty Senior amassed heavy debts and much of the later part of his life was spent avoiding his creditors, at a time when you could still be imprisoned for debt. But he founded a legal dynasty: he had five who all became lawyers and three of whom were also legal writers.¹³

Joseph Chitty Junior was the oldest. He produced the first two editions of the book he called “*A Practical Treatise on the Law of Contracts not under seal, and upon the usual defences to actions thereon*”. After he died at the age of only 42, the third edition was edited by one of his younger brothers, Thompson Chitty. In the next generation of Chittys, the son of another brother was a High Court judge (and ended his career in the Court of Appeal). You won’t be surprised that his name was Joseph Chitty. This Joseph Chitty had a fine reputation as a lawyer but was one of those judges – a type well known to practitioners – who talks too much in court; and he was popularly known as “Mr Justice Chitty”.¹⁴

Chitty on Contracts is not the oldest English legal treatise still being updated. So far as I can find, that is *Woodfall on Landlord and Tenant*, which was first published in 1802. *Archbold’s Criminal Pleading, Evidence and Practice* is also older than *Chitty*, though only by four years, as it was first published in 1822. But *Chitty* is by far the longest standing book on contract law. I believe the next in age is Anson’s *Law of Contract*. But compared with *Chitty*, Anson was a latecomer: his book first appeared in 1879.¹⁵ So Anson’s book will have to wait more than another half century, if it lasts that long, for its bicentenary.

What explains the longevity of *Chitty*? You will be hearing soon from Catharine MacMillan and others much more erudite than me about *Chitty*’s place in legal history. But on this 200th anniversary, I hope you will indulge my amateur

¹³ Oxford Dictionary of National Biography: Chitty, Joseph, the elder.

¹⁴ Oxford Dictionary of National Biography: Chitty, Sir Joseph William.

¹⁵ Anson, *The Principles of the English Law of Contract*, 1st ed (1884).

speculations. I would like to suggest four factors that may go to explain *Chitty's* remarkable endurance.

The first is that Chitty entered the market for legal treatises early and was able to gain what Business School professors call “first mover advantage”. Chitty’s book was not the first treatise on the English law of contracts. That appears to have been “*An Essay upon the Law of Contracts and Agreements*” by John Joseph Powell, published in 1790. Several others followed in the first two decades of the 19th century.¹⁶ But, when Chitty was writing, no book on the law of contracts had yet emerged as the market leader. Indeed, the legal treatise was itself a newly popular genre. Its rise as the dominant form of legal literature is an interesting phenomenon. Brian Simpson has argued that it reflected two major conceptual shifts. One was the emergence of a new paradigm of law as a science. This conceived law as a latent scheme of rules or principles, illustrated by decisions of the courts, which it is the text writer’s task to reveal and expound. The second conceptual shift was to see law as divisible into discrete branches each possessing an intrinsic unity and coherence.¹⁷ How the law of contracts came to be seen as such a branch is another fascinating subject for study.¹⁸ But my, more superficial point is simply that Chitty was writing at a time when no treatise on the law of contracts had yet acquired dominance. That presented a business opportunity. For with law books as with other products and services, once you become a brand leader, popularity can feed on itself. The book becomes the one to buy because others are using it and citing it. Through being cited, the book is mentioned in judgments, which gives it authority. And because of its wide readership and reputation, talented lawyers may be attracted or persuaded to edit it, thus maintaining or enhancing its quality.

A second factor in Chitty’s favour, I suggest, was that, if you were looking in 1826 for a legal topic with a bright future, the law of contracts was an excellent topic to choose. It was only going to grow in importance, and it is of course a core legal subject today. Some of the subjects which Joseph Chitty Senior chose to write about have not had the same staying power.¹⁹ Take, for example, his *Practical Treatise on the Law Relative to Apprentices and Journeymen* (1812) or his

¹⁶ See AWB Simpson, “Innovation in Nineteenth Century Contract Law” (1975) 91 LQR 247, 253; Warren Swain, *The Law of Contract 1670-1870* (2015), pp 147-148.

¹⁷ See AWB Simpson, “The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature” (1981) 48 Univ of Chicago LR 632.

¹⁸ As to this, see Warren Swain, *The Law of Contract 1670-1870* (2015).

¹⁹ Oxford Dictionary of National Biography: Chitty, Joseph, the elder.

A Treatise on the Game Laws (1811). Those works never even made a second edition. Even his most successful work – his *Treatise on Bills of Exchange*, first published in 1799 and which reached a ninth edition in 1840 (the year before he died) – was on a relatively niche subject which has waned in significance and may soon be obsolete.

