

A ROUTLEDGE FREEBOOK

Essential Study Skills for Law Students



TABLE OF CONTENTS

Introduction



01:: Understanding and making the most of your degree



02:: Academic Survival Skills: Standing on your own two feet



03:: Types of Law



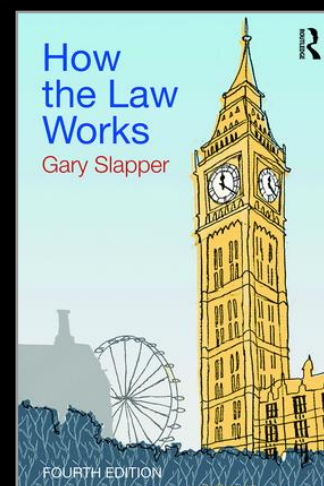
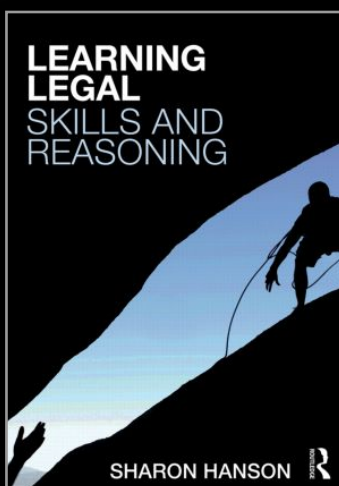
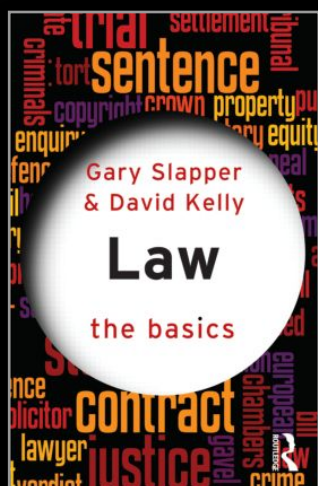
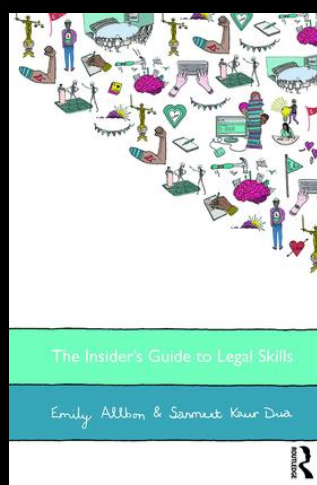
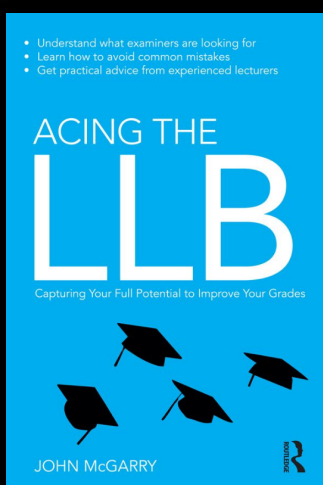
04:: Effective Legal Research: How to get the most out of
your University Print and e-Library



05:: Language and Law



Equip yourself with key subject-specific knowledge and invaluable tips about university study. Read the full text of these titles and start your Law degree with confidence!



Visit [Routledge Law](#) to browse our full collection of Law resources, textbooks and revision guides.

Don't miss the *Optimize* revision series, now fully updated to take into account the latest developments in the Law, and with new, improved diagrams!

Discover our full range of Revision series [here](#)



Introduction

Dear Law Student,

Welcome to the Routledge *Essential Study Skills for Law Students* FreeBook, packed with helpful advice and information to help you start your Law degree with confidence.

This FreeBook contains selected chapters from five key titles that are designed to help students achieve their full potential in their Law degrees. They provide comprehensive introductions to the study of Law, or teach legal and study skills that will prove vital throughout the course of your degree.

First is a chapter from John McGarry's *Acing the LLB*. The book draws upon McGarry's own experiences as a lecturer and marker of student work as well as those of colleagues at a range of institutions to offer easy-to-follow practical advice that you can use to improve your performance and achieve top marks in your assessments.

The second chapter is taken from *The Insider's Guide to Legal Skills* by Emily Allbon and Sanmeet Kaur Dua. If you're confused by cases, stuck on statutes, or just unsure where to start with writing, research or revision, this book will show you what you need to succeed. You will learn how to apply skills in their real-world context and to get to grips with legal method and thinking.

Up third, is an excerpt from *Law: The Basics* by Gary Slapper and David Kelly. This chapter demystifies the different types of law that you will encounter. The book introduces both the main components of the legal system - including judges, juries and law-makers - and key areas of law. Throughout, a wide range of contemporary cases are examined to relate key legal concepts to familiar examples and real world situations.

The fourth chapter is excerpted from Sharon Hanson's *Learning Legal Skills and Reasoning*. Packed full of practical examples and diagrams across the range of legal skills from language and research skills to mooting and negotiation, this textbook is invaluable for those seeking to acquire a range of discreet legal skills in order to use them together to produce competent assessed work.

Finally, our fifth chapter is taken from Gary Slapper's *How the Law Works* and makes sense of much of the legal language you will inevitably come across throughout your studies. This book is a refreshingly clear and reliable guide to today's legal system and explores all the curious features of the law in day to day life and in current affairs.

Don't forget that Routledge also offers a range of revision guides at affordable prices to guide you through revising for assessments in the core areas of the LLB.

[Find out more here.](#)

Happy Reading!

Best wishes,

The Routledge Law Team



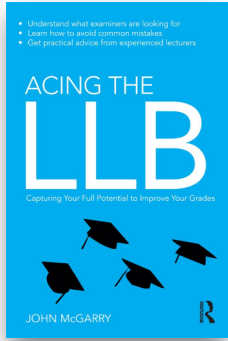
Please note that any references to other chapters within the texts have been removed.



CHAPTER

1

Understanding and making the most of your degree



The following is excerpted from *Acing the LLB* by John McGarry. © 2016 Taylor & Francis Group. All rights reserved.



This chapter:

- explains what a qualifying law degree is;
- describes the difference between foundational, optional and core subjects;
- advises students about choosing optional subjects;
- explains the role of different staff involved in the delivery of a law degree, such as: programme leaders, module leaders and external examiners;
- describes the different degree classifications and the marks that are usually required for each;
- advises readers about how they may best work with lecturers to get the most from them;
- discusses the value of joining student societies and engaging in other extracurricular activities.

1 INTRODUCTION


For most students, beginning their law degree will be their first direct experience of higher education. Much of what they encounter will be new or, at the very least, different to the ways in which they have previously been taught. Moreover, even for those who have studied at higher-education level before, or who have previously studied some law, undertaking a law degree will be a significant and new experience.

This chapter introduces you to degrees in general, and law degrees in particular. It discusses the roles of the different staff who are involved in your degree and how you can best work with them. It also explains the way degrees are classified. The chapter concludes by considering the benefits of becoming involved in different extracurricular activities, such as joining the student law society, attending lectures by visiting speakers and entering mooting competitions.

Throughout this chapter, there will be emphasis on the importance of treating the staff of your institution – whether academic, administrative, catering, housekeeping, maintenance or security staff – and your fellow students with courtesy and respect. This is, of course, the right and decent way to behave in itself. It is also the smart way to behave – you will be doing your degree over a number of years and, at times, you might need the help and advice of those around you. Such help is more likely to be forthcoming if you have behaved considerately towards others.

2 A QUALIFYING LAW DEGREE

I have written this book with the assumption that its primary readership will



comprise those studying, or planning to study, for a qualifying law degree. The book will, though, be useful for anyone studying law.

A qualifying law degree is one that has been approved by the Solicitors Regulation Authority and the Bar Council as satisfying the academic stage of training for those wanting to become solicitors or barristers. That is, it is sanctioned as the first step you can take to become a practising solicitor or barrister.

Those who complete the qualifying law degree are usually entitled to place the letters LLB after their name. As a point of interest, LLB is an abbreviation of Legum Baccalaureus, which means Bachelor of Laws – just as those taking a science degree would become a Bachelor of Science (BSc), and those taking an arts degree would become a Bachelor of Arts (BA).

2.1 Foundational, core and optional subjects

In order to be classified as a qualifying law degree, students must study the seven foundational law subjects. They may also be required to study some core subjects and will have some optional subjects available to them.

Foundational subjects

There are seven foundational subjects that you must study for the qualifying law degree:

- contract law
- tort law
- criminal law
- equity and trusts
- European Union law
- property law
- constitutional and administrative law.

In some institutions, these foundational subjects may be given other names. For instance, property law is sometimes referred to as land law, and constitutional and administrative law may be known as public law. Further, the precise content of these subjects may vary from institution to institution – usually because they will reflect the research and interests of the lecturers teaching them. So, in one institution, you may study the role of the UK monarchy as part of constitutional and administrative law, whereas it may not be examined at all in another.

Moreover, rather than be studied as separate, discrete subjects, two or more of the foundational subjects may be combined into one module. So, rather than contract and tort law being studied separately, they may be combined in one module, entitled, for instance, the law of obligations.

Core subjects

In addition to the foundational subjects, there may be some subjects that your institution requires you to study and pass in order to obtain the degree. These are known as core subjects. So, for example, most law degrees will require you to study a module that examines the legal system or one that provides you with certain lawyers' skills (such as legal research and the like). It is also increasingly common for students of all subjects to have to take modules designed to improve their employability and personal development.

Optional subjects

After the foundational and core subjects, the remainder of your degree will be made up by your selection from a number of optional modules that your institution makes available. The following are indicative of the types of option that are commonly available to study:

Law of evidence	Sports law	Tax law
Jurisprudence	Public international law	Family law
Child law	Dissertation	Media law
Employment law	Human rights law	Medical law
Company law	Business law	Environmental law

The options that are available in your institution will depend on a number of factors, including the research and teaching interests of the staff and the law school's view of what options should be made available to students.

As well as law options, it may well be the case that you can study some non-law subjects. It is common, for instance, for students to be given the opportunity to take a business or a foreign language module.

2.1.1 Choosing options

There may be some restrictions on which options you can take – it may be that you are permitted to take some options only in a particular year of your degree, or that you can only take a particular option if you have previously passed another. It may be that, because of timetabling issues, some options cannot be taken together (for example, you may not be able to take both sports law and tax law).

That aside, the following factors may inform your choice of module; each of them, I believe, is a rational consideration:

- *Assessment:* Students may choose options based on the method by which the different modules are assessed. So, a student with a dislike of examinations may try to choose options that are not assessed in this way.
- *Enjoyment and interest:* Students are more likely to do well in subjects in



- which they have a genuine interest and that they believe they will enjoy.
- *Further study:* Students who plan to go on to further study, say to undertake a masters degree or doctorate, may choose their options with that in mind. So, they may choose subjects that they intend to study in depth as a postgraduate student. Students who want to undertake a research degree may decide that it will be useful to gain experience researching and writing a substantial project and may, therefore, choose to undertake a dissertation.
 - *Future career:* Students may choose options on the basis of their future career aspirations. For example, those who wish to specialise in corporate law may choose options that reflect that. I should note that, in one sense, it is not necessary to study the area of law in which you wish to practise; you will be able to develop the requisite expertise in the later parts of your training or when you enter into the profession. However, taking a module in the area of law in which you wish to practise may demonstrate to a future employer your commitment to that specialism.
 - *The lecturer teaching the subject:* Students often choose to take, or not to take, a module because of their feelings about the lecturer they believe is going to teach it. This is understandable. It is the way of the world that, for individual students, some lecturers are simply more engaging teachers, more likable or more able to convey their subject than others. Moreover, if you like the way a class is taught, you are more likely to enjoy and be interested in the subject and, consequently, do well. It is worth remembering, though, that there is no guarantee that the person who has taught a subject in the past will continue to do so: for a variety of reasons, staff leave or change their role.
 - *Choosing subjects because they are similar or complementary:* It may be that you choose subjects that are alike, or that complement each other. This might be because of your career or postgraduate plans or simply because you are interested in the general area in question. So, for example, you may choose to study a number of related international law options because this reflects your interest or career ambitions.
 - *The timetable:* It may be that you are restricted in your choice of module because of the time or day on which it is taught. It may be, for example, that you would love to take jurisprudence, but that the lecture takes place at a time when you have an alternative commitment that you cannot escape.

When deciding on which options you should study, you might find it useful to talk to students, perhaps in other years, who have taken the modules you are

interested in. You might also find it useful to talk to the lecturer who usually delivers the module.

LECTURERS' THOUGHTS	
Anna	'The received wisdom is that students shouldn't consider whether they like a tutor or not when they choose their options. I disagree with that. At the end of the day, we are all just people, and it's only natural to take to some people more than others. If there is a tutor that you simply can't take to, for whatever reason, then you're unlikely to do well in their subject.'

2.2 Combined degrees

Institutions will often offer combined qualifying law degrees, where you study law in combination with another subject. There are numerous possible subjects with which the study of law may be combined; some common examples are:

- law with business;
- law with criminology;
- law with French (or another modern language);
- law with politics.

Such combined degrees will be attractive to those who want to obtain a qualifying law degree and also study another subject in addition to law.


Undertaking such degrees will, though, reduce the number of optional subjects that you may take. The reason for this is that you have to study a sufficient amount of law on the degree for it to be a qualifying law degree and a sufficient amount of the secondary subject in order for it to be a law with that second subject degree; this means that there is less space in your degree for optional choices.

3 DIFFERENT STAFF

There are various people involved in the delivery of your degree and they have different and, often, multiple roles. In this section, I want to introduce you to some of the more common roles that you will encounter or hear about.

Lecturer, senior lecturer, principal lecturer, reader and professor

The differences among these types of lecturer will vary across institutions and, in fact, some institutions may not use these titles at all. In some countries, it is the case that all lecturers at higher-education level are given the title 'professor' (though there will be levels of seniority between professors). In the UK, this is not common: in most UK institutions, a professor has a particular role, and other titles are used for those who are lecturers but not professors.



The difference between the categories of lecturer, senior lecturer and principal lecturer is one of seniority and, usually, experience – a senior lecturer will be more senior, have more responsibility and (usually) be more experienced than a lecturer.

Readers and professors will usually be lecturers who have significant research experience and are expected to undertake a research role and provide research leadership within their institution. In some institutions, readers will be known as associate professors.

Programme leader

In different institutions, programme leaders may alternatively be known as programme convenors or co-ordinators. They are usually one of the lecturers teaching the degree.

Although the function of programme leaders will differ from institution to institution, their central role is an oversight one: to co-ordinate the delivery of the degree and to ensure that it runs as well as possible. To this end, they will be responsible for making certain:

- that the degree programme is academically coherent;
- that the programme is academically rigorous, and that the manner in which students are assessed is appropriate;
- that the degree is delivered in such a way that it enables all students to attain their full potential; and
- that any concerns raised by the external examiner are adequately addressed. (The role of external examiners is considered below.)

Module leaders

Module leaders may also be known as module convenors. They are responsible for the delivery of a particular module and will lead the other lecturers who may teach on it. The role of module leaders will usually include:

- organising the module to make sure that it is effectively taught;
- making certain that students know what is expected of them in terms of attendance and assessment;
- deciding the content of the module (what topics will be taught), how it will be assessed, and what the recommended text for that module is (i.e. what textbook will be recommended to students for purchase); he or she may make these choices in consultation with other staff, but, ultimately, it will be the module leader who is responsible; and
- ensuring that student assessments are marked consistently and at the correct standard, and that students have adequate opportunity to receive



feedback on their assessment performance.

First and second markers

For all assessments, there will be a first and a second marker. The first marker will mark the individual assessments of students; on modules that are delivered by more than one tutor, the first marking will be shared among those who teach the module. The role of the second marker is to ensure that the first markers are marking at the correct standard. This will usually involve the second marker looking at a sample of the assessments (exam papers or coursework) from each grade bracket (firsts, 2:1s, fails, etc.); on some modules, however, the second marker may look at all the assessments (particularly where a small number of students are taking a particular module).

External examiners

External examiners are established, experienced academics from another institution – i.e. they are external to the institution for which they are an external examiner.

The role of external examiners is one of quality assurance: to confirm that students on particular modules – or, sometimes, across the whole degree – are being assessed appropriately, and that the marks awarded by the lecturers are correct – that they are not too high or too low.

4 DEGREE CLASSIFICATIONS AND GRADE BOUNDARIES

Most readers will be aware of the different degree classifications that UK universities award. They are:


- first-class degrees (first);
- upper second-class degrees (2:1);
- lower second-class degrees (2:2);
- third-class degrees (third);
- ordinary degrees.

For first-class, 2:1, 2:2 and third-class law degrees, the recipients will have an honours degree, which allows them to place the abbreviation 'Hons' in brackets following LLB after their name. For example:

Larry Lawyer LLB (Hons)

The ordinary degree is a non-honours degree. It is typically awarded where a student has failed to pass or complete some aspects of the degree.

To explain a little further: an honours degree is awarded where a student has completed modules amounting to 360 credits of study, and an ordinary degree is



usually awarded where a student has completed modules amounting to at least 300 credits. Each of your modules will be worth a certain number of credits, and this is calculated on the basis that each credit is assumed to amount to 10 hours' worth of study; e.g. a 20-credit module is assumed to require 200 hours' worth of study.

