

The Psychology of Justice: The Interface Between Psychology & Civil Law

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ABSTRACT

This paper discusses how the several branches of psychology impinge on civil law processes such as the organisational culture of courts and justice, claimant and expert experience and experience of judges, barristers and lawyers. Recent publications illustrating the complex interface of psychology and law and how these two significant professional bodies of knowledge and practice interact are described. Key questions for the collaborative research into the psychology of justice are identified.

KEYWORDS

Psychology; Civil Law; Organisational Culture; Collaborative Research; Justice

INTRODUCTION

Since the 1970's, psychologists and psychiatrists have developed their expertise in providing expert witness services in civil claims for personal injury and medical negligence. By doing this, they have helped lawyers and the courts understand more about diagnosis, causation and prognosis [1]. However, the relevance of psychology and psychological medicine has a much wider applicability to the civil justice system.

In Tort Law, the focus is on Justice as the goal, ensuring a more fair, equitable, holistic and reliable outcome to a personal injury event. This is in addition to the quantum assessment of damages and attempts to conduct the process efficiently [2].

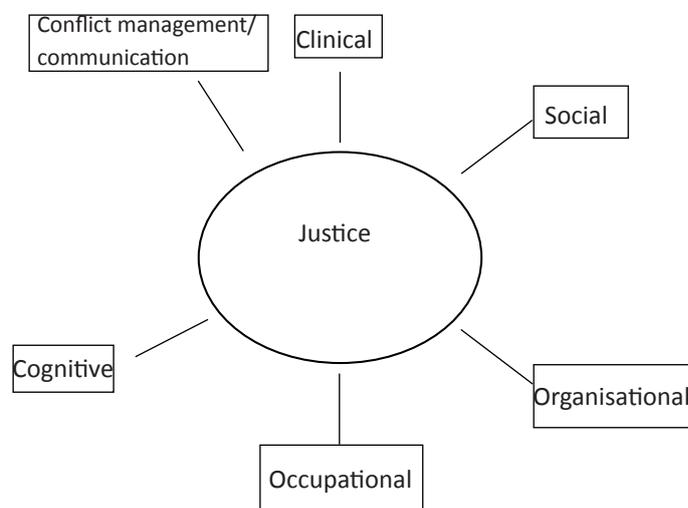
Understanding and measuring 'justice' is a challenge due to its complex multi-dimensional nature. Both claimants and defendants of claims need to be assured that medico-legal process goals are balanced fairly with justice goals, making civil claims more 'just' and 'better', not just faster and cheaper. Increasing attention is now being centred on how psychological and social processes affect civil justice and the way it is carried out in the UK and other countries, both in Europe and North America [3].

Starting at the point of a personal injury event such as a road traffic accident or work accident through to the conclusion

of litigation, there are many psycho-social processes involving claimants, lawyers, medical experts, barristers and the judiciary which can affect any one particular case and assessment of damages [4].

The main branches of psychology which are applicable to the medico legal trail and are illustrated in (Figure 1)

Figure 1: Branches of Psychology.

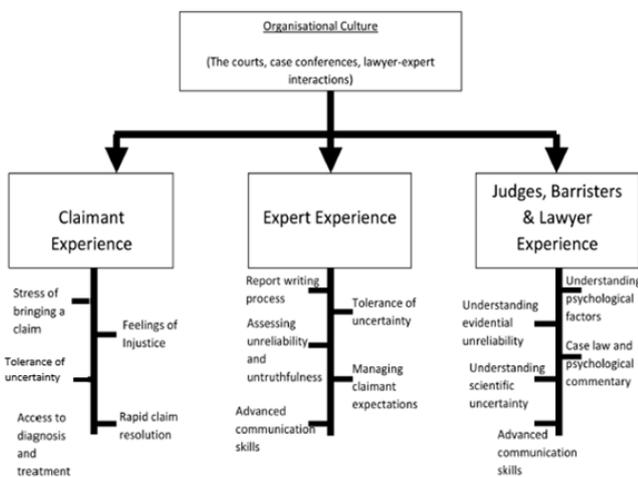


These branches are summarised

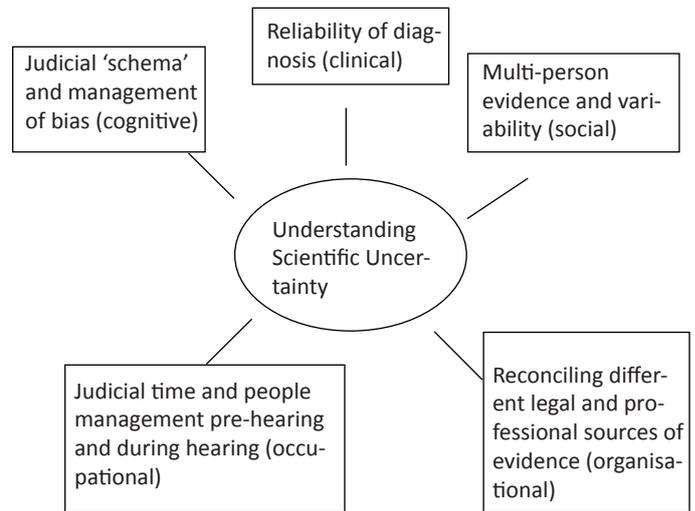
- a) **Clinical:** The understanding of a claimant’s personal injuries in terms of diagnosis, attribution and prognosis on it; the formulation of treatment recommendations.
- b) **Social:** The understanding of interpersonal communication between claimant and professional, and between professionals; the behaviour of professionals in group situations e.g. case conferences and court hearings.
- c) **Organisational:** The behaviour and interaction of professional lawyers in law firms and court settings; the wellbeing and the resilience of lawyers.
- d) **Occupational:** The understanding of legal and medico-legal work processes; time, people and paper management; process improvement.
- e) **Cognitive:** The understanding of how thoughts and ‘schemas’ of claimants and professionals affect their outlook, attitudes and behaviour, and the specific area of neurocognitive processes including memory and attention.
- f) **Conflict Management & Communication:** The understanding of why legal and medico-legal conflicts exist and how best to resolve them, via the theme of advanced face-to-face and written communication skills.