Joseph Chitty Junior could not of course know how the future would unfold. But he saw the potential of his chosen subject. That is plain from the opening words of his preface to the first edition, where he wrote:²⁰

“Perhaps no branch of the jurisprudence of the country has of late years been more the subject of judicial inquiry and decision than the Law of Contracts. The rapid extension of commerce, and the variety and increase of the transactions of mankind, have furnished, and constantly supply, fresh and abundant materials for a renewed investigation of this subject.”

My third suggestion is that Chitty outdid his competitors by providing a book of a kind that practitioners found useful. If you open one of the first two editions today, it is not obvious from a modern perspective why this was. But I looked for contemporary evidence and found a book called *A Popular and Practical Introduction to Law Studies*, first published in 1835. This contained a list of essential reading for first year law students, which included Chitty’s book. The author wrote:²¹

“The student will also provide himself with a copy of Mr Joseph Chitty's (jun) Treatise on Contracts, of which a second edition has appeared very lately (1834). It is in one octavo volume, of moderate size, and is, in the author's opinion, decidedly the best practical treatise extant, upon the subject. He has had occasion frequently to examine it for practical purposes, and is happy to bear testimony to its admirable arrangement, accuracy, compression of detail, and comprehensiveness of design. ... If the student ... will but do justice to this work, he will have obtained no mean acquaintance with a very important and extensive branch of law.”

The same might be said today, except that *Chitty* can no longer be said to be “of moderate size” and even the most diligent student could not be expected to “do justice” to the work – though they would certainly obtain “no mean

²⁰ Chitty on Contracts, 1st ed (1826), preface, p iii.

²¹ Samuel Warren, *A Popular and Practical Introduction to Law Studies*, 1st ed (1835), pp 337-338.

acquaintance” with the law of contracts if they did. The current edition weighs in at over 5,200 pages (more than 15 times the length of the first edition). But it retains its character as a “*practical treatise*” and indeed as “*decidedly the best practical treatise extant, upon the subject*”.

In the preface to the second edition Joseph Chitty wrote that he had:²²

“endeavoured to render this work not only an elaborate and complete treatise on the principles of the Law of Contracts, illustrated and explained by practical cases, but also a useful Nisi Prius book ...”

A “*useful Nisi Prius book*” meant a book that was useful to have with you for reference at a trial. That selling point was repeated in the preface to the next, third edition, edited by Thompson Chitty. He wrote that he had endeavoured:²³

“to carry out the Author’s intention of rendering the work useful, not merely as a treatise on the principles affecting the law of contracts, but as a useful book of reference and a companion in court and on circuit.”

Chitty was still such a useful companion in court when I was a junior barrister. Things may be different today now that advocates have instant access to a vast library of legal material through their laptops. But when I went to argue contract cases in county courts in the late 1980s, I always took a copy of *Chitty* with me.

I recall all too well one particular trial in Banbury County Court. The claim turned on the interpretation of a settlement agreement. When I opened my client’s case, the judge asked if I was intending to call my client to give evidence about what he had understood the contract to mean when he signed it. I said that I was not, as the subjective understanding of the parties to a contract is not relevant or admissible. The judge found that an unlikely proposition. So I got out my copy of *Chitty*. I turned up a passage explaining the objective principle of interpretation, no doubt citing *Prenn v Simmonds* which would have been the leading case at that time.²⁴ I showed it to the judge. I am sorry to say that in Banbury County Court the authority of *Chitty* did not carry the weight that I expected. But I stuck to my guns and declined to call my client to give evidence.

²² *Chitty on Contracts*, 2nd ed (1834), preface, p v.

²³ *Chitty on Contracts*, 3rd ed (1841), preface, p iii.

²⁴ *Prenn v Simmonds* [1971] 1 WLR 1381.

My opponent did not share my scruples. He accepted the judge's invitation and called his client as a witness. She duly gave evidence that she thought the contract meant what her counsel submitted that it meant. I stayed on what I felt was the legal high ground. I did not cross-examine. The result was a resounding defeat. In giving judgment, the judge explained that he had no hesitation in accepting the uncontradicted evidence about to what the contract meant. I can still remember my feeling of disillusionment in discovering that legal practice and legal theory do not always correspond.

But back to why *Chitty* has flourished for so long. I have suggested as factors first mover advantage, a prescient choice of subject matter and a shrewd understanding of what practitioners wanted. My final suggested factor is the loyalty, and more recently the quality, of the book's subsequent editors.