I should note that slightly different rules apply in Scotland, where it is commonly the case that an ordinary degree is achieved after three years as an undergraduate, and an honours degree after four.

The degree classification (whether one receives a first, 2:1, etc.) is usually based on a calculation of the marks obtained in the second and third year of a full-time degree (or the equivalent of a part-time degree). In essence, the calculation will be an average of all the second- and third-year marks. Actually, it is a little more complicated than that sounds, because the calculation has to take into account some other variables, such as the credit weighting of the modules taken. Also, the regulations of some institutions require that the lowest mark received in the second and third year be discounted when the classification is calculated. Moreover, in some institutions, greater weight is given to third-year marks than second-year marks – this is colloquially known as exit velocity.

Although the actual calculation of your classification may be complicated, in most cases one can assume that, if the majority of a student's marks are, say, in the 2:1 bracket, then they will be awarded a 2:1 degree.

Grade boundaries


Most UK universities set the boundaries between the different grade brackets as follows:

- first class (first): 70 per cent or higher;
- upper-second class (2:1): 60–69 per cent;
- lower-second class (2:2): 50–59 per cent;
- third class (third): 40–49 per cent;
- fail: 39 per cent or below.

5 UNDERSTANDING THE ROLE OF, AND GETTING THE MOST FROM, YOUR LECTURERS

Your lecturers will be very busy people. Their role is multifaceted, and only a portion of it involves dealing directly with undergraduate students. As well as teaching you, the role of your lecturers is likely to include the following:

- *Teaching other undergraduate and postgraduate students:* Your lecturers will teach a variety of students in the law school and, perhaps, in other

- 
- departments in your institution (e.g. they may teach media law to journalism students or business law to business students).
- *Supervising the dissertations of undergraduate and postgraduate students:* It is likely that your lecturers will be supervising the dissertation work of undergraduate students and, often, postgraduate students taking a masters degree or a doctorate.
 - *Marking the work of students:* Marking students' work is one of the most important functions lecturers undertake, and it is very time consuming.
 - *Engaging in research:* Many of your lecturers will also be expected to engage in research as part of their role.
 - *Attending conferences:* Lecturers will often be away from the university attending research or teaching conferences, both in their own country and abroad.
 - *Consultation:* Your lecturers may be using their expertise and knowledge to advise external bodies (i.e. bodies outside your institution). It is not uncommon, for instance, for lecturers to be engaged by national or international governmental bodies.
 - *Administrative duties:* Your lecturers will have a number of administrative duties, both within the law school and across your institution. These might be acting as programme or module leaders – with all the administrative work entailed in those roles (see Section 1.3 above for a brief account of these roles) – and might also include sitting on, or even chairing, various committees involved in ensuring the smooth running of your law school and the institution.
 - *Acting as external examiner at another institution:* I gave a brief description of the function of external examiners in Section 1.3, above. External examiners are an essential part of higher education – ensuring that standards across different institutions are broadly equivalent – and many of your lecturers will be external examiners at other institutions.

So, you will see that your lecturers are unlikely to be dealing only with you and your classmates; they will be involved in many other things. Moreover, being a lecturer is a job, and your lecturers will have a life, family and interests outside work. That is, although your lecturers will be dedicated and hard-working, they need – and are entitled – to have time for themselves and their families, which includes free time at weekends and evenings and taking annual leave.

Recognising these facts will help you to understand the best way to contact, arrange to meet and get help from your lecturers.

5.1 Contacting, arranging to meet and getting help from your lecturers



As it happens, as I write this, I have just returned from two weeks' annual leave during which I holidayed with my family. Prior to that, I had some work commitments away from my institution. This means that I had not physically been in my office for almost three weeks. On my return to the office, there was a message on my phone that had been left by a student two weeks earlier. Fortunately, the matter was not important, but this illustrates the issue: lecturers, because of the nature of their role, may be absent from their office for long periods of time.

Given this, generally, the best way to contact your lecturers is by email. This is because, among other things, your lecturers can access and respond to emails while they are away from the office. In addition, if you contact by email, your lecturers are able to carefully consider what you are asking and their response.

Of course, that does not preclude you from telephoning or simply calling in to see them. In fact, your lecturers will usually provide some specific times when they will be in their office to see students who simply want to drop in. But, mostly, the best way to contact your lecturers is by email.

In a wholly unscientific survey, I asked four of my colleagues how they prefer to be contacted by students and why. As you will see, each of them mentioned email as

LECTURERS' THOUGHTS	
How do you prefer to be contacted by students, and why?	
Anna	'[I prefer] email because, as a lecturer, you are an incredibly busy person, sometimes dealing with a lot of students, and it's easy to forget what you've been asked. With email, there's a written record of what the student actually wants. Also, lecturers set aside time to deal with emails, so you're more likely to get a good response.'
Graham	'Email – [it is] easier to keep a record, and the student has record of the response.'
Heather	'Face to face after lectures when it relates to something in the lecture, but if it's to do with submission dates, explaining absence or to arrange a meeting, then email.'
David	'I do not really have a preferred method. What I do say is, if the query relates to, say, their work, research or thoughts or concerns about coursework or an exam, I always suggest that they contact me by email, [not least] because it encourages them to formulate their concerns and enables me to respond more directly than I could orally; [it also] means that they have a record of my response that they can reread and reflect upon and that might be lost in an oral conversation.'

a preference or as the most useful for the students.

Arranging to meet your lecturers

If you are attempting to arrange a meeting with your lecturers, try to be as flexible as you can. Your tutors will appreciate that, like them, you may also have other commitments outside your degree. However, it is little use sending your lecturer an email saying, in effect: 'I would like to meet you and the only time I have available is Friday at 2 p.m.'. It should be obvious that your lecturer may not be able to meet at the time you specify. Moreover, any lack of flexibility from you may be reciprocated; for instance, they might reply: 'Sorry, I can only meet on Monday at 9 a.m.'.

When trying to arrange a meeting, offer your tutor a number of options. So, for instance, Figure 1 shows what you might write.

To: Leonard Lecturer
From: Samantha Student
Subject: Meeting

Dear Leonard

Would it be possible to arrange to meet you this week or next to get some feedback on my Property law exam? I work on Wednesday afternoons and am in classes on Monday mornings, Tuesdays between 9 and 11am, and Friday afternoons; other than that, I am free to meet at a time that suits you.

Thanks and best wishes

Samantha

Figure 1 Suggested email requesting a meeting

Interacting with your lecturers

Broadly speaking, when dealing with your lecturers (and, indeed, with other members of staff and your fellow students), you should adopt a friendly and courteous approach. You should be respectful, treating them as you would want to be treated, without being obsequious (toadying and overly deferential).

It will usually be the case that your lecturers prefer you to call them by their first name. If, however, they make it clear that they would like something more formal, then you should comply.

Taking a relatively informal but polite approach is appropriate, primarily for three reasons:

1. It is appropriate to behave toward other people with courtesy and respect – it is simply the right thing to do.

2. It is the professional way to behave, and acting in this way as a student will mean that you are accustomed to acting in the correct manner when you enter your chosen career.
3. Throughout your degree, and after, you may need the help of your lecturers. For example, you may need them to take the time to explain something you are finding difficult, to provide support because some unexpected issue has arisen that disrupts your studies or to provide a potential employer with a reference for you. You are more likely to receive this help if you have acted courteously.

When emailing lecturers, there is no need to be deferential or overly formal. Similarly, you should not be too informal. Also:

- do not use text speak in emails – your message should be in clear English,

WORK SMARTER

Treating your lecturers, other staff and fellow students with courtesy and respect is not just the right thing to do, it is also the smart thing to do – you may need the help of your tutors or the others around you at some point and it is more likely to be forthcoming if you treat them decently.

so that the recipient can make sense of it;

- do not end your email with kisses;
- if it is not clear from your email address who you are, make it clear in your email, for instance, by signing your full name; your first name alone may not be sufficient – remember, your lecturers may be dealing with a number of students who share your first name; and
- if your private email address may be considered embarrassing or offensive, use a different one or your institutional email account.

6 EXTRACURRICULAR ACTIVITIES

For many students, higher education is not simply about getting a qualification; it is also about developing as a person and broadening interests and horizons.

Your law school, and perhaps your institution, will most likely have different clubs or societies that you can join and activities in which you can engage. So, for example, it is likely that you will be able to:

- join the student law society of your institution;
- engage in mooting competitions;
- attend lectures given by visiting speakers, including practising lawyers,



- judges and academics from other institutions;
- attend events with the law school's alumni (past students); and
- have the opportunity to go on a visit organised by your law school, for instance, to visit some of the institutions associated with the European Union and the European Convention on Human Rights.

Of course, you may find the opportunity to join the different societies or engage in the various extracurricular activities enjoyable in itself. In addition, participating in different institutional events or organisations will enable you to develop a network of contacts among students in your own year, in different years and perhaps on different degrees. This, in itself, may be valuable, and it may also provide you with a greater sense of belonging. Further, it is always useful to have friends and contacts beyond those with whom you normally study, because they may be able to give you help or advice that would be otherwise unavailable to you.

It may also be the case that, with some events – for instance, visiting speaker or alumni events – there will be a possibility for you to make valuable contacts with, say, practitioners, which may, in turn, lead to work placement opportunities.

Engaging with various societies and in extracurricular activities may also make you more attractive to a future potential employer. Being an active member of your student law society, for example, is something you can put on your CV and will present you as a rounded and experienced individual with good social and interpersonal skills – these are characteristics that many employers positively value and want to see.



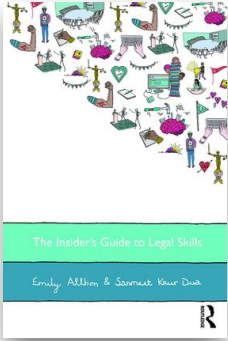
CHAPTER

2

Academic Survival Skills: Standing on your own two feet

Chapter 2: Academic Survival Skills

Standing on your own two feet



The following is excerpted from *The Insider's Guide to Legal Skills* by Emily Allbon and Sanmeet Kaur Dua. © 2016 Taylor & Francis Group. All rights reserved.



1 INTRODUCTION

Studying law for the first time is challenging, whether you are coming at it fresh from A-levels or arriving as a graduate of another discipline.

There are skills that are very specific to law, and there are many skills that are applicable to everyone studying any discipline at university. Often students can discount these, thinking them obvious and wanting to rush onto the 'real' law. This is madness! Knowing how to cope with your workload, manage your time, get the most out of your face-to-face time with lecturers and get better at note-taking are not law-specific, but nevertheless essential. So we'll try and make this as painless as possible.

2 LECTURES AND TUTORIALS

For those of you new to university it is a massive shock to the system – going from small classes where you know everyone (might have even been in school with some since pre-school!), to massive lecture theatres seating hundreds of you.

Generally speaking you may be taught both in large groups (via lectures) and small groups (via tutorials, also called seminars). Traditionally the lecture is where you listen to your lecturer telling you all the important stuff about a particular subject – introducing you to key cases and legal principles, as well as raising any areas of uncertainty and perhaps voices of dissent on particular issues. That said, your role won't be a passive one. You will be working on processing, understanding and analysing the information you're listening to. Generally your role as a student is to sit quietly, listen and take notes. For lectures with fewer students (perhaps for elective final year subjects), the format might be a little looser, with more opportunities for student and lecturer interaction.

It is in the smaller group sessions where you get a chance to put what you've learnt in the lectures into practice. Here, you and about 15 others (numbers depending on your university) will get involved in debate and discussion – answering questions, giving presentations and trying out theories.

2.1 Teaching mash-ups

Like most walks of life, times are changing, and some lecturers are trying new approaches to make the lectures more engaging. Sitting in a lecture trying to pay attention for an hour or two is challenging for most people. It's not like going to the cinema where you are quite happy to sit and munch popcorn quietly for that

period of time. Perhaps with the addition of some visual effects, supporting actors, good jokes, fight scenes, a romantic lead even, we, as lecturers, might be able to keep you glued spellbound to your seats. Alas, glamming up restrictive covenants or proprietary estoppel is a tough call.

Flipped learning is becoming more commonplace – here the large lectures become much more interactive. Students are required to watch or listen to information before the lecture – this would be the normal lecture part. Then the time in the lecture is spent in activity – with students working on problems in small groups for example. There might also be quizzes to test your knowledge.

2.2 What do your lecturers want from you?

Whatever the format our teaching takes, the key thing for us is engagement. We want you to play a part – there is nothing more soul-destroying than sitting in a tutorial and NOBODY SPEAKING.

We don't want to lecture again, and we definitely don't want to answer our own questions – gets kind of weird.

We don't mind if you get things wrong – we like helping you learn, but please just contribute.

The tutorial is the only time you get to test out that you know what you're talking about. You have an academic right there – so make the most of it. This may be your lecturer, another academic member of staff or a Graduate Teaching Assistant (GTA). Remember that what you cover in this session will be really helpful when it comes to preparing for exams or writing a piece of coursework.

The exemplary student will*:

- read the necessary chapter(s) within the recommended text;
- follow up on any recommended journal articles in the course handout;
- prepare for tutorial thoroughly – answering any questions set, noting anything not sure of to ask in class; • make notes!;
- add to notes from lecture and tutorial by doing some extra reading – choose a different book, perhaps a monograph or look for some comment online via a practitioner/academic blog or the Times/ Guardian law section.

**This won't always be possible – we know sometimes you have coursework deadlines and then that's all you can think about. Sometimes (shock horror!) you have a life outside university and you may have to focus on your family or friends. However try not to get too behind; it is difficult to get back on track. That first year of your law course will absolutely fly by, and then you'll be sat at home trying to work out how to revise in a panic.*

2.3 The students who drive everyone mad

- The student who says nothing in tutorials – is it just shyness or haven't they done the preparation?
- The student who talks/giggles through lectures.
- The student who monopolises discussions.
- The student who sits in front of their laptop thinking that we don't know that they are more focused on keeping tabs on their social media world.

3 COMMUNICATING WITH ACADEMICS

So you're at university – you now have lecturers rather than teachers. You will probably have a different lecturer for each subject, and often a different person will take you for tutorial than for the lecture.

You will also have a personal tutor.

We've already mentioned that different modules may be taught in different ways – you may see your lecturer on a weekly or fortnightly basis. What happens if you're finding something difficult to understand or you've a question about an assessment?

Ashwin: I just can't get my head around X. I emailed my lecturer but they haven't bothered to reply yet.

Brodie: Yeah that is really difficult; I'm a bit unsure on that too.

Ashwin: When did you email them?

Brodie: .Yesterday about 11 pm. Probably a bit soon to expect a reply.

Yes!

It's human nature to think that just because it takes a few seconds to email someone, the reply should be just as speedy. However a few points to note:

1. Your lecturer in a particular subject might have 300+ students in that lecture alone, add to that any other subjects they are responsible for teaching.
2. Your lecturer will also be a personal tutor and may have around 75 students who might need their help.
3. Your lecturer has other commitments outside teaching, these may include:
 - a. Marking.
 - b. Preparation for teaching (updating materials, designing new modules, keeping up with the latest legal developments).
 - c. Research – many of those who teach you will also be researching in



preparation for writing new books and journal articles. They may also be putting together applications for getting external funding for their research.

- d. University business – many of your lecturers will also have administrative responsibilities within the law school. This might be in relation to management of mootings, pro bono, assessments or particular programmes. This involves a lot of meetings, as well as the inevitable work resultant from this!
- e. Family life and dare we say it, a love life?

Generally you should only expect a reply within business hours. If you get one outside this – bonus!

All of this means that at peak times in term it wouldn't be unusual for your email to be sat among another 70 received that day in your lecturer's inbox. They will of course reply, but there may be other ways of getting answers.

That's why those tutorials are so important! You have their undivided attention to get clarification, try out your thoughts and get guidance on tricky aspects of that module.

Many universities also lay on extra sessions for those students who are keen for extra support, often run by enthusiastic PhD students. Sign up for these where you can. Other options are to set up informal groups among your friends on the course – you will all have different levels of understanding for different subjects. It makes total sense to pool resources! You are not in competition with each other – use the time to share ideas and form a deeper understanding. This will really help with your motivation.

Your lecturers will also have 'office hours' where they make themselves available to you – sometimes it's more beneficial to book a slot and go through your issue face-to-face, rather than via a long drawn-out email exchange.

4 NOTE-TAKING

Cracking when and how you need to take notes is absolutely key to successful study. First let's consider why we need these notes.

Everything you do during the year of studying for a particular module is leading up to some kind of an assessment, often in the form of a written piece of coursework and a final exam, although there will be lots of variations on this.

Organisation is dull but so important – if you start out as you mean to go on, the scene above will not feature you! When I speak to undergraduates after their first

PICTURE THE SCENE . . .

(Start of revision period – sun is shining, but the mood is black)

Sienna is sat on her bed sobbing with head in hands, surrounded by files, a laptop, hundreds of pages of scribbled notes.

year, and ask what they'll be changing for Year Two, they always say the way in which they prepare for and recap after taught classes. Their big recognition about that revision period was that they were learning too much for the first time.

4.1 When will I be taking notes?

The situations will vary but may include some combination of the following:

- while sitting in lectures;
- while preparing for tutorials;
- while participating in tutorials;
- while reading your textbook/casebook;
- while reading case law;
- while reading journal articles or other academic materials.