A challenge is to ascertain how these various branches of psychology not only interface with civil law, but how a greater understanding of them enhances the provision of justice and service to the claimant.

Psychological processes (clinical, social, organisational, occupational, cognitive and conflict management/communication) are relevant to each of the four main substantive areas shown in the medico-legal trail below (Figure 2).



For example, taking one of these specific areas: ‘Judges/understanding scientific uncertainty’, this is illustrated in (Figure 3)



Recent publications have already illustrated how psychology and law interact, bringing together a range of established expert witnesses with wide experience of civil justice:

- Trauma and its medico legal and psychological implications [5]
- Clarification of psychological symptoms in orthopaedic presentations [6]
- Impartiality of Expert Witnesses [7]
- Judging credibility in personal injury cases [8]
- Organisational culture and Therapeutic Jurisprudence [9]
- Psychological and medico-legal implications of assessing unreliability in civil cases [10]
- Investigating expert witness uncertainty and its psychological implications [11]
- Interface of psychology and law in civil opinion and legal case reporting [12]

It is important that both academic and practitioner groups are active in promoting the understanding of the interface between Law (and legal systems) and Psychology in the context of civil cases and litigation, and thereafter to provide education to legal students and practitioners on these issues. This collaboration should inform the scientific, medical and psychological communities on the one hand, and legal communities on the other, and also the public, about current research and practice in the area of science and law [13].

Civil courts admit evidence from health care experts in order to assess injury and determine quantum. It points to a need for Law and Psychology to address the use of science, and both sectors’ narrow constructions of rationality and logicity which can often have the effect of divorcing science and ‘facts’ from their psychological and social context [14].

Both lawyers and psychologists groups have significant expertise to increase the understanding of how these two areas (Law and Psychology) interact in the modern legal world and to promote policies which clarify and solve legal-orient-

ed challenges. Multidisciplinary research and education can make a major contribution to the generalisation and dissemination of medico-legal knowledge and, as a result, improve the decision-making processes undertaken by judges, lawyers, jurors and scientific/medical experts. Both US & UK legal frameworks and practices have an inbuilt uncertainty which individuals and professionals have a variable tolerance of and ability to manage, especially after evaluating contentious scientific evidence in legal claims. This issue of uncertainty tolerance is nowhere better exemplified than in the two crucial areas of credibility assessment and judicial decision making.

This journal is leading the way in encouraging this debate via its individual articles and special edition and plans to continue this role in 2017/18 with special editions on how each branch of psychology specifically enhances our understanding of civil law as follows:

- 1) Managing conflict resolution in justice: the role of advanced communication psychology
- 2) Understanding civil justice: the role of cognitive psychology
- 3) Justice as a multi person, social process: the role of social psychology

REFERENCES

1. Milne R and Bull R. (1999). *Investigative Interviewing*. Wiley. London.
2. Quill E and Friel R. (2017). *Damages and compensation culture: comparative perceptions*. Bloomsbury. London.
3. Koch HCH. (2016). *Legal Mind: Contemporary Issues in Psychological Injury and Law*. Expert Witness Publications. Manchester.
4. Koch HCH, Palmer H and Reay K. (2017). *The Interface Between Psychology & Law: Continuous Improvement in Claimant, Lawyer and Expert's Experience*. Expert Witness Journal. Spring.
5. Koch HCH. (2017). Special Edition on 'Trauma & its medico-legal implications'. *Mathews Open Access Journals*. 2: 1-11.
6. Koch HCH, Cleary A, Mackinnon J and Willows J. (2017). *Chronic Pain and Understanding the Interplay between Orthopaedic and Psychological Aspects: A Case Study*. *MOJ Public Health*. 5(6): 1-8.
7. Koch HCH and Elson PA. (2017). *Impartiality of medico-legal experts*. *The Expert Witness Institute Newsletter*. Spring.
8. Koch HCH, Akehurst L and Easton S. (2017). *Judging Credibility of a Road Traffic Accident claimant*. *Journal of case reports and studies*. Annex Publishers.
9. Koch HCH and Diesen C. (2017). *Therapeutic Jurisprudence – Continuous Quality Management and Positivity in the Civil Justice System in Sweden and UK*. *MOJ Public Health*. 5(1).
10. Koch HCH, Court K and Bates S. (2016). *Medico-Legal Implications of Assessing Unreliability in Civil Compensation Cases: A Case Study Reflecting Potential Unreliability*. *Scholarena SAJ Case Reports*. 4(1): 1-4.
11. Koch HCH, Carleton RN and Cosway R. (2017). *Investigating Expert Witness Uncertainty: A Single Case Study Approach*. *CP Case* 1(1): 1-4.
12. Koch HCH. (2016). *Medico-legal case commentary: Interface Between Clinical Opinion and Legal Case Reporting in Personal Injury Litigation*. *Mathews Open Access Journal*. 1(1): 1-5.
13. Koch HCH, Hampton N, Midgley S and Tanner R. (2017). *Current Developments on the Interface of Psychology and Law in Civil Justice: Reconciling Law, Science & Policy*. *J Psychol Cognition*. 2(2): 83-85.
14. Cooper SL. (2016). *Forensic Science Identification Evidence*. *Journal of Philosophy, Science and Law*. 16: 1-35.