If you look at the list of past editions, you will find that three editors have between them had charge of *Chitty* for more than half of its history – over a century in total. An extraordinary degree of continuity. The first of these three long distance runners took over from Thompson Chitty and edited the next eight editions of the book, from the 4th edition in 1850 through to the 11th edition published in 1881. For each of these editions his name is listed as “His Hon Judge J.A. Russell QC” – although, when he first became editor, John Archibald Russell was not yet a Queen's Counsel nor a county court judge: he was a junior barrister and a professor of law here at UCL. He is described by John Baker as one of “*a line of competent but uninspiring professors*” who filled the Chair of English Law after the departure of Andrew Amos.²⁵

Although Russell kept the contents updated with new cases and statutes, he does not appear to have made major changes to the structure of the work. Works of reference, like buildings and institutions, can get by for long periods with minor adjustments and repairs but every now and again a more thorough overhaul is needed if they are to remain fit for purpose.

Such an overhaul of *Chitty* was carried out for the 19th edition published in 1937. This was the first to have a “general editor” heading up an editorial team. That person was Harold Potter, Dean of the Law Faculty at King's College, London, who recruited seven editors to undertake what he described as a “*drastic revision*” of the whole work. He explained in the preface:²⁶

²⁵ JH Baker (1977), p 6.

²⁶ *Chitty on Contracts*, 19th ed (1937), preface, p iii.

“During the century of its existence the labours of the successive editors have so enlarged the work of the original author that the original text, though much of it remains, has become embedded in a patchwork mass of authority that has grown to some extent according to the individual tastes of those editors.”

The result of this revision did not much impress the founder of the Modern Law Review, Robert Chorley, who wrote in the first volume of that journal:²⁷

“Dr Potter has enlisted a very strong team of editors in his endeavour to bring about a radical transformation. Transformed it they have, but it is still not a good book. The new wine ferments in the old bottles, but the result is hardly intoxicating. One of the greatest difficulties, perhaps the fundamental one, is the lack of a satisfactory analytical arrangement.”

Such an arrangement had to await the 22nd edition published in 1961. For that edition, the general editor was John Morris. In his preface Morris said that he did not agree that *“only students deserve rationally arranged textbooks and that practitioners will put up with anything provided only that it is traditional”*.²⁸ Morris brought in a distinguished team of Oxford academics to assist him. It was the start of what Gareth Jones writing later in the Cambridge Law Journal described as the rejuvenation of *Chitty* by *“a massive transfusion of dark blue blood”*.²⁹

Morris did not carry on after that edition. But in the 65 years since then, *Chitty* has had only two general editors: the other two long distance runners I mentioned earlier. They are Anthony Guest and Hugh Beale. I say that there have been only two general editors but, if you look at the front of the book, you will see that the general editor of the 28th to 33rd editions is named as “H.G. Beale”, while the general editor of the three most recent editions is called “Hugh G. Beale”. A sign of more informal times perhaps. The immense contributions of Anthony Guest (who is now aged 96) and of Hugh Beale (who is very much younger) deserve to be honoured today.

It is an understatement to say that, over the 200 years of their existence, the UCL law faculty and *Chitty on Contracts* have expanded. The two law professors appointed when UCL was founded may be compared with the 157 people

²⁷ Review by RST Chorley in (1937-38) 1 MLR 328.

²⁸ *Chitty on Contracts*, 22nd ed (1961), preface, p vii.

²⁹ Gareth Jones, review of *Chitty on Contracts*, 24th ed (1978) 37 CLJ 346.

including 49 professors (and I have not counted emeritus professors) who now make up the law faculty. I have described the increase in the size of *Chitty*. The general editor now heads a team of 20 editors, all formidably accomplished.

If the expansion continues at the same rate, then in 200 years' time *Chitty* will be 80,000 pages long and the UCL law faculty will have more than 1,200 professors. But while I have speculated about *Chitty*'s past, I am not so bold as to speculate about its future; or indeed about the future of contract law, or for that matter about what will have become of books or universities by 2226.

There is roll call of luminaries assembled here to talk about "contract law: past, present and future". When Paul Davies asked me to make some introductory remarks, he said that he didn't expect me to contribute anything substantial. That will be done by the distinguished speakers and commentators. I trust I have fulfilled his expectation. Thank you all for your attention. I look forward keenly to the sessions that lie in store for us today.