Everyone's notes are different, and the hardest thing is finding the right level of detail required. You can't write everything down – the point is to pick out the most relevant information, and this takes time to refine.

4.2 Lectures

The notes you take in lectures will give you the structure for the rest of your notes. Remember your lecturer can't possibly cover everything there is to know about a subject in the hour or two allotted; you will need to research and find the extra reading yourself.

It would be sensible to use the PowerPoint slides or lecture outline provided by your lecturer as the basis for your notes. You can then just add in any additional details as you follow these along. Do spend more time listening than writing though – it is easy to get so carried away writing down everything you hear that you don't have time to reflect on what is actually important in all that content.

4.3 Handwritten or typed?

More students use their laptops or tablets to take notes in lectures but there are still some who take notes old-skool style. If you're using a pen and paper then it makes sense to leave lots of spaces under each section so you can add in any notes from additional reading in the relevant spot.

Typing them is obviously much more flexible – you can easily combine lecture, tutorial and additional reading into one document. Try not to get distracted by

other things on your laptop though – the lure of Facebook can be hard to resist.

4.4 Secret code

TOP TIP

Always make sure you back up your documents – the number of students whose laptops combust or get stolen each year is significant. Don't take the risk – stick it regularly on a USB or onto a cloud-based storage centre like Dropbox.

As you get more practice you'll start to develop your own coding system for notes – using underlining, bold or different colours to indicate key information. Alas for most of us, the merits of Microsoft Word mean you don't get the enjoyment of those special pens with four integral colours.

You could use different colours to signpost different types of information – normal black for the detail from the lecture, another colour for supporting commentary-type material (e.g. passage from the recommended textbook) and yet another for the primary law (the relevant section from a case or piece of legislation).

NOTES EXAMPLE

Juries – banned from taking into account evidence not raised in court – to ensure fair trial & that no convictions occur on the basis of gossip. Contempt of court.

Social media issues

R v Frail and Sewart Juror chatted with a defendant on Facebook re (2011) a co-defendant while trial ongoing. Also carried out research while deliberating verdict. Eight months for contempt.

AG v Dallas (2012) Lecturer researched defendant while a juror on the case, shared findings with other jurors. Given verbal & written warnings about this issue before case began. Six months for contempt.

If you're doing a breakdown of cases, you could use different colours to indicate the case name, legal principle, your own breakdown of the case and any criticism or related authorities.

Perhaps you could also make a separate file of terms you're not familiar with, so you can check later.

You might make use of different symbols to act as shorthand – alerting you to the



NOTES EXAMPLE

Objective standard of care: relevant considerations

I. Foreseeability

Was the harm foreseeable or unforeseeable? *Roe v Minster of Health* [1954] 2 QB 66

II. Magnitude of the risk

Likelihood of the harm *Bolton v Stone* [1951] AC 850 and *Miller v Jackson* [1977] QB 96

Severity of the potential damage – seriousness of the consequences
Paris v Stepney Borough Council [1951] AC 367 and *Harris v Perry* [2008] EWCA Civ 907

III. Practicality of precautions

How practical is it to take precautions to prevent the harm? *Latimer v AEC Ltd* [1953] AC 643 and *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd, the Wagon Mound (No 2)* [1967] 1 AC 617

IV. The utility of defendant’s conduct

How worthwhile is the defendant’s activity *Watt v Hertfordshire County Council* [1954] 1 WLR 835 and Compensation Act 2006, s 1

V. Common practice

Bolitho v City and Hackney HA [1997] 4 All ER 771 and *Sutcliffe v BMI Healthcare* [2007] EWCA Civ 476

significance of certain parts of your notes. You can get creative about these – as long as you know what they mean, that’s all that counts! However you might want to use an * or ! to indicate something really important. A ? is always good for when you’re not sure on something. Choose a symbol to remind you to check another source for more detail later.

Ashwin and Maisy attend their Tort Law lecture – they have different approaches to note-taking. Ashwin is a firm believer in writing everything down; he doesn’t want to miss anything. Maisy is keen on cutting down work where possible!

Here’s what their notes look like for the same section of the lecture on the *Objective Standard of Care*:

ASHWIN

The objective standard of care

- The question for the court is not what *could* we have expected *this particular defendant* to do in the circumstances?
 - The question must be asked in each situation is *what the reasonable person would have done* in the circumstance.
- Rather the question is: what could we expect a reasonable person to do?
 - The courts apply an objective standard of care - means that D's own view of the reasonableness of his conduct is irrelevant. It also suggests that courts should ignore particular characteristics of D. So if D is a little careless D cannot argue that their standard of care was reasonable since the reasonable person would not usually be careless.
- *Nettleship v Weston* [1971] 2 QB 691
 - It is no defence for a driver to say 'I was a learner-driver under instruction. I was doing my best and could not help it'. Every person driving a car must attain an objective standard measured by the standard of a skilled, experienced and careful driver. That is shown by *McCrone v Riding* [1938] 1 All ER 137, where a learner-driver 'was exercising all the skill and attention to be expected from a person with his short experience', but he knocked down a pedestrian. He was charged with driving 'without due care and attention' contrary to s.12 of the Road Traffic Act 1930; now s.3 (1) of the Road Traffic Act 1960.
 - But what is the standard of care required of the driver? Is it a lower standard than he or she owes towards a pedestrian on the pavement? But, suppose that the driver has never driven a car before, or has taken too much to drink, or has poor eyesight or hearing and, furthermore, that the passenger *knows* it and yet accepts a lift from him. Does that make any difference?
 - Seeing that the law lays down, for all drivers of motor-cars, a standard of care to which all must conform, even a learner driver, so long as he is the sole driver he must attain the same standard towards all passengers in the car, including an instructor.*

* These paragraphs are taken from the judgment itself and need to be referenced so we caution against taking down almost verbatim what the lecturer says as it is often too much detail for your notes and can be written succinctly.

MAISY

The objective standard of care

- What shd partic D have done in the situ?
- Q. What wld reasonable person have done?
 - Objective (obj) standard of care (soc)
 - Not what D thinks but what reasonable person shd have done =obj soc.
- *Nettleship v Weston* [1971] 2 QB 691
 - Learner driver caused accident
 - Soc to be applied?
 - Obj soc makes no difference that D was learner driver
 - Relevant soc = skilled, experienced and careful driver to all relevant people
 - Fair? What if first time driving?

Essentially you can choose the code you employ, just make sure you know what it is and that you are consistent.

4.5 Get visual!



Figure 1 Offer and acceptance diagram



For some, pages and pages of text do not prove as effective as something a little more creative. You can't overestimate the importance of *how* your notes appear on the page. You'll see when we get to the chapter on revision we talk about mind maps in relation to planning question answers, and this has applicability here also. Diagrams, doodles, flowcharts and tables are all vital tools for reinforcing what you've learnt (see Figure 1). It's surprising how well a concept gets embedded in your brain when you've changed it from text to something visual – for many students it is often recalled more easily in exams too.

4.6 Consolidation


Yet another dull word we're afraid!

To avoid that situation we visualised at the beginning of this section, you need to bring it all together. So all your notes on a topic e.g. *psychiatric harm* need to be brought together – so notes from the lecture, tutorial and all extra materials you've read. It makes it much easier in the revision period if this has been done – you can then spend all your time focusing on *getting it in your head*.

5 TIME MANAGEMENT

Studying at university is very different to being at school. The onus is on you to manage your time and to manage it well. Once your course gets underway, you will soon remember that there are only 24 hours in a day. There is only so much that you can cram in. You will have competing demands: preparing for tutorials, which involve reading pages and pages, meeting assessment deadlines and potentially preparing for moots. You know that you need to study hard to reap the rewards, but that said, you do not get this time at university again and making friends is also very important indeed. It is true for many of us that the friends that we make at university are friends for life. So how do you fit your studies around your all-important social life, which no doubt also involves regularly updating the world on your activities via social media websites?

You need to make sure that you use your time efficiently and effectively when studying, and learn to balance your commitment to your studies while permitting time for your personal life. It goes without saying that **you** are responsible for your own learning. If you do not put the time in, you will not see the results. Having said that, just because you are studying law does not mean that you should not have a personal life; indeed it is quite the opposite. Your lecturers will encourage you to ensure that you take a couple of evenings off a week from your studies so that you can be refreshed for the next set of classes. So how do you manage your workload?



You need to develop a technique that helps you to take responsibility for your own learning but without burning out, by ensuring that you do have time to do the things that you like as well.

Tip 1: Be honest and think about the way that you study best, as well as what time of day you are at your most productive.

What this really means:

- Think of your university life as a job and work regular working hours between 8 a.m. and 6 p.m.
- Stay back to finish work when you have a lot on. This will help you develop a good work ethic for the real world.

Tip 2: Establish weekly goals that you must meet.

What this really means:

- Set some attainable and clear goals for the week
- Do not set impossible goals because you will end up feeling defeated if you do not meet them. It is better to set small goals ('easy wins') that you realistically think you can meet. This is a great way of boosting your confidence because you know you have achieved your goals for the week

Tip 3: Create a study timetable.

What this really means:

- Create a timetable that incorporates your scheduled learning and assessment deadlines so you know exactly what time you have either side of your classes and when you have to submit work. Do not cram in things that you know you cannot feasibly do within a day. It can make you feel like you have failed
- It is true however, that you might draw up a timetable and try it for a week and realise that it needs a few tweaks, it is absolutely fine to go ahead and change it. Remember it is a personal study timetable that works for you, incorporating the way you study and the time it takes you to study. You will learn from your own experience
- Don't feel like you need to be a superstar student and finish everything in record time. Some activities will just take you longer than your friend but equally, you will probably understand some things quicker than your friend

Tip 4: Allow time for yourself and your social life.

Time Slot	Monday	Tuesday	Wednesday	Thursday**	Friday
9-10	Public Law lecture	Plan answer for Criminal law coursework	ELS lecture	Prep* Contract law tutorial	Criminal law lecture
10-11		Research for moot competition			
11-12	Research for Criminal law coursework	Contract law lecture	ELS tutorial	Attend careers talk	Prep* Public law tutorial
12-1	Lunch		Lunch	Lunch	
1-2	Criminal law tutorial	Lunch	Commerical awareness group	Gym	Lunch
2-3	Gym	Research for moot competition	Write Criminal law coursework	Read through and edit Criminal law coursework	Prep* Criminal law tutorial
3-4	Prep* ELS tutorial			Moot club	
4-5					
4-6	Continue research for Criminal law coursework	Gym			Get ready for going out

**Prep = preparation for; ** = not a uni day*

What this really means:

- Don't go out clubbing every night! Yes it is fun to be away from home and you are finally being treated as an adult. Yet being treated like an adult means that you have to learn how to balance your time. You need to be able to work hard and play hard (as the saying goes . . .)
- A good student is someone who studies hard but is able to put their studies and time at university in perspective by ensuring that they reserve time for their personal and social life. It often makes



students better learners since they are able to take a break, refresh and think again about their studies. It's the same as when something seems hard, you stop trying to figure it out, you go away, have a cup of tea, come back to tackle it again and realise that it was not that hard. You just needed to take a break from trying to solve it in one session

- Some students describe the feeling of guilt if they go out instead of studying, but then go on to say that they stay at home looking at their books, getting very little done. The only way around this is to take a break. When you go out, do not feel guilty – you have earned it. When you are at home, study hard – simples! Often taking Friday evenings off and the whole of Saturday off seems to be like a winning formula. (Yes you should study on Sundays!)

Table 2 What time-management issues do our friends need to consider?	
Sienna	Does not need to spend time on Contract law because she gets it but struggles with Public law so needs to incorporate more study time for the extra reading
Ashwin	He needs to spend more time on Tort law because there are so many cases whereas Sienna treats tort law cases like stories, which helps her remember them
Brodie	Does not need to spend time on substantive law but struggles with answering questions, so needs to incorporate practising how to answer questions in his study timetable
Maisey	Keeps missing her own deadlines and relies on staying up way past midnight and energy drinks, which often results in her missing the nine o'clock lectures

Tip 5: Do not leave things to the last minute.

What this really means:

- Finish early or on time
- How many times have you had a deadline and something unexpected came up, which meant that you had to quickly cobble something together that is not your best work, or even that you miss your deadline. Think about university life as your first job in the real world; a senior partner in a firm would not accept poor time-management skills as a reason for you not meeting a deadline. Likewise, you want your tutor to be able to say in a reference: this student is punctual and hands in work in good time, as well as being good at keeping to deadlines

- This leads nicely on to you learning to avoid procrastination . . .

6 AVOIDING PROCRASTINATION, AND TIME MANAGEMENT

Have you ever heard the word procrastination? No? Well we are all guilty of it. Think of a time when you know you have a deadline or that you have to get some work done but all you can think about is watching just one more episode of the current box set you are addicted to or playing just one more game on your games console or cleaning your room . . . again! These are examples of procrastination. You want to put off what you really need to do by doing other things, in other words you are just delaying the inevitable. Take the plunge and just do it! Yes it seems hard at first and all you can think of is cleaning your room, because a clear room means a clear mind, but yet you have not built that into your study timetable so what will happen? You will end up missing your own deadlines and possibly your submission deadlines.

6.1 What happens when something unexpected happens?

Do not stress! Realistically there will be occasions when something unexpected comes up and this throws you off your study pattern. Do not panic. It is OK. Hopefully all of your good time-management skills mean that you will not be missing any deadlines as you have allowed yourself enough time to complete your work. There may however be the odd occasion when something has come up and you are really up against it. Fear not. Perhaps you have to stay up late to complete your work and this may involve working into the wee small hours of the morning. It is not recommended that you do this often but understandably there are times when this needs to be done.

Reserve these late night study sessions only for when you really need them because otherwise you will struggle in your lectures and tutorials the next day and your notes are not going to be good. Think also about a time when you can catch up with any work that you have not managed to complete. So imagine something unexpected crops up or getting your head around the issues takes longer than expected and you don't manage to complete all of the reading on proprietary estoppel. The best approach is to use your lecture notes and the reading that you can manage to do to get by and make a note that when you next have a reading week or break (not the revision period), that you have to catch up on this topic.

6.2 Time management and revision

When it comes to crunch time and you are on study leave to revise, remember these top tips:

- Do not procrastinate.
- Revision means that you should not be learning anything new but rather revising.
- Create a new study timetable for your revision.
- Incorporate breaks and time off into your revision timetable.
- Make sure you schedule time in to practise answering old exam questions under timed conditions.

6.3 Time management and coursework

You generally have a few weeks in between being handed an essay title and it needing to be submitted. Once that sinking feeling has passed, it's wise to take a breath and remind yourself of these points:

- *Get started early:* start analysing the question and working out what area you will need to start researching. Grab a couple of books from the library and pore over them until you grasp the relevant area of law.
- *Be methodical:* go through your lecture and tutorial notes to pick out anything relevant.
- *Set aside a few hours to research on the legal databases:* for the finer details, and to read the relevant cases.
- *Don't underestimate how long the writing will take:* it'll be time-consuming to build your argument, incorporate your sources and the various redrafts.
- *Double-check when the deadline is and be ready to submit well in advance of this:* if you're uploading onto your university Virtual learning environment (VLE) there's always a (small) risk that some technical hitch will result in you screaming at your laptop as the deadline passes and the submission box closes.

7 WORKING WITH OTHERS

As we mentioned in the earlier section on communicating with academics, it's always beneficial to work with others on your course. This might be in an informal study group, but sometimes you might need to work together formally on an assessment and be graded on your output.

Of course, in the real world you will be likely to find yourself working with others, so getting practice in while at university is important. Many law firm assessment days will incorporate some activity where they can observe how you work with others.

Whether in an informal study group or a group working together towards an assessment, it is vital you set out the steps you'll be taking, a division of workload



and some kind of schedule. Without this, you'll just end up chatting about what happened in the latest episode of *Game of Thrones* last night and your precious time will ebb away.

There are various teamwork models out there with clearly defined roles to recognise the fact that individual personality might drive which role you are better at taking on within this scenario. For example, Dr Meredith Belbin identified nine different roles in a team situation – splitting them into action-orientated roles, people-orientated roles and thought-orientated roles. Take a look at his website to see which of those you might best fit in with: www.belbin.com.

Students often feel aggrieved about the prospect of group assessments, particularly if you only get a group mark. The competitive nature of students comes to the fore here as individuals feel like their hard work and intellect is benefitting others, rather than just themselves. Obviously this works both ways and often each member of the group will bring different talents to the task.

Ashwin: I don't see why we have to do this group assessment. I'd much rather prepare for it on my own.

Maisy: I know, I bet Sienna won't pull her weight; she's always whispering in lectures and then not contributing in tutorials. She's even late for this first meeting about it. We just get one grade right? Not an individual one each?

Ashwin: Yes I think so – it's so unfair. I hate the idea that we do all the work and she benefits.

Brodie: She might be alright – give her a chance. We just need to be organised and make sure everyone has their role and that we set a realistic timetable for work to be done. We'll make sure we all agree on who is doing what, how that task is to be achieved and when it must be completed.


Ashwin: Hmm I guess we can give that a go. Not convinced she'll stick to it.

Maisy: We could perhaps come up with a written team agreement that we all sign? It could state what we commit to individually in terms of meeting attendance, keeping in touch with each other and meeting deadlines.

Brodie: I like that idea. Like a contract between us?

Ashwin: Here she comes . . . let's see what happens . . .

However lots can go wrong, particularly if someone doesn't pull their weight, or if



personalities clash. With several dominant personalities there is the potential for a power struggle. It's important in these cases to keep pulling the group back to the task at hand. Try to resolve this within the group rather than running straight to your lecturer.

8 STAYING IN LOVE WITH LAW

As a student your feelings towards your subject will without a doubt twist and turn – some days you'll be really fired up, others a bit fed up with the deadlines coming out of your ears. There will be modules you are fascinated by, and others that bore you. There will be those you find straightforward and others that seem impenetrable. In the difficult times it is hard to retain enthusiasm, but keeping yourself up to date on what's going on in the world is one way of keeping the flame burning.

Another way to keep motivated is to attend events going on in your area – if you're at a London University you are spoilt for choice as many of the events at universities like City University London, LSE and UCL will be open to all. The Institute of Advanced Legal Studies in Russell Square also boasts an amazing number of events throughout the academic year.

You could even start a blog about your experiences – or write occasionally for an existing legal blog (like lawbore.net!). You could write articles about potential law reforms, a case comment on a recent decision, review an event you've been to, interview one of your friends on their recent internship even? There are lots of law essay competitions during the year giving you a chance to flex your writing skills and be in with the chance of some prize money. You can find a long list of these on Learnmore: http://learnmore.lawbore.net/index.php/Law_Essay_Competitions.

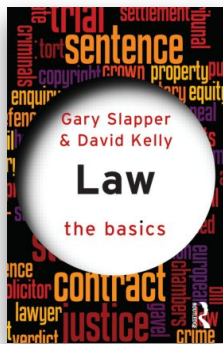
Getting involved with a project at your law school or doing some pro bono work will also help keep you enthused about law; you'll feel like you're doing something rewarding towards your future.



CHAPTER

3

Types of Law



The following is excerpted from *Law: The Basics* by Gary Slapper and David Kelly. © 2011 Taylor & Francis Group. All rights reserved.

Learn more:




There are many ways to divide law into different types. Putting law into categories is like putting people into categories – it can be done in different ways and for different purposes. If you take 100 random people in a crowd you could sort them into groups according to height, or weight, or age, or occupation, or skin colour, or blood type, or place of birth, or any number of other criteria. A 34-year-old, 5 ft 7 in., dark-haired female musician, weighing 8 stone, and born in Hong Kong with blood type O, would be placed among different subsets of people from the 100 depending on how people were being categorised.

In the same way, law can be put into different groups according to different criteria. The quantity of law that applies in the UK today is very considerable. It is contained in thousands of voluminous law reports of decided cases judged over many centuries, statutes and regulations passed by Parliament, and a gigantic quantity of European law and European human rights law.

Taking this law as a whole, it can be divided according to whether it has originated from judicial pronouncement (judge-made law) or legislation (from Parliament). Equally, it could be divided according to whether it is *private* law (law, like contract law, which applies to people in the private relations they might have as citizens or organisations) or *public* law (like criminal law which applies to everyone at large).

Very commonly, a single transaction or relationship or event will entail the relevance of a great many laws and several types of law. For example, consider the awful case of a lorry travelling at speed along a motorway, crashing into a car that had stopped on the hard shoulder, killing one of a number of people standing near the car, and then smashing through the barrier and plunging down an embankment on to a railway line in front of an oncoming train. All sorts of law could be applied to such a dreadful situation including the following:

- A criminal charge of dangerous driving against the lorry driver;
- A criminal charge of causing death through dangerous driving against the lorry driver;
- If defective brake pads and discs had been fitted to this lorry, along with others in the fleet owned by the haulage company, and it evidently knew of this danger, then there might be a charge of 'corporate manslaughter' against the haulage firm;
- A civil claim in the tort of negligence by the dependants of the person who was killed, against the lorry driver and his or her employer;
- A civil action in the tort of negligence for nervous shock by people who

- 
- witnessed the horror of the carnage at its scene;
 - A civil action for economic loss in the tort of negligence against the lorry driver and the haulage firm brought by the train company, or companies, whose business was disrupted for days following the terrible accident and the blocked train lines;
 - The accident might well have prevented a number of scheduled events with a commercial significance from taking place. For example, if a pop group or orchestra was unable to arrive at a large auditorium to play on a scheduled night (as part of a busy world tour that would not be repeated) then various civil actions for breach of contract or insurance-related claims might follow, in which case the law relating to the frustration of contracts and so called 'Acts of God' might be applicable.

These last four claims would, if successful, be likely to be paid by the defendant's insurance companies.

What follows are a number of ways in which the law might be divided.

CRIMINAL LAW AND CIVIL LAW


Criminal cases are generally brought by the state for offences ranging from graffiti to murder. If the defendant is found guilty he or she is punished. Civil cases are brought by citizens or organisations and the aim is usually to get compensation or a court order to make someone do something or stop doing something.

CRIMINAL LAW

Ultimately, all justice systems hinge on their criminal codes because the criminal law is the portion of the law underpinning the legal system and enforcing its edicts. Behind every *civil law* court order is the force of a *criminal* sanction for disobedience of the order. Testimony in all civil, family, and private law matters is upheld ultimately by criminal laws against contempt of court, perjury, and perverting the course of public justice. There are many types of law but failing to obey a court which tries to enforce any of these types of law is ultimately a crime.

What is the distinguishing characteristic of a crime? What puts one type of wrong in the category of a crime, and keeps another as a civil wrong? The truth is that there is no scientific way of differentiating wrongs on that basis. It is impossible to be definitive about the nature of a crime because the essence of criminality changes with historical context. As one legal writer, Glanville Williams, observed (1983):

a crime (or offence) is a legal wrong that can be followed by criminal proceedings which may result in punishment.



In ancient times, lending money and charging interest was the crime of usury. Now if done successfully it might earn a banker a knighthood. Cocaine used to be a legal narcotic used both for recreational purposes and toothache; now it is illegal.

If you ask 'what is a crime?' and are given the answer 'anything that can be punished as a crime', you might reply that such an answer keeps you going around in circles because you could then say 'yes, but what sort of things are likely to be labelled by the state as crimes and then punished?' In an attempt to escape from the circularity of these definitions of crime ('a crime is anything that is punished as a crime'), some writers have sought to explain its nature in terms of the seriousness of the conduct it prohibits.

Thus Glanville Williams eventually concedes (1983) that

a crime is an act that is condemned sufficiently strongly to have induced the authorities (legislature or judges) to declare it to be punishable before the ordinary courts.

This is a little more helpful but it still leaves unanswered the question – 'condemned sufficiently strongly' by whom? The principle connects with the thinking of the nineteenth-century French writer, Emile Durkheim. He remarked on the way that collective 'social consciousness' can be enhanced by the condemnation and punishment of deviance. People like to stick together to condemn what they see as wrong, and this behaviour strengthens their togetherness. Criminal law therefore bolsters social solidarity.

The *public* nature of crimes is evidenced by the fact that, technically, any citizen is permitted to bring a prosecution after a crime. He or she does not have to establish a *personal* interest as is necessary in civil proceedings. Each year there are about two million prosecutions, of which about 20 per cent are brought by someone other than the Crown Prosecution Service. These include shops, the education welfare service, utility companies and transport organisations. About 2 per cent of prosecutions are brought by private individuals.

By contrast to the general principle that anyone can prosecute for a crime, in civil law a litigant needs to show a particular status. For example, in *Holmes v Checkland* (1987) an opponent of cigarette smoking was denied 'standing' to restrain the BBC from broadcasting a snooker championship sponsored by a tobacco company, since he was no more affected than anyone else. He could only proceed with the aid of the Attorney-General. The word 'standing' in this context comes from the Latin phrase *locus standi*, 'a place to stand', which was used in older cases to denote that someone, by virtue of being personally affected by a matter, was in a position to sue.



There are only minimal controls over who can prosecute for a crime for the public good. There is provision in s. 24 of the Prosecution of Offences Act 1985 for the High Court, on the application of the Attorney-General, to restrain a 'vexatious' prosecutor. A vexatious prosecutor means someone who by the serial nature of their prosecutions or the evident malice of them is denied the facility in future. Another control is that if a private prosecution is regarded as inappropriate by the governmental legal authorities, the Attorney-General can take it over, for the sole purpose of dropping it. That process is called *nolle prosequi* (Latin for 'not to wish to proceed').

However, if a citizen begins a prosecution, he or she may not discontinue it at will because, as was decided in *R v Wood* (1832), it is not only his concern but that of all citizens. If a prosecution succeeds and sentence is passed, a pardon cannot be granted by the instigator of the prosecution, it can only be granted by the Crown.


THE ORIGINS OF CRIMINAL LAW

There can be little doubt about the importance of the criminal law as a method of social control. As the Criminal Law Commissioners noted in 1843: 'The high and paramount importance of the Criminal Law consists in this consideration, that upon its due operation the enforcement of every other branch of the law ... depends.' This aspect of the criminal law's importance has not diminished over the last 150 years. It retains a crucial ideological significance as being *the* form of law in closest touch with the public, and something which reinforces their belief in the need for 'law'.

There are differing explanations accounting for the rise of criminal law as a distinct entity. Some writers have regarded the process as being a rather chaotic development. Harding, for example, looking at nineteenth-century changes, suggests (1966) that it was manufactured piecemeal by statutes 'listing offences with minute particularity which had long ago obscured any general principles'.

The church's influence over early medieval criminal law is illustrated by the fact that although sentences still retained the character of retribution or an equivalent, the retribution ceased to be directly linked to the loss of the victim based on his claim but acquired a higher general significance as a divine punishment. In this way the church attempted to associate the ideological motive of atonement with the material aspect of compensation for the injury, and thus to construct, from penal law based on the principle of private revenge, a more effective means of maintaining public discipline.

The notion of crime as a type of wrong associated with 'wickedness' or



'evil' was fostered by the early church and its doctrine of atonement by penance. It was under the Norman rule, after 1066, that the Crown started to take charge of the criminal courts to protect 'the King's peace'. The degree of royal control, however, was very limited because the initiative for bringing criminals to justice still lay with the victim and his or her kin.


Actions against the criminal, the 'appeal of felony', had retribution as their main object was that the felon's property was forfeited, his belongings to the King and his lands to his feudal Lord so there was no gain for the victim. The Crown guarded this right to prosecute jealously – it was an offence for a victim to settle privately (take cash from the culprit) without permission. It was the imperfections of the appeal procedure, and the resulting loss to the revenue when claimants started to disregard the felony and sue in the civil courts, that brought about the introduction, in the twelfth century, of a new straight criminal process at the option of the Crown. That was the start of the modern criminal justice system. Today, over a million cases are prosecuted every year, criminal law is a core part of every criminal law course at university, and the most famous branch of the law.

CIVIL LAW

Sometimes words carry different meanings according to the settings in which the word is used. For example the word 'rich' can mean quite different things depending upon what sentence it is within. The person possessing great financial or financially quantifiable wealth can be described as rich. A food or diet can be described as rich if it contains a large proportion of fat or eggs, or even spice. A voice is rich if it is mellow or deep. And where it is said of a person's assertion or statement 'that is rich coming from you' then rich means highly amusing or ludicrous. The phrase 'civil law' can mean different things depending on the context in which it is used.

Civil law can be used to connote Code law (as in France or America), and so to distinguish it from common law jurisdictions like the UK. In other circumstances, 'civil law' can be used to refer to Roman law. Most commonly though, in the UK, 'civil law' is used to refer to the sort of law used in civil proceedings. Common examples include cases for breach of contract, for nuisance, for negligence and for defamation. Such civil proceedings have the object of declaring or enforcing a right for the advantage of a person or company, or of recovering money or property.

This can be contrasted with an action in law which is a *criminal prosecution*, which we have examined earlier, and with a *public* or *administrative* law action. Criminal actions are brought on behalf of the state to condemn as criminal something affecting society at large. Similarly, public or administrative law actions



are aimed at securing a benefit for the general public, for example to stop a nuisance which is disturbing the public at large.

In civil proceedings, the person or organisation bringing the action is known as the claimant (before the Civil Procedure Rules 1998 came into effect in 1999, a claimant was known as a plaintiff). If this litigation, often called a civil action, succeeds, the defendant will be found liable, and judgment for the claimant might require the defendant to pay compensation (damages) to the claimant or to comply with a court order to carry out the terms of a contract (an order of specific performance), or to do something or to refrain from doing something (an injunction).

Important areas of civil law include contract law and tort law.

THE LAW OF CONTRACT

A contract is a legally enforceable agreement. In very early human societies where people lived in small, family, kin or tribal communities, and everybody knew everyone else, it was unnecessary to have any framework of rules dealing with exactly at what point and in what circumstances an agreement was made, and how it should be enforced. The more complicated a society becomes, though, with many thousands of transactions each hour or every day between strangers, the more it needs to have a sophisticated law of contract. Each week in the United Kingdom, with a population of 60 million, there are hundreds of millions of contracts made. You make a contract every time you buy something in a shop, or on the internet, or every time you buy a train or bus ticket. One leading writer on contract has put it this way:

Contracts come in different shapes and sizes. Some involve large sums of money, others trivial sums. Some are of long duration, while others are of short duration. The content of contracts varies enormously and may include contracts of sale, hire purchase, employment and marriage.

If you read a book on the law of contract you will discover that there are many hundreds of possible points of contention concerning whether a contract has been properly made by two or more parties who have clearly consented to all of the same points in an agreement. Disputes can arise over whether the behaviour of one party is a breach, or tantamount to a breach, of the agreement, whether an agreement based on a mistake or misrepresentation should still enjoy the protection of the law of contract, and what remedies are available where a contract has been broken.

Here is an example of a case decided in the law of contract. Under general principles in the law of contract, if there is to be an enforceable agreement, then



an acceptance of an offer must be communicated to the person who has made the offer. If I am to accept your offer I must communicate my acceptance to you. In *Entores v Miles Far East Corp* (1955), the court was concerned with the technicality of precisely *where* a deal for '100 tons of Japanese cathodes' had been completed because other matters swung on the question of in which city the deal had been made. The court had to consider at what point an acceptance made by telex (a precursor of the fax machine) in Amsterdam was 'communicated' to the person receiving the message in London. Was it communicated when it was typed in by the sender or when it was printed at the other end? The Court of Appeal decided the deal was made in London when the telex message was printed out in that office.

Lord Justice Denning said that if an oral acceptance is drowned out by an over-flying aircraft, so that the person making an offer cannot hear the acceptance, then there is no contract at that point. Where two people are negotiating on the phone and one makes an acceptance to the other but the line goes dead so the acceptance is not heard then, again, there is no contract because the acceptance has not been communicated. Where, however, the acceptance is made clearly and audibly but the person to whom it is said does not hear, a contract *is* concluded unless the person who has made the offer clearly says to the person making the acceptance that he did not hear what was said.


In the case of 'instantaneous communication' like telephone or, as here, telex, the acceptance was ruled to take place at the moment when the acceptance is *received* by the person who has made the offer and at the place where the person who has made the offer is situated.

THE LAW OF TORT

The law of tort covers a wide range of civil wrongs which, broadly speaking, are the ways in which you can cause injury, damage or loss to someone or some organisation, apart from breaking a contract that you have with them. The unusual word 'tort' is an old French term meaning wrong. It comes from the Latin word *tortus* which means twisted or crooked. A person who commits a tort is known in law as a tortfeasor.

One of the largest areas of civil action within tort is the wrong of negligence. The caseload for the courts is heavy. Over 9,000 negligence actions were heard by the courts in 2005.

Civil actions for the tort of negligence include litigation arising from car accidents, sporting accidents and medical accidents. Actions in negligence are often brought against car drivers, health authorities, local education authorities,



and sometimes against professionals such as accountants and lawyers. Other torts include defamation (libel and slander), private nuisance, assault, false imprisonment, trespass and 'passing off'. Passing off occurs where, through icons or logos or website styles, a business is conducted in such a way as to mislead the public into believing that its goods or services are those of another more famous business, as where a design or packaging trade mark is falsely used.

The liability of the owners and occupiers of land for injury caused to visitors on to their land or premises is another area of tort. Similarly, liability for damage caused by animals or defective products is within the compass of tort.

Negligence is a very developmental area of tort law. In 1932, in *Donoghue v Stevenson*, Lord Macmillan made a momentous declaration about the law of civil negligence. He said 'the grounds of action may be as various and manifold as human errancy; and the conception of legal responsibility may develop in adaptation to altering social conditions and standards'. And thus has the law developed.

The case of *Barber v Somerset County Council* (2004) illustrates the way in which the courts have applied old principles so as to develop the law. The House of Lords held that a local authority was in breach of its duty to its employee to take reasonable care to avoid injuring his health where it had become aware that his difficulties at work were having an adverse effect on his mental health, but had taken no steps to help him.

Mr Alan Barber had been employed by the local authority as a teacher. In September 1995, there was a restructuring of staffing at the school at which he was employed, and he was told that in order to maintain his salary level he would have to take on further responsibilities. He worked between 61 and 70 hours per week, and often had to work in the evenings and at weekends. In February 1996 he spoke of 'work overload' to the school's deputy head teacher, and in March and April consulted his GP about stress at work, and made enquiries about taking early retirement. In May, he was absent from work for three weeks, his absence certified by his GP as being due to stress and depression. On his return to work he met with the head teacher and the two deputy head teachers, and discussed the fact that he was not coping with his workload and felt that the situation was becoming detrimental to his health.

He was not met with an entirely sympathetic response and no steps were taken by the school to assist him. Between August and October, he again contacted his GP about stress on a number of occasions. In November 1996, after losing control and shaking a pupil, Mr Barber left the school and did not return. By then he was unable to work as a teacher, or to do any work other than undemanding



part-time work.

The House of Lords decided in favour of Mr Barber and endorsed damages of £72,000. Mr Barber, an experienced and conscientious teacher, had been absent for three weeks with no physical ailment, such absence having been certified by his GP as being due to stress and depression. The duty of his employer to take some action had arisen in June or July 1996 when Mr Barber had seen members of the school's management team, and continued so long as nothing had been done to help him. The senior management team should have made enquiries about his problems and discovered what they could have done to ease them, and the fact that the school as a whole was facing severe problems, with all the teachers stressed and overworked, did not mean that there was nothing that could have been done to help Mr Barber.

COMMON LAW AND CIVIL LAW

These terms are used to distinguish two distinct legal systems and approaches to law. The use of the term common law in this context refers to all those legal systems that have adopted the historic English legal system.

One principal distinction to be made between common law and civil law systems is that the common law system is largely casecentred and heavily reliant on judges' interpretation of general principles, allowing scope for a policy-conscious and pragmatic approach to the particular problems that appear before the courts. The law can be developed on a case-by-case basis. On the other hand, the civil law system tends to be a codified body of general abstract principles which control the exercise of judicial discretion. In reality, both of these views are extremes, with the former over-emphasising the extent to which the common law judge can impose his discretion and the latter underestimating the extent to which continental judges have the power to exercise judicial discretion. The European Court of Justice, established, in theory, on civil law principles, is, in practice, increasingly recognising the benefits of establishing a body of case law. Although the European Court of Justice is not bound by the operation of the doctrine of precedent (where a case is decided in line with similar earlier cases), it still does not decide individual cases on an individual basis without reference to its previous decisions.

COMMON LAW AND EQUITY

This dichotomy (division into two) reflects the way in which law developed within the English legal system. Both common law and equity are types of law, in the sense that they are applied by judges in law courts. But they are different types of law, and so how they are applied, their 'grammar' of operation, and their



vocabularies are distinct.

As the common law progressed, it became more formal and judges often became very insistent on exact procedures being followed even if injustice sometimes resulted. A modern analogy would be with a company or government department that refused to deal with your complaint because none of its existing forms was suitable even though you obviously had suffered a wrong. Also the common law courts were perceived to be slow, highly technical and very expensive. A trivial mistake in pleading a case could lose a good argument. How could people obtain justice, if not in the common law courts? The response was the development of equity.

Claimants (then called plaintiffs) unable to gain access to the common law courts appealed directly to the sovereign, and such pleas would be passed for consideration and decision to the Lord Chancellor who acted as 'the King's conscience'. As the common law courts became more formal and more inaccessible, pleas to the Chancellor correspondingly increased and eventually this resulted in the emergence of a specific court constituted to deliver 'equitable' or 'fair' decisions in cases which the common law courts declined to deal with. As had happened with the common law, the decisions of the courts of equity established principles which were used to decide later cases. So, it should not be thought that the use of equity meant that judges had discretion to decide cases on the basis of their personal idea of what was just in each case.

An almost obsessive attention to words is, however, sometimes something that principles of equity cannot correct. You are, in general, strictly bound by the words you agree to sign to in a contract. If you attack someone in writing publicly, the form of words you use might amount to libel. The law generally governs people with a precise application of words and legal forms. Hence, Portia's admonition in *The Merchant of Venice* (Act 4 Scene i):

This bond here gives you no drop of blood; the words expressly are 'a pound of flesh'. If in cutting off the pound of flesh you shed one drop of Christian blood, your land and goods are by the law to be confiscated ...

From medieval times, only a limited range of claim forms or 'writs' was available, and litigants had to be very careful about choosing the correct form for their complaint, and filling it in properly. Litigation could be struck out if there was a spelling mistake on the form. Errors in Latin were fatal to a claim, as was the omission of a single punctuation mark. The moral justice of a case was often subordinate to its orthography. So, the omission of a single down-stroke or contraction sign or an error of Latin were fatal mistakes in a writ (the old form of legal action). One writ, for example, was invalidated because *inundare* – to

overflow or flood – was misspelled as *inum dare*.

The pursuit of propriety with such apparent pettifoggery still happens today. Consider the world of cars. In 2004, Vincent Ryan was given a fixed penalty notice by a car park attendant in Ipswich, Suffolk. He was ordered to pay a £30 penalty, even though he had purchased a ticket, because he had left the ticket upside down on his dashboard – the penalty notice had been marked 'not displaying a valid parking ticket'. The need for punctiliousness, though, sometimes favours the citizen. Thus, in 2003 the speeding conviction of the footballer Dwight Yorke was quashed by the High Court because he did not personally fill in the official form to confirm that he was the driver of the vehicle. A missing signature rendered the form inadmissible evidence.


Historically, there were a number of important conditions which a person seeking justice from the Court of Equity had to meet:

- He had to show that he could not receive justice in the common law courts.
- He had to show that he himself was without blame. This was called coming to the court with 'clean hands'. By contrast, claimants using the older common law courts did not have to show they were acting in a morally blamefree way.
- He had to show that he had not delayed in bringing his case before the court.

The division between the common law courts and the Court of Equity continued until they were eventually combined by the Judicature Acts 1873–75. Prior to this legislation, it was essential for a party to raise his action in the appropriate court, for example, the courts of law (as opposed to the Court of Equity) would not implement equitable principles. The Acts, however, provided that every court had the power and the duty to decide cases in line with common law and equity, with the latter being paramount in the final analysis.

The development of equity did not stop centuries ago. The innovation of major principles has occurred several times in recent history. One example is the case of *Central London Property Trust v High Trees Ltd* (1947). It holds that a person who is already in a contract, and who has made a promise by which he intentionally modifies his contractual rights against another party, will not be allowed to resile from such a promise. Normally, to be enforced, any promise needs to be given in exchange for something of value, but equity here does not make such a requirement.

Mr Justice Denning's doctrine of 'promissory estoppel' has affected hundreds of thousands of such situations since, either because people take legal



advice before they try to go back on such a promise (made within an existing contract), or they just try to go back on their word and so get to learn about the principle through a lawyer once things have gone wrong.

COMMON LAW AND STATUTE LAW

As you have seen, the 'common law' is the law that has been created by the judges through the decisions in the cases they have heard. The judge and jurist Oliver Wendell Holmes Jr very aptly summed up the way such development works. He noted in *The Common Law* (1881):

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.

Statute law, on the other hand, refers to law that has been created by Parliament in the form of legislation. Although there has been a significant increase in statute law in the twentieth and twenty-first centuries, the courts still have an important role to play in creating and operating law generally and in determining the operation of legislation in particular.

PUBLIC LAW AND PRIVATE LAW

This dichotomy concerns the difference between law that applies to public institutions, or everyone at large, in contrast to law that applies to citizens in their relations with each other. Public law includes the law governing the government, the constitution of the UK, the administration of public authorities, and criminal law. Private law includes the law of contract and the law affecting neighbours. This division, therefore, runs across others mentioned in this chapter. Below, the law of contract is examined as part of civil law, whereas here it can also be mentioned to exemplify private law. It is under this heading that something more should be said in detail about constitutional and administrative law.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Constitutional law concerns the relationship between the individual and the state, examined from a legal viewpoint. The United Kingdom does not have one written document which is 'the Constitution'. What amounts to the Constitution in the UK is a diverse collection of guidelines and rules. It was described in 1733 by Henry Bolingbroke (1678–1751), a Tory statesman, as:

That assemblage of laws, institutions and customs, derived from certain fixed principles of reason, directed to certain fixed objects of public good, that



compose the general system, according to which the community have agreed to be governed.

Much of administrative law is concerned with the process of judicial review. Judicial review is the procedure by which prerogative (coming from the inherent power of the court, and not subject to restriction) and other remedies have been obtainable in the High Court against inferior courts, tribunals and administrative authorities. Its primary purpose is to control any actions of these bodies that might be made in excess of their proper powers or on the basis of some unreasonable way of coming to a decision.


In cases of judicial review an applicant will be proceeding against a public authority or part of the government asking for an official decision to be reviewed by a judge in respect of the propriety with which the decision was taken. In these cases judges can issue court orders of a mandatory, prohibiting or quashing variety (in earlier cases before 2000 these were known as orders of *mandamus* prohibition and *certiorari* respectively). In matrimonial cases the parties are called petitioner (who brings the action) and respondent (who defends it). The relief sought in the actions concerns dissolution of marriage.

Judicial review has expanded dramatically as a part of law in recent history. In 1981, 552 applications for judicial review were made at the High Court, whereas in 2004, a total of 4,207 applications were made.

The case of *John Hirst v United Kingdom* (2005) decided by the European Court of Human Rights (ECtHR) provides a good illustration of public law in action. In this important judgment the Strasbourg judges ruled by twelve to five that the denial of the right to vote to 48,000 sentenced prisoners in Britain amounted to an abuse of the right to free elections. The ruling challenged the 1870 Forfeiture Act, which introduced the Victorian punishment of 'civic death'. The idea was that upon imprisonment an inmate ceased to have any civil status. The court merely 'challenged' the law of 1870 because it cannot cancel British legislation.

Mr Hirst brought the case to ensure that MPs took an interest in what happened in their local prisons. The ECtHR ruled that voting was a protected human right and not a privilege, and awarded Mr Hirst £8,000 in costs and expenses. The court did not state that *all* prisoners must now be given the right to vote. The judges ruled that the UK government was wrong not to have considered fully the legal basis of its ban on prisoners voting, and whether it applied regardless of the gravity of the offence for which a prisoner had been convicted.

Many prisons are in marginal seats (political constituencies in which no political party has a clear primacy in popularity) and 600 or 700 votes from



prisoners could swing the result. The ECtHR ruling will require legal changes by the UK government before it has any effect. It will eventually mean that prisoners' rights and interests will become more politically important as those fighting for seats in the House of Commons seek to gain prisoners' votes. Any candidate, however, seen to be according too much attention to such votes might be opposed by a rival who, by denying any promises to the prisoners, sought to win extra votes from other parts of the constituency. Whatever the outcome of such debates, the discussion will be lively.

There are, as we have seen, many types of law.

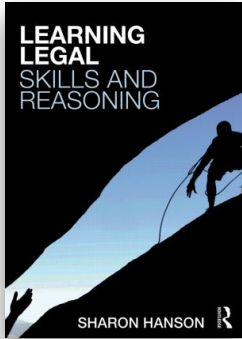


CHAPTER

4

Effective Legal Research: How to get the most out of your University Print and e-Library

Chapter 4: Effective Legal Research: How to get the most out of your University Print and e-Library



The following is excerpted from *Learning Legal Skills and Reasoning* by Sharon Hanson. © 2016 Taylor & Francis Group. All rights reserved.

Learn more:




Your success in your legal studies depends upon your competent understanding of the law, primary texts of law as well as the contexts of law, which involves consideration of secondary texts, texts about law. You need to understand how to use your university law library and how to efficiently access their print and electronic sources. Additionally, while many of the electronic sites that you will access through your university library will be subscription only sites, you will also need to, or desire to, access electronic sites outside your university's e-library and it is important that you understand how to navigate, as well as critically evaluate, these free, open access internet resources.

This section begins from the view that your ability to competently use the law library is essential for your success in the study of law. It ensures that you can understand the structure and layout of the library as a whole and the law collection within it, and develops your competency in searching and accessing its materials. There are an enormous range of such materials and part of the rationale for this chapter is to make you aware of them and their pros and cons: a range that includes reference texts such as dictionaries and encyclopaedias, academic books and journal articles, professional articles, parliamentary papers and debates, reports by parliamentary committees; reports by non-governmental agencies such as charities or independent think tanks; as well as web pages by leading academics, media reports and blogs by individuals or pressure groups. You need to understand the authority (if any) and the limits of the usefulness of any secondary material that you use.

Many students often do not go much further than the textbook in their research and as a consequence their understanding of law remains relatively unsophisticated; certainly not of a standard to achieve the highest grades (and in some cases even lower pass grades). Students must keep up to date with academic thought about the area of law they are studying as well as keep up to date with the actual law itself. It also takes the time to consider how to check the authenticity, reliability and authority of free access internet resources.

INTRODUCTION

The key tools of the trade of the law student are initially found in the university library. Here you will find the law itself, in texts of the law. You will also find texts about the law, describing and critiquing the law and its institutions. The acquisition of excellent library research skills is an essential task undertaken in the first term. But you will find that you continually need to develop them throughout your studies. If you become a research student after your degree you



may, in time, be able to access the prestigious research only, reference only libraries such as the British Library in London.

Before looking in detail at the location of the law as well as texts about the law it is important to ensure that you understand and appreciate the indispensable role of the university library in your degree studies.

This chapter concentrates on mapping the overall structure of the library, the range of available resources for the study of law and their storage formats (whether in print or electronic formats). It covers the location of print and electronic law resources and discusses the need to quickly develop competent library IT skills. You need to understand how to search the library's online catalogue and the nature of online databases, research gateways and other e-resources.

Walking into the university library can be a daunting experience. New students of all ages often report a feeling of inadequacy when first confronted with the scenes of a typical library lobby. There are lots of people (all of whom seem to know what they are doing); there are issue desks, banks of computers, banks of photocopiers, unfamiliar signage, student study support staff and private study rooms. There may be coffee bars, and some may have imposing atriums built to a scale which dwarfs individual users; there are cloakrooms and rules about bags. Entrance to the library is often through security checks and the scanning of your library card. Some libraries have not taken on the dimensions of huge factory buildings or implemented security measures, but even these can feel extremely alien to the new student.

Librarians and lecturers do realise, however, that students need to be orientated to the library and the structure of its resources so that they can use it competently. You will find that all libraries arrange a general induction to the layout and range of resources for new students. Additionally the law department, usually in liaison with library staff, will arrange for a series of specialist training sessions to introduce new law students to the print and electronic collections. Often there are opportunities for updates and more advanced training throughout the first year and one to one assistance may be offered to students who lack confidence. It is important to be aware of what support and training is on offer in your library so that you can make best use of it. Many libraries and departments also provide links to in-house and external online tutorials concerned with using the library. You should check for these in your university's departmental, library, study support and induction webpages as well as on your department's preferred virtual learning environment (VLE).

In the past, university libraries, with their large print collections, were

referred to as storehouses of knowledge. Today the volume of the printed resources becomes insignificant in relation to the volume of academic and official, non-subscription and subscription, electronic resources on offer through the standard university library. The library electronic resources are dwarfed by the freely available electronic resources generally available, the constant supply of which seems inexhaustible. There will also be large numbers of subscription sites outside your library's e-resources. Only a few are chosen by universities. Figure 1 illustrates the proportions of different formats in which materials can be accessed, and roughly indicates their proportions in relation to each other. When using the library it is important to use the best of the full range of available sources for the task in hand. In year 1 of a law degree you need to acquire the basic skills of searching, and you will then work hard to build on these to construct sophisticated search strategies that you can rely on. If you are researching a particular law you do not want to overlook reliable and valid information because your library research skills are patchy. Nor do you wish to base an essay for an important assessment on non-authoritative, unreliable, non-academic open internet site sources. Many students do, and achieve extremely low marks bordering on fail for doing so.

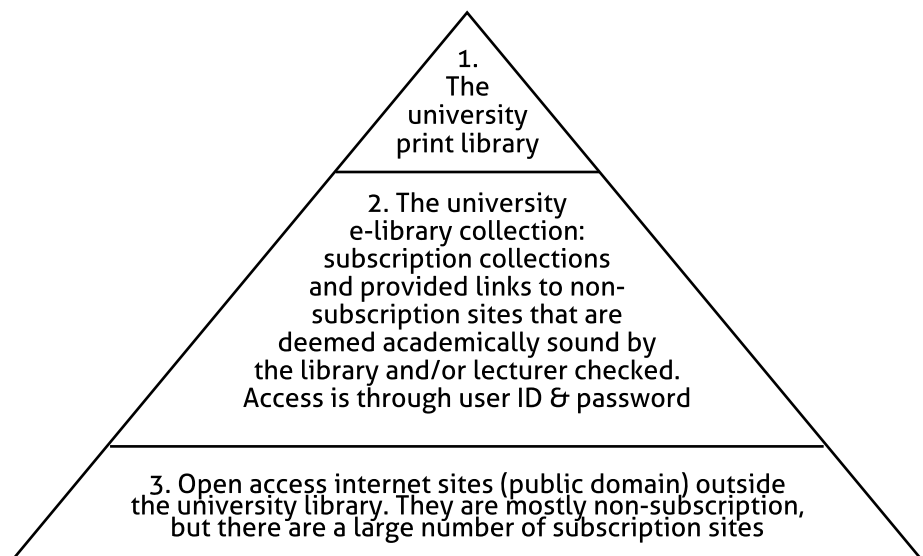


Figure 1: How the volume of different types of legal resources compare

THE GENERAL STRUCTURE AND LAYOUT OF UNIVERSITY LAW HOLDINGS

Your university may house the law library in a separate building, or in a separate area of the main library. Some libraries fully integrate law resources into the main classification system of the library without creating a separate space. Whichever system is used the same signpost is required to allow you to begin to find the



actual rooms and shelves where the resources you need are located: the online main library catalogue.

The main library catalogue

This is the online catalogue of your library's print and e-library resources which you can search by author name, title of book, or the subject area you are interested in. You can also search this catalogue from any PC, laptop, mobile phone, or tablet with an internet connection, signing on with the user ID and password given to you when you registered with the library. Increasingly, apps are being created by universities to give you more versatility when using Apple and/or android devices. You will need to learn how to navigate vast reservoirs of electronic resources subscribed to by the university which create a virtual library, usually called the e-library.

Each print resource is allocated a 'classification number' or a 'class mark' and these numbers or marks are grouped in subject clusters and sub-groups of subjects. Libraries tend to have signs and leaflets that map the area of the law print collection, indicating which part of the building you need to go to for particular subjects. Once you have a classification number or class mark, and a diagram of the library showing the location of the law resources, you will be able to go to the correct area and locate your specific resource.


The classification number is located by searching the main online library catalogue. Many libraries, but not all, have banks of computers around the library and in the reception area, which you can use to access the catalogue.

You will also find access to the cataloguing system of the e-library. Often you can locate these in a number of ways by scrolling down a menu of the various resources and databases, or using a quick search to locate a particular database, or journals, or gateway by alpha order. For example, if you are in the databases areas and click on 'find databases' you will get an alpha bar. If you wanted to locate Westlaw, clicking on 'W' will bring up all the databases starting with W and you can choose Westlaw. All university e-library and print collections are not exact replicas of each other. There will be deviations from the standard. Do make use of library guides which are usually free in the library or available online.

TYPES OF PRINT MATERIALS AND THEIR STANDARD LOCATIONS

Print material comes in a range of types and sizes. All law material is not laid out in one integrated sequence but, for reasons of ease of use and rationality of layout, it is segregated into different spaces.

Many lecturers find it useful to put important books, or multiple copies of set text books on the 'short loan' system. This means that the book is loaned for



only a few hours at a time. Short loan books can be placed behind the issue desks and requested or they can be placed on open shelving. Most short loan books are only for use in the library and cannot be removed, although some short loan books can be taken out overnight just prior to the library closing, or for the weekend. Lecturers may also put in short loan a photocopy of an article from a journal not in the print collection or the electronic subscription collection of the library. Fines for such books can be by the hour.

Now that so much is available online the types of resources that need to go to short loan are those that are not readily available online, such as law books.

The main types of printed resource are:

- Reference texts, digests, encyclopaedias, indexes, dictionaries.
- Thin resources (pamphlets). . Parliamentary papers.
- Journals (academic and professional).
- Law reports.
- Legislation.
- Books about the law (textbooks, scholarly or research works).


The nature of each of the above print resources will be briefly described and examples of leading publications in the areas of reference and primary law will be given.

Reference

There are always some books that tend to be abnormally large. These are usually reference books and it is standard practice for them to be placed together in a reference section of the main library, as it is recognised they only tend to be dipped into for limited and highly specific information. You need to find out where they are, whether they are in the law area, in the general reference section or divided between the two areas. Examples of reference books include dictionaries, encyclopaedias, digests, indexes, and bibliographies.

The sets of reference texts which are the most authoritative source of law are *Halsbury's* published by Butterworths and available in hard copy and online, through LexisNexis which is also Butterworths. *Halsbury's* include the following publications:

- *Halsbury's Laws of England and Wales*: First published in 1907 to give a full statement of all of the laws of England and Wales, case law, legislation, and now, more recently European law. It uses an alphabetic system to track law composed of several complementary cross referenced publications. It has main volumes (organised by subject and re-published around every 20 years), a table of contents and a consolidated index published yearly which



will either reference the main volumes or the cumulative supplement. The cumulative supplement is published yearly to update the main volumes. Additionally, monthly digests give updates to allow a subject search for the appropriate volume. As it is concerned with individual laws classified by subject one statute could be divided up among several volumes as often different law concerning different subjects can be contained in the one statute.

- *Halsbury's Statutes of England and Wales*: First published in 1929 it is considered to be the most authoritative source for primary and secondary legislation in England and Wales. It also refers to cases affecting or prompting legislation. The schema used is the same as for the laws, main volumes, tables of contents, indexes, cumulative supplements and monthly digests. Volumes are published when it is considered necessary.
- *Is it in force?* Gives a full listing of all statutes or parts of a statute in force and not in force.

Thin resources (pamphlets)

There are also some print resources that are very thin (pamphlets) and these will tend to be stored together generally in the main library, with law related ones placed in the law library if it is in a separate area.

Parliamentary papers

There is a vast array of materials generated by Parliament, including verbatim reports of proceedings of the two Houses of Parliament, details of committee meetings, reports and material produced by government departments (reports, statistics, recommendations, and policy reviews). Not all libraries will keep a print collection of parliamentary papers. They are useful for research purposes as secondary texts that shed light on the reasons for legislation, and for changes to bills as they go through the parliamentary law making process.

Journals

Journals are collections of articles about the law published throughout the year. Academic journals (also called periodicals) are written by academics and are an important resource for the development of your understanding of law and are vital for competent performance in seminars and assessed work.

There are also a range of professional journals that are written by practising lawyers and intended for the profession. These can be of use as long as you remember they are not academic but professional.

Journals are published two, three or four times a year, with some professional journals being published more frequently. Because of their



publication throughout the year journals contain the most up to date information and analysis.

The law journals may be grouped together in the law library; however, some libraries do like to keep all their periodicals together in one place regardless of discipline and here science rubs shoulders with art. It is important to be aware that many disciplines in their own specialist journals contain professional and academic articles about the law and you are therefore likely to find relevant articles about law in other disciplines such as psychology, sociology, anthropology, medicine, politics or history.

Law reports

These are primary texts of law, reports of important cases decided by senior judges in the courts. They are published in several series by private publishers but the most respected collection is published by a charity, the Incorporated Council of Law Reporters. The courts have established a hierarchy of law reports by publisher and the ICLR are at the top. Law reports are usually stored in the law library area and are classified within a particular series of law report by year date, although there can be other ways of referencing such as by volume number. They cannot be removed from the library and are for reference only.

Legislation


Legislation enacted by Parliament constitutes a primary text of law. It is divided into collections of primary and secondary legislation by a range of publishers and as noted above, the most authoritative is *Halsbury's Statutes* which is mainly a reference text.

Books

These secondary texts tend to be divided into topics and sub-topics, for example criminal law or the law of contract. It is worth remembering that the date of publication of a book is likely to be 6–24 months after the completion of the manuscript of the book, due to the time needed for the publication process. This means that the law described in books may be out of date. You must always check the publication date of the book, and you should double check the status of the law to be careful. Also, as with journals, it is important to be aware that many other disciplines interact with the law and you are therefore likely to find relevant books in other subject areas.

THE STRUCTURE AND LAYOUT OF THE ELECTRONIC COLLECTION

The competent location and search of the range of electronic materials is an essential skill for the law student. You need to learn how to navigate vast



reservoirs of electronic resources in the e-library, which will include subscription sites used by the university as well as links to free sites considered to be useful.


Initially you may find the array of internet sources overwhelming. But in fact they can be reduced to a few overarching categories within which you can research. These will be set out below. Electronic resources mirror in many ways the materials contained in print collections. The best electronic materials are developed by commercial organisations, with annual subscription fees. However, there is a wide range of additional databases and internet gateways which open a huge array of electronic resources.

An internet gateway, which can be referred to as a portal, is a single website that collects together a range of internet links on related topics. Search engines are powerful tools that have indexed a large number of webpages, and allow you to retrieve data through simple keyword searches. Some gateways and databases are free, whilst others are commercial and require username and password information. Many will be accessible through the electronic library (e-library) of your institution.

The standard university law library will have subscriptions to many electronic resources that retrieve materials from the UK, the EU and a range of world collections of legal rules. They will also keep lists of free electronic materials available on the internet. There is a great difference between subscription sites, with accurate presentation of legal rules and academic commentaries, and non-subscription, open access, sites which may not be accurate. That said, you should explore the full range of available data. Some free sites are of great importance. For example, the only official site for revised statutes (that is the most up to date online version of a statute) is the new government UK Statutes Database, which is free to access.

Accessing the e-library collection

When you sign in to the main library catalogue, click on the icon for the e-library and you will be taken into the sources. Your library will often group access by subject. You can therefore click on 'law' and be sent to another listing of sources. Some of these will be subscription sites and some free sites. There will be different access conventions for each of the electronic materials. The majority require an internationally recognised login and password, referred to as an Athens password. Today most university library students' login and password details are also automatically accredited as Athens logins and passwords. At induction you will be told your own library's conventions. Whilst the majority of the electronic collection can be accessed from anywhere, including your home if you have internet access, a few resources can only be accessed from computers based in the



library itself. The catalogue will make clear which resources can only be accessed on campus.

Whilst the majority of your electronic resources will come to you via the internet, your library may also have a range of CD-ROMs and microfiche (texts on film viewed through specialised machines). Whilst both are older forms of technology they can still hold valuable data.

When you have your library access sorted out, take time to explore the e-library at your leisure. It will not be time wasted as you need to acquire the skills to access a range of databases quickly and easily, in order to locate materials for seminar and assessment purposes. You would not just walk into a large university library and wander around until you accidentally found the law section and then luckily stumble across a relevant law book. You would locate the catalogue and engage in a methodical search. Many students approaching a database, however, do the equivalent of just aimlessly wandering around. If they do not haphazardly locate any sources from inadequate searches they erroneously conclude no such sources exist. Map the terrain of the electronic sources as well as you would the library print collection. Your lecturers will be only too pleased to guide you generally, as will library staff.

TYPES OF ELECTRONIC MATERIALS AND THEIR STANDARD LOCATIONS

The same types of material available in the print collection are available through electronic sources in the e-library, but, with the exception of books, there are also many more materials available in electronic form. Figure 2 shows the type of resources generally available.

These resources are located in a range of different places as illustrated in Figure 3. The government open site UK Statutes Database contains only legislation. Subscription databases such as Westlaw, LexisNexis can each contain a large range of resources such as law reports, legislation, journals, and more.

The resources on the internet include nearly all of those that we have listed above for print collections but the following additional resources are available:

- Reference (most notably Halsbury online via Butterworths LexisNexis).
- UK parliamentary papers from www.parliament.uk, as well as individual government departments.
- Journals (academic and professional).
- Law reports.
- Legislation.
- Books about the law (textbooks, scholarly or research works).
- Blogs by noted academics and practitioners.



- Websites of pressure groups (e.g. Amnesty International).
- Websites containing articles and lectures by noted academics.
- Media sites containing news reports and much more.

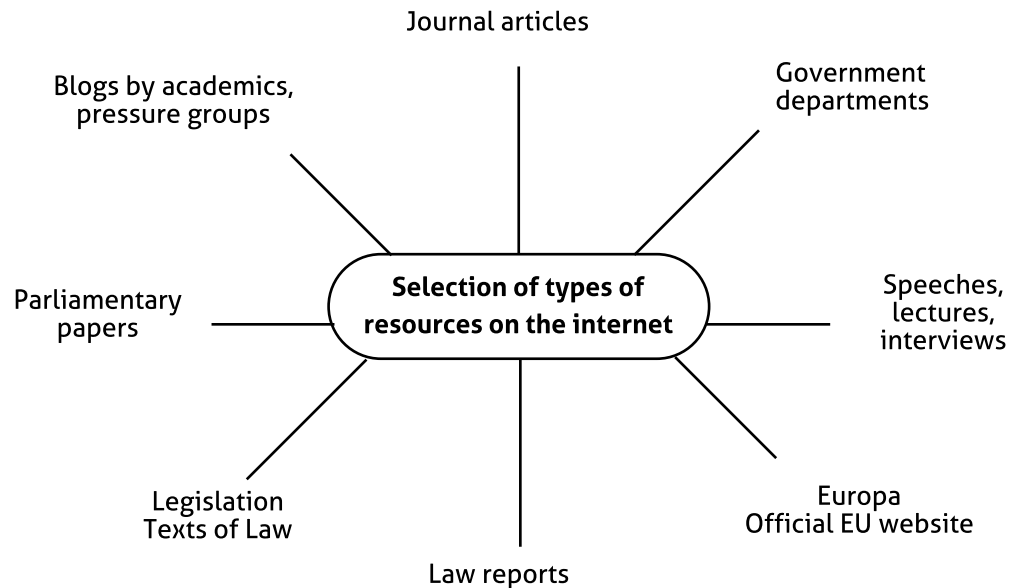


Figure 2: A selection of legal resources available on the internet

Your university e-library will give you access to the databases and internet gateways that allow you to access reliable reference sites, texts of the law and texts about the law or connected to the law. You will be taught how to use them to most efficiently access the material they contain.

The one area where the electronic collection differs enormously (at present) from the print collection is in the area of academic e-books. There are not many academic law books available as yet in electronic formats. The small collection of e-books is growing but these, as yet, are nowhere near approaching the capacity of the books in the print collection. There is a particularly poor selection of law books currently available online in comparison with the larger numbers of academic books in other disciplines and the thousands of fiction e-books.

The main area where you need to exercise caution is accessing the open, free public domain sites as you cannot be sure of the quality of the information you will retrieve. You could easily obtain out of date information or incorrect analysis. We will now spend time looking at the issues with these sites.

Public domain sites: open access free internet electronic sources located outside the e-library

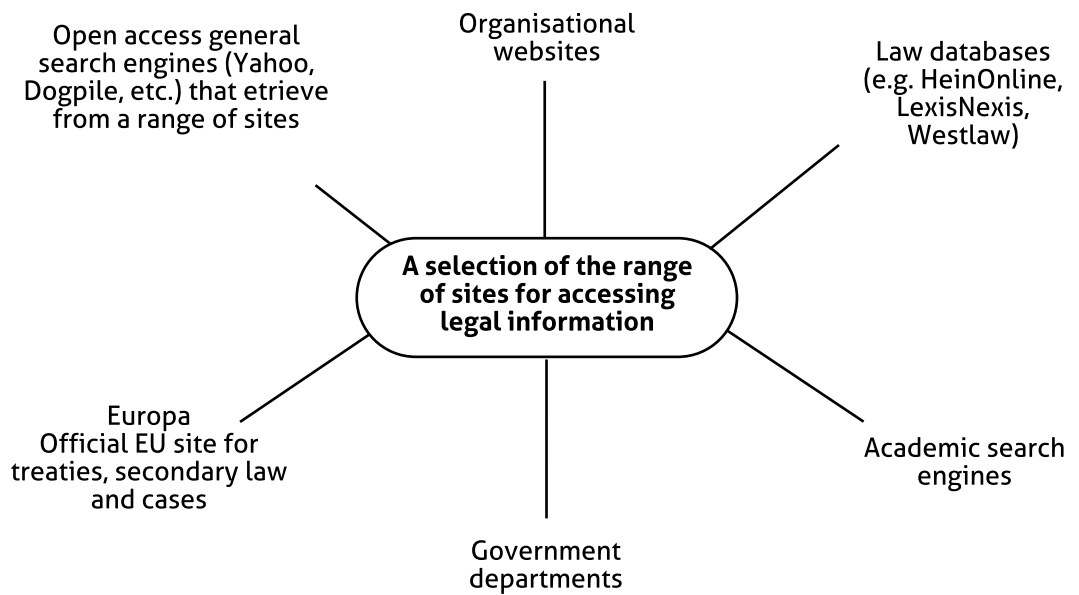


Figure 3: A selection of the different types of legal internet sites

Here we properly enter the third level of the triangle shown in Figure 1 above. In this category the electronic resources are unlimited and extremely varied. They are often updated daily. They may include student sites, propaganda sites, news sites, organisational sites, individual sites, university sites, government department sites, and thousands of other types of sites. Some of these may be of

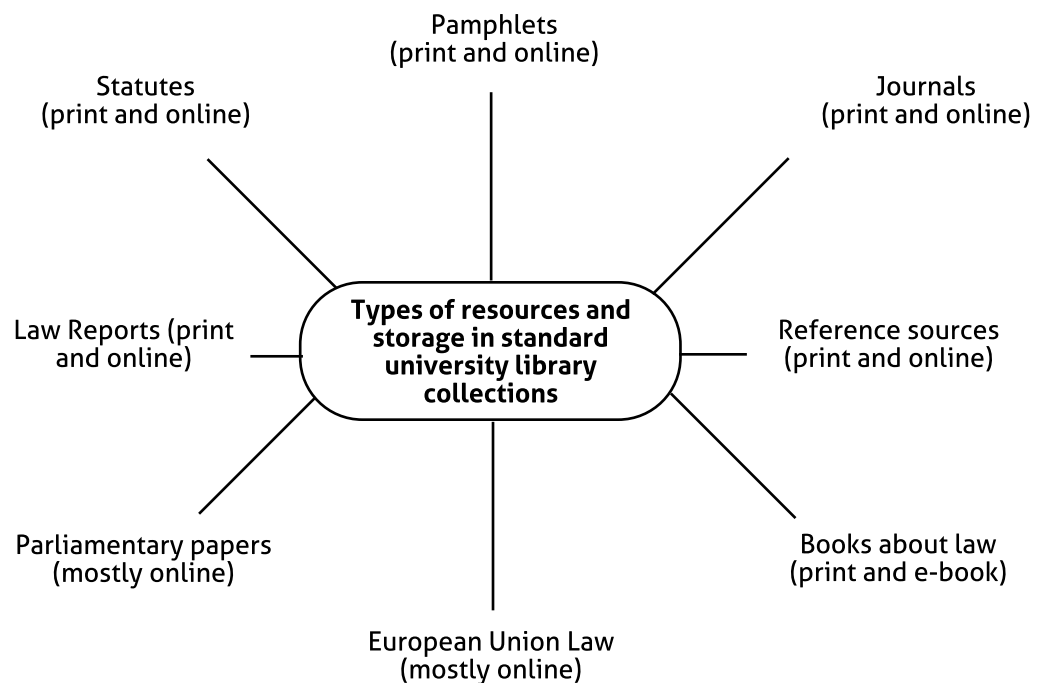



Figure 4: Types of resources in standard university library collections



use to you, but you need to be very clear what you are dealing with and have a good strategy for ascertaining the authority and reliability of retrieved data.

A large number of organisations, such as charities and pressure groups, have extensive literature on their sites. Many universities around the world make some aspects of their electronic materials available free on the internet. Some individual academics in university departments make their speeches, lectures and articles available. Some university professors have their own websites, often accessible through their university departments' websites. All these types of sites open another world of electronic source material and many will have links enabling you to go to other sites with similar material.

Figure 4 sets out the main types of resource in the library and their common forms of storage and access.

PRIMARY TEXTS OF LAW (WHETHER PRINT OR ONLINE)

Primary legal materials – texts of the law Texts of law, or primary legal materials, are documents containing the law itself, such as law reports, statutes, regulations, bylaws, international treaties, European treaties and law from other jurisdictions. Primary law can be found in resources in print or electronic formats, on a subscription or non-subscription basis.

These resources can be official versions, sanctioned in some way by Parliament, the EU or the courts, or they may be unofficial versions reproduced from official versions by other publishers and organisations. You need to know the authority of the version you are reading and whether it can be trusted for reliability.

The text of statutory legal rules can be obtained in full text form, summary form, or revised form (where amendments to statutes have been put into the text of the original statute). Law reports of law cases can also be retrieved in full text or summary versions. You need to know whether you have the verbatim text or a

Intellectual health warning!

Primary texts of legal rules located in law reports and legislation are not academic materials – they are legal materials.

summary, and legal analysis should only be carried out on the full text versions. You also need to know if the case you are considering has been changed by later cases. For statutory legal rules you also need to have confidence that you are using the most up to date and correct wording. You also need to know which law reports may have dealt with the interpretation of legislation.



No one print or electronic resource will contain all of the law. Many databases start at differing dates and some of the oldest law is in print form only.

SECONDARY TEXTS ABOUT LAW (WHETHER PRINT OR ONLINE)

Secondary texts of law are texts dealing with the explanation, description or analysis of legal issues, or of the primary texts of law.

Your library will subscribe to journals and other important secondary material and in many cases these will be available in both print and electronic formats. You will find that many materials, particularly law reports, statutes, and journal articles are stored in both electronic and print formats. There is a lot of cross referencing between print and electronic versions, for although the strategies for access differ between them, the nature of the two main types of storage, and the functions for their ultimate use, remain the same. They both offer collections of information, explanation, description, innovation and argument as well as records of legal rules from the courts and Parliament.

CONCLUSION

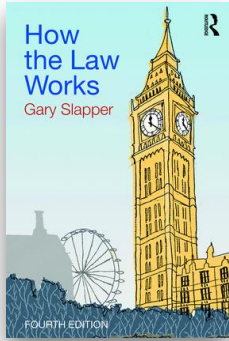
This chapter has concentrated on the university library and set out the range of material you are liable to have access to in its law collections both in print and online to enable you to appreciate their extent. It is important not to view your institution's e-library as an optional extra, but to treat it as an essential and integrated aspect of your university's provision for the study of law.



CHAPTER

5

Language and Law



The following is excerpted from *How the Law Works* by Gary Slapper. © 2016 Taylor & Francis Group. All rights reserved.

Learn more:




All professions and social groups, such as football fans or horticulturalists, have their particular and specialist vocabularies and styles of language. The language of judges and lawyers might be notorious for being technical, laden with Latin and archaic, but the relationship between law and language is even more interesting and important than the relationship between other occupations and their languages or codes. This is because the actual business of law is transacted and executed in language.

Medicine has its own specialist vocabulary and medics speak and write to each other using medical argot, but the actual business of medicine is to do with the human body, medicines and medical procedures. Medicine is done physically. Architects have their own specialist vocabulary and use language in their own particular way, but their business is to do with building materials and buildings. Lawyers, too, have their own specialist language but, by contrast, their work, its materials and products, are words and language: the words in sworn documents (deeds), Acts of Parliament, regulations, advocacy and court judgments. This chapter looks at both legal vocabulary (the language used by judges and lawyers in the course of their work) and also some examples of legal work where aspects of ordinary language are themselves the issues in question.

Language is dynamic. Every year many words fall out of the dictionary and new ones are added. English has evolved an extraordinarily eclectic vocabulary. Whereas French offers about 100,000 words, English offers around one million words including word combinations and vocabulary used in electronic and broadcast media.

Juridically, the English language has become the best instrument box in the world. The word 'law' comes from an Old Icelandic word for 'something laid or fixed', although law's lexicon, like the general one, is unfixed and constantly developing. Every year some words become obsolete while others are born. So 'rixle', meaning 'to rule', has gone, but a 'clickwrap', a mouse-made contract, is arriving. Lawyers and judges often struggle against the accusation that they use a superfluity of words. Chief Baron Kelly once told a witness, 'You must give me an answer, in the fewest possible words of which you are capable...' That, though, was his opening phrase in a 121-word sentence of instruction.

Even though language is changing all the time, anyone moving into the study or practice of law moves into an area heavily laden with a linguistic inheritance. In subjects such as science and the social sciences, much of current vocabulary and phrasing originated in modern times. In law, though, much of the language has



been inherited from earlier ages. This is an inheritance of some considerable influence. As the esteemed legal historians Pollock and Maitland have observed, 'Language is not a mere instrument which we control at will; it controls us.'


Verbal precision is not always possible when social factors cause obfuscation. Occasionally, however, court definitions are evidently at variance with aspects of ordinary life. Consider this example. Does the working class still exist? In a case in 2003, Mr Justice Etherton was asked to rule whether a 1929 legal covenant on a piece of land, restricting its use to benefit the poor and in particular 'for the housing of the working classes', was now invalid. In court it was argued that 'It is not possible to say today with any degree of certainty or precision what is meant by the working classes.' The Court of Appeal, faced with a similar argument in 1955, unanimously ruled that the working class in Britain had been abolished (*Guinness Trust (London Fund) v Green* (1955)). This is very strange. If the working classes have been abolished, then who is making steel, cars and ships, and repairing the roads, and driving the buses, trains and lorries? Where does our food come from? These tasks are not being performed by the aristocracy. In a survey a few years ago, 80 per cent of respondents described themselves as 'middle class'. Thus, social attitudes can affect legal definitions. Whether a particular fruit is or is not a lemon will not depend on changing attitudes. However, what is meant by something like 'the working classes' can, in law, change even to the extent of ceasing to have a referent.

Verbosity is a fault often alleged against lawyers. Why does legal language often resort to pairs of words when plainly one would suffice? Why is law sprinkled with so many phrases such as 'each and every', 'last will and testament' and 'null and void'? There are various explanations. In medieval Britain, law was conducted in three languages (Anglo-Saxon, Norman French and Latin), and phrases were sometimes aggregations of words lifted from the different traditions. Lawyers were also often paid by the folio, so it did not hurt them to be a little fuller in expression than might be strictly necessary. The additional embroidery of a Latin phrase could also lend an authoritative air to an argument: 'If that phrase had not been in Latin', said Lord Shaw in a case in 1923, 'nobody would have called it a principle.'

LATIN AND THE LAW

'I'm off to the local radio station now', I once said to a legal colleague. 'I'm going to speak about the public irritation with legal language.' 'Good for you', he replied. 'Is that something you have done heretofore?'

Law is closely associated with Latin for several reasons. For centuries, while law was being developed in Britain, Latin was the official language used in court



documents. Additionally many principles that matured into law in Britain were derived from those used in Roman law. Principles were also developed by medieval jurists at a time when Latin was the language of scholarship. The use of a language alien to over 95 per cent of the population certainly fuelled the observation by George Bernard Shaw that a profession is a conspiracy against lay people. Study of Latin is, however, expanding. There has been a growth recently in Latin study in schools, and in 2003, BBC Radio broadcast its first programme entirely in Latin: readings from Pliny the Elder. The humorous book *X-treme Latin* (2004) by Henry Beard caters to baser interests, allowing readers to learn translations of contemporary phrases. These include *Lingua Latina – iurisperiti ea utuntur ut te defraudent* (Latin – lawyers use it to screw you) and *Estne cubiculum deliberationis instructum cistula potionum spirituosarum?* (Does the jury room have a minibar?).

The phenomenon of lawyers being criticised for their use of Latin is not a recent development. Cicero was berating lawyers for using outdated Latin in 63 BC. In his 'Pro L. Murena' he also attacks lawyers for thinking too much of themselves, and for their quibbling and verbosity. Speaking for Lucius Licinius Murena at his trial on a charge of electoral malpractice, Cicero chided the linguistic practices of earlier Roman lawyers as being 'long-winded' and 'filled to the brim with trickery and foolishness'. He said:

As for myself, I have long found it extraordinary that so many of the finest legal brains should not yet have managed, even after so many years, to make up their minds as to whether one ought to say 'two days from now' or 'the day after tomorrow', 'judge' or 'arbitrator', 'case' or 'lawsuit'.

The Civil Procedure Rules 1998 now insist that all the old esoteric or Latin phrases used by lawyers and judges are replaced with plain English equivalents. Thus, for example, a 'writ' is now a 'claim', a 'plaintiff' is now a 'claimant', guardian *ad litem* (guardian to the suit) is a 'litigator's friend', an *in camera* (in a vaulted room) hearing has become a 'private hearing', an *amicus curiae* (friend of the court) is now, simply, an 'advocate to the court', and an order of *certiorari* (to be made certain) is a 'quashing order'.

How have the lawyers coped with all this change? For many of the more seasoned practitioners the radical changes required in practice seem to have been a considerable challenge. Things did not get off to a good start. The morning the new rules came into effect in April 1999, one of the first barristers on his feet in the High Court was swiftly knocked back by the presiding judge. 'My Lord', offered the experienced counsel, 'I appear for the plaintiff in this action.' The withering judicial riposte was instantaneous: 'No you don't, you appear for the claimant.'





Latin has been banned from the law courts before, only to be promptly reintroduced when lawyers could no longer tolerate the withdrawal symptoms. In 1731, Parliament passed an Act abolishing law-Latin in legal proceedings (written to come into effect two years later), which read:


Whereas many and great mischiefs do frequently happen to the subject of this kingdom, from the proceedings in courts of justice being in an unknown language, those who are summoned and impleaded having no knowledge or understanding of what is alleged for or against them in the pleadings of their lawyers and attornies. [...] To remedy these great mischiefs...be it enacted that from [25 March 1733] all writs...process...pleadings...indictments...judgments...shall be in the English tongue and language only.

Lawyers then faced the challenge of rendering certain Latin phrases into English; for example, *nisi prius* (unless before), *quaere impedit* (wherefore he hinders) and *habeas corpus* (you [must] have the body) all caused great difficulty. According to the eighteenth-century legal writer Sir William Blackstone, these phrases were 'not capable of an English dress with any degree of seriousness'. So, in March 1733, a week before the first Act was due to come into effect, another Act was passed which once again permitted lawyers to attack and parry in Latin. It amended the first Act, to allow Latin to be used in technical terms, customary phrases and abbreviations.

A good case for the use of Latin in court has been made by the former judge John Gray, who wrote in 2002:

Latin usage is to be forbidden in the courts, ostensibly to make the law more comprehensible and less intimidating to lay people, *ad captandum vulgus* ('to win over the crowd'). Yet Botanists, and those concerned with fragrances derived from plants, revere it as an international language by which species are named and can be identified. Nobody there suggests change because the practice might be thought elitist and offend the average gardener's sensitivities. Entomologists (insects) and Ichthyologists (fish) too are happy to classify in Latin.

There is, however, a good argument for court proceedings being as much in ordinary, plain English as possible. In court, the rights of citizens are at stake. These are, especially for the people concerned, matters of very great importance. In criminal cases, a defendant might be imprisoned, or lose his or her job following a conviction. In family cases, issues of the very greatest consequence, such as access to children, are determined. And in civil cases, the courts resolve issues such as bitter neighbour disputes, the life or death of companies, and



compensation claims worth millions of pounds. Citizens of the twenty-first century expect these proceedings to be conducted in a way that they can understand. As much as possible, therefore, the legal arguments and the judgment in a case should be rendered in modern English.

Latin knowledge is still very useful for the interpretation of many old cases, in other words most of the law reports. Additionally, Latin appears in the judgments of some judges who continue to use such phraseology, albeit with polite recognition that such use is not the modern way. In a case in 2000, Vanessa Dawn Dimond was the innocent victim whose Suzuki Vitara car was damaged by Robert J. Lovell in an accident in Sheffield. She tried to claim back the cost of hiring a Ford Mondeo from him, while her car was being repaired. The cost of this hire was quite high. She lost her claim for various legal reasons. One question for the court was whether an agreement she had with her insurance company (to get a hire car, following any accident, without cost to herself when she hired it) could affect the liability of a third party like Mr Lovell. Lord Hoffmann characterised one of the arguments as being 'as one used to say, *res inter alios acta*' – shorthand for *res inter alios acta alteri nocere non debet*, which means 'a person ought not to be prejudiced by what has been agreed between other persons'. In the event, he stated that such a rule was not to be strictly applied today in some circumstances, so that if someone agreed to provide a valuable service to you without cost following an accident, such a cost might be unrecoverable by you.

Here are some useful phrases. The translations are, where suitable, functional not literal.

a posteriori: in reasoning, this means proving the cause from the effect, for example seeing a watch and concluding there was a watchmaker, or, like Robinson Crusoe, seeing a footprint on a desert island and inferring the presence of another person. This is called inductive reasoning, and is to be contrasted with knowledge gained prior to experience (see *a priori*, below).

a priori: in reasoning, this means inferring effects from given causes, without investigation. *A priori* knowledge is derived prior to experience. This is known as deductive reasoning, and is often used in mathematics. It is to be contrasted with knowledge gained after experience (see *a posteriori*, above). *A priori* reasoning proceeds from theoretical deduction and not from observation or experience.

argumentum ad hominem: 'argument to the person' – an argument not in general or impersonal terms but directed at a particular person; an argument focused on the personal characteristics or situation of someone. Attacking a judgment for alleged incoherence might be proper, but trying to invalidate a

judgment by alleging senility in the judge who delivered it would be *argumentum ad hominem*.

cessante ratione legis, cessat lex ipsa: 'when the reason for its existence ceases, the law itself ceases to exist'. This is truer of judge-made common law principles than of the contents of legislation.

damnum sine injuria esse potest: 'there can be damage [such as physical injury or financial loss] without injury [legal wrong]', i.e. not all hurt and harm is legally actionable. If you bruise someone in a rugby match or open a bakery near another bakery, there is normally no legal remedy for the people who have been hurt or suffered economic loss.

de minimis non curat lex: 'the law does not concern itself with the smallest, trivial matters'. You cannot take legal action for being heavily jostled in an unruly queue.

expressio unius est exclusio alterius: 'the expression of the one is the exclusion of the other'. Where land is conveyed by deed, and it is not clear whether certain parts should be included in the transfer, it is a question of fact whether particular parcels are covered by the deed. However, the express mention of certain property, for example 'quarries', may show that other property such as 'mines' was not intended to be transferred, on the principle *expressio unius est exclusio alterius*.

habeas corpus: 'you are to have the body'. Part of a longer phrase describing a claim by which the detainer of a person is required to produce 'the body' (i.e. the living person) to a court to justify the detention.

in pari delicto, potior est conditio defendentis (or possidentis): where both parties are equally at fault, the defendant (or the person in possession of disputed property) is in the stronger position.

quis custodiet ipsos custodes?: 'who shall guard the guards?', i.e. even guards and protectors can be deficient.

qui facit per alium facit per se: 'he who employs another person to do something, does it himself'.

suppressio veri, suggestio falsi: 'the deliberate suppression of truth implies something untrue'. This is the cold cost of being 'economical with the truth'.

PUNCTUATION

Lynne Truss's award-winning book *Eats, Shoots & Leaves: The Zero Tolerance Approach to Punctuation* presents a compelling case for accuracy in the art by



telling the following joke:

A panda walks into a café. He orders a sandwich, eats it, then draws a gun and fires two shots in the air. 'Why?' asks the confused waiter, as the panda moves towards the exit. The panda produces a badly punctuated wildlife manual and tosses it over his shoulder. 'I'm a panda,' he says, at the door. 'Look it up.' The waiter turns to the relevant entry and finds an explanation. 'Panda. Large black-and-white bear-like mammal, native to China. Eats, shoots and leaves.'

Punctuation is very important in law. Consider the difference between 'a woman, without her man, is nothing' and 'a woman: without her, man is nothing'. Truss also cites an example from a 1937 exam in which candidates were asked to punctuate the following sentence: 'Charles the First walked and talked half an hour after his head was cut off.' The answer: 'Charles the First walked and talked. Half an hour after, his head was cut off.'

In language and in law, the comma is so much more than a prissy squiggle. The importance of this punctuation mark is illustrated by the negligently composed line in a CV, 'I like cooking my pets and travel'. Sometimes, commas can rotate a sentence from one meaning to its opposite: from 'Ann said Brett is an idiot' to 'Ann, said Brett, is an idiot'.

Much can swing on a single punctuation mark. Take Sir Roger Casement. He was hanged by a comma. Casement was convicted in the First World War of conspiring with the Germans to further an Irish insurrection. The contentious punctuation mark appeared in some but not all versions of the law under which Casement was prosecuted: the Treason Act 1351. Ultimately the comma allowed the definition of a traitor to include someone whose treachery, like Casement's, was committed outside the realm in Germany. He made his nefarious plans with others while he was abroad. The relevant part of the Act translated from the Norman French said that a man was guilty if he was:

adherent to the enemies of our Lord the King in the Realm giving them aid or comfort in his Realm or elsewhere...

There are different ways of reading this section of the Act. To be convicted, a defendant must have 'been adherent to', in other words 'helped', the enemies of the king. It did not matter whether the enemies were in the country or in another country. But what about the defendant – did it matter if he was outside the country when he gave his alleged help?

The prosecution relied on a version of the Act with commas in it. The relevant section was punctuated in this way:

adherent to the enemies of our Lord the King in the Realm, *giving them aid or comfort in his Realm*, or elsewhere...[Emphasis added]

The prosecution argued that if the middle explanatory clause 'giving them aid and comfort in the realm' is treated as bracketed, and covered up for a moment, then the first bit of the sentence can be joined with the last bit to read, 'adherent to the enemies of our Lord the King in the Realm...or elsewhere'. That means it would be a crime to be adherent to the king's enemies either by doing the adhering at home in the realm, or by doing the adhering elsewhere, like Germany. In which case, Casement would be guilty.

Casement's barrister, A.M. Sullivan KC, argued that the Act applied only to stay-at-home traitors, not to his client. He said the court should not interpret the Act as the prosecution wanted it to, because there were no commas in the original law. He continued:

[N]o inference can be drawn from punctuation. The whole matter should be determined without any theory as to punctuation...and in dealing with a penal statute crimes should not depend on the significance of breaks or commas. If a crime depended on a comma, the matter should be determined in favour of the accused and not of the Crown.


He argued that the appearances of the phrase 'in the Realm' and 'in his Realm' were a clear indication that to be treason, an activity had to be done within the country. Moreover, the phrase 'or elsewhere' had to be interpreted as referring to the king's enemies, not to the alleged traitor. It was treason to help the king's enemies wherever they were, provided the help was rendered in the realm.

However, two of the five judges, Justices Darling and Atkin, went to the Public Record Office to check with a magnifying glass what was on the original Statute Roll and Parliamentary Roll. Mr Justice Darling reported, 'there is a mark which we looked at carefully with a magnifying glass'. Referring to such marks as they had spotted, Mr Justice Atkin said, 'I think they are really to represent commas.'

Casement's appeal was rejected, and on 3 August 1916 he was hanged at Pentonville prison.

In 2015 in Ohio, the Court of Appeals overturned a conviction because a comma mistakenly omitted from a local parking law meant that the code did not apply to most vehicles. In 2014, Andrea Cammelleri had had her 1993 Ford pickup truck towed away by police from outside her house and impounded for a parking violation. She refused to accept a fine, saying that she had checked the local law and it did not apply to her truck. The matter went to trial and she was convicted.

Ms Cammelleri had been cited for violating the village of West Jefferson Codified



Ordinances 351.16(a), which states that it is unlawful for any person to park on any street 'any motor vehicle camper, trailer, farm implement and/or non-motorised vehicle' for a continuous period of 24 hours.

The prosecution argued that the first item in that list, 'motor vehicle camper', did apply to Ms Cammelleri's pickup truck because what the law had meant to say was 'motor vehicle, camper, trailer . . .' but a comma had been 'inadvertently omitted' between 'motor vehicle' and 'camper'.

In allowing Ms Cammelleri's appeal and vacating her conviction, the Court of Appeals in Madison County ruled that, according to the rules of grammar, separate items in a series are normally separated by commas, and that 'motor vehicle camper' connoted one item. Ms Cammelleri's pickup truck was not a 'motor vehicle camper' so she could not be convicted under the ordinance.

Historically, legal documents were written down only as evidence of what was said; they were not designed for studied interpretation. Punctuation, adapted from a Greek system, was used to assist in public readings, and so some documents were punctuated from very early history. Falsifying the meaning of a document by the artful insertion of squiggles and dots is relatively easy, but there was never an edict prohibiting punctuation in legal instruments. Nowadays, the use of punctuation in statutes can be considered in order to make sense of the law. As Lord Lowry once noted, 'Why should not literate people, such as judges, look at the punctuation in order to interpret the meaning of the legislation as accepted by Parliament?'

LEGAL WORDS THAT HAVE BECOME COMMON

Law is a major part of social life, so many legal words and phrases, or phrases with legal references in them, have been absorbed into general language. Many common words such as 'culprit', 'international' and 'codify' all originated in legal writing. English is rich in legal expressions such as 'that story would be laughed out of court' and 'I hold no brief for the Football Association but...

One word that occurs frequently in textbooks and case reports in all branches of English law is the word 'reasonable'. In fact, more cases have hinged upon the meaning of this word than any other. In an early Latin form, the word appears in the first great treatise on English law produced in 1189 and ascribed to Ranulf de Glanville, the chief justiciar of England. In answer to the question of when a mortgage debt should be paid in the absence of an express agreement, Glanville launched a thousand years of conjecture and courtroom quibbling by answering, *rationabile terminum*, 'a reasonable time'. In 1215, the Magna Carta spoke of *rationabile auxilium*, 'a reasonable aid', in an attempt to put a limit on the level of




tax a king or lord might levy on the knights in order to defray the expenses of ransom (money demanded for hostages or prisoners of war), knighting his eldest son and marrying off his eldest daughter. Defining what is meant by 'reasonable' has foxed the best legal practitioners and philosophers, and many today accept the scepticism of Lord Goddard, who said in 1952, 'I have never yet heard any court give a real definition of what is a "reasonable doubt".' A very reasonable point.

The opposite phenomenon – common words that become legally recognised – is also a regular feature of linguistic development. Judges must ensure that the language recognised in the court is not a code that ossified centuries ago when the style of wigs that they wear were the fashion. In a case in 1857, Chief Justice Pollock stated, 'Judges are philologists of the highest order.' (Philology is the science of language, especially in a comparative or historical setting.) In fact, Baron Martin once suggested that judges are bound to know 'the meaning of all words in the English language'. Sometimes, though, even the best judges are challenged by today's rapidly developing vocabulary. In 2003, presiding in an intellectual property case about rap music, Mr Justice Lewison had to discern the meaning of phrases like 'mish mash man' and 'shizzle my nizzle'. Andrew Alcee, the writer of 'Burnin' ', a track that was a hit for the concept group (a group with no fixed membership) Ant'ill Mob in 2001, claimed that lyrics 'laid over' the top of the Heartless Crew's remix of the song constituted 'derogatory treatment' of the copyright. Mr Alcee claimed that terms like 'shizzle my nizzle', 'mish mash man' and 'string dem up' referred to drugs and violence, and so 'distorted and mutilated' his original tune. The judge said the claim had led to the 'faintly surreal experience of three gentlemen in horsehair wigs [himself and the two barristers] examining the meaning of such phrases'. He admitted that even after playing the record at half speed and referring to the *Urban Dictionary* on the Internet he was unable to be sure of the meaning of the slang. He concluded that the latter words 'for practical purposes were a foreign language'. The claim failed.

NAMES

The law relating to proper names is vibrant. This is because, among other things, so much hinges on commercial property rights associated with names, and upon personal identity. The legal disputes are many and varied.

Can one charity, for example, take action against another if the newer one has adopted a very similar name? The courts have said there is such an action. The economic tort of 'passing off' (torts are civil wrongs other than breaches of contract) is intended to protect businesses with established reputations from having trade diverted from them by other businesses that have adopted




misleadingly similar names. The tort was developed to cater to the needs of commercial concerns, but the courts have applied this law to charities. In one case, *British Diabetic Association v Diabetic Society Ltd and others* (1995), the British Diabetic Association won an injunction to stop a breakaway group from calling itself the Diabetic Society. The court held that the concept of trade for the purposes of this tort was to be seen as wider than in a tax or commercial setting. It did not matter that the newer title was used without an intention to deceive the public if in practice the public will in fact be misled. It was also no defence for the newer organisation to say the public would recognise the difference between the two organisations if the public paid very close attention to the details. The court took that principle from an earlier decision about a company selling lemon juice.

In the earlier case, *Reckitt & Colman Products Ltd v Borden Inc and others* (1990), the court had held that it was no defence for the newer organisation to say that purchasers of a product would not be misled if they were 'more careful, more literate or more perspicacious'. In this case, the claimants had sold their product (preserved lemon juice), known as Jif lemon, in plastic lemons since 1956, and its appearance and brand name were established in the public mind. Virtually no attention was paid by shoppers to the label. There was bound to be confusion in the mind of the public in respect of the defendant's lemon juice, also sold in plastic lemons, which was an imitation of the claimant's product. It was held that the imitators had acted fraudulently in selling their product.

Problems occur when companies want to register common words or names as intellectual property. When should one common surname be allowed to become a registered trademark? In *Nichols plc v Registrar of Trade Marks* (2005), the court was told that a company had applied to register the surname 'Nichols' as a UK trademark for vending machines, and food and drink typically dispensed through such machines. One of its main products was the soft drink called Vimto. The Registrar, whose decision was successfully appealed against in this case, applied the criteria that: (1) in judging the capacity of a surname to distinguish goods or services, consideration would be given to the commonness of the name, based on a specified number of times that it appeared in an appropriate telephone directory; and (2) consideration would be given to the number of undertakings engaged in the relevant trade.

The Registrar, having noted that 'Nichols', or phonetically similar names, appeared more than the specified number of times in the London telephone directory (483 against a maximum of 200), refused registration in respect of food and drink, but granted it in respect of vending machines, on the grounds that the size of the market in the first case was large, but in the second was more specialised.



The High Court referred to the Court of Justice of the European Communities for a preliminary ruling on the question of what criteria were applicable to the determination of whether a surname, and in particular a common one, was to be refused registration as a trademark, on the grounds that it was 'devoid of any distinctive character' in European law. The European Court of Justice ruled that the distinctive character of all marks was to be assessed in relation to the goods or services involved, and to the perception of the relevant consumers, with a specific assessment in each case. It ruled that a Registrar should not judge whether a name can be registered simply by looking at how numerically common it was.

Under English law, a commoner problem has concerned neologisms, that is, made-up or newly coined words. A word can be registered as a trademark provided it satisfies certain conditions. It must be an invented word, and it must not indicate the character and quality of the goods to which it refers. In a case in 1946, about whether the word 'oomphies' could enjoy trademark registration in connection with footwear, Mr Justice Evershed, with perfect poise, noted that the word 'oomph' originated as a description of 'a cinema actress, Miss Ann Sheridan, and, as I understand it, after being particularly applied to her, it has achieved a significance'. Nonetheless, it was an invented word, and although American slang signifying 'sex appeal', it did not refer to the character of the footwear in question, so it was a registrable trademark.

A business trading on the good name of another enterprise might be committing various torts, including that of 'passing off'. A Sheffield hair salon called British Hairways, which opened in 1990, and a shop called Herrods, which opened in London in 1994, did not impress British Airways or the owners of Harrods, and solicitors' letters were quickly fired off at both name adapters. The Business Names Act 1985 precludes registration of names that are already registered, and names that are 'offensive' or would amount to crimes. Odd nominal questions have arisen elsewhere. In 1962, an American court held that there had been no unlawful discrimination by a telephone company that had refused to put the name of a registered company in its telephone directory. Mr Robert A. Williams and his wife Mrs Fern G. Williams, who ran a trash haulage firm, had wanted their company to be placed first in the telephone directory. The name they tried to get entered, which was perhaps echoed in the sound they made when they heard the judge rule against them, was 'AAAAAAAAAAAAAAAAAAAAAAAAAAAA'.

Cases from other jurisdictions have raised other points of legal interest. Rarely have legal arguments about the word 'virgin' been as consequential as those raised in a case in the United States Federal Court in New York in 2005. Sir Richard Branson's Virgin Group claimed that owners of websites such as the online cigar merchant virgincigar.com were committing 'cyberpiracy' by using the word 'virgin'



in their domain names. Lawyers for the Virgin Group demanded that the companies named in the suit transfer their domain names (i.e. their 'www.' names) to its client, Sir Richard Branson's company. All the companies complied except the small New York clothing firm VirginThreads, operated from the home of Jason Yang, its sole proprietor. Yang fought the action as over 6,000 pages were linked to his website, and he needed the business (his total sales in 2004 amounted to \$105,000, as opposed to Virgin's \$8.1 billion). He said, 'Morally, I don't think it is right for me to give up my name.' Virgin, which sells clothes in the US, argued that consumers would think any product with the prefix 'virgin' was part of the Virgin Group. Additionally, under American law, owners have a duty to police their trademarks, and failure to do so can be construed as an abandonment of the mark. Mr Yang argued that 'virgin', unlike fabricated names such as Altria or Kodak, is too common an English word to be owned by a company. In the event, the matter was settled and the smaller company agreed to change its name.

To be trademarks, words must be distinctive. They cannot be descriptive, because this would unfairly circumscribe rival traders' abilities to market their products. Curiously, the European Court of Justice has ruled that 'Baby Dry' (for nappies) is a 'lexical invention' and should enjoy a community trademark, but that 'Doublemint' is too descriptive for the same privilege.

A rose by any other name might smell just as sweet, but whether that is so of MPs is another matter, especially if one changes his name to Haddock. In 2002, the MP for Great Grimsby, formerly known as Austin Mitchell, temporarily changed his name, declaring this by deed poll, to Austin Haddock. He did this to promote the struggling fish industry in his constituency.

A surname in common law is simply the name by which someone is known. The use of surnames was introduced around the time of the Norman Conquest in 1066 but was not commonly adopted until the late 1300s. As names could be arbitrarily assumed, there were no legal requirements as to how they should be changed, and, leaving aside children and companies, that is still the position today. As Lord Justice Ormrod noted in a case in 1979, 'a surname in common law is simply the name by which a person is generally known, and the effect of a deed poll is merely evidential: it has no more effect than that'. In other words, showing that you have changed your name by deed poll provides some evidence that you have changed your name legally, but it can be contradicted by other evidence, for example if you continue to use another name for all formal purposes like filling in forms and documents. The award for most unusual name-change must go to Michael Howard, who became overdrawn by £10 in 1995 and was charged £20 by his bank in Horsforth, Leeds. By deed poll he declared his new name to be 'Yorkshire Bank PLC Are Fascist Bastards'. He said, 'I have 69p left in my account and I want the bank to

return it by cheque in my full new name.¹⁸ His wish, though, was not granted.

In 2004, a father from Zhengzhou, Henan province, in China, was refused official permission to name his son '@' after the keyboard character. Officials declined the application on the legal basis that all names must be capable of being translated into Mandarin.

PROFANE LANGUAGE


'To some this may appear to be a small matter, but to Mr Harry Hook it is very important' . . . so begins the celebrated judgment of Lord Denning in a case from 1976. Mr Hook, who had been a Barnsley market trader for six years, had his licence revoked by the local council after he had urinated in a side street on an evening when the toilet was shut. He had been confronted by an official. Denning explained:

We are not told the words used by the security officer. I expect they were in language which street traders understand. Mr Hook made an appropriate reply. Again, we are not told the actual words, but it is not difficult to guess. I expect it was an emphatic version of 'You be off'.

Judges, of course, sometimes cannot avoid repeating the vulgar words of litigants or witnesses in order to have points clarified. 'You don't accept the bit about "get out of the room and take the fucking money"?' Mr Justice McCombe, for example, enquired of a High Court witness in a case in 2002. The swearing is often an integral part of statements that have potential legal significance. Sometimes the profanities are drearily mundane, for example 'We are the Preston hooligans. We want to kick your fucking heads in', which was considered in a case about whether a young man called John Joseph Cawley was guilty of a public order offence at the Shay Football Stadium in Halifax in 1975. He was eventually convicted.

However, sometimes there is evidence of some verbal flourish. A libel case, involving the former Liverpool goalkeeper Bruce Grobbelaar, was the setting for a profusion of imprecations ricocheting off the court walls, from the direct 'there's fuck all chance of winning Newcastle' to, in literary terms, the rather arch use of hyperbaton in the phrase 'one hundred and twenty-five fucking thousand pounds cash'. Those statements, and others, were legally relevant to whether the goalkeeper had accepted money to fix games. Mr Grobbelaar eventually won a libel action against a paper that had made such an accusation, but the House of Lords reduced his damages from £85,000 to £1.

One case in which the precise connotations of swear words was judicially examined was *Snook v Mannion* (1982). The Divisional Court held that the words 'fuck off', when said to police officers by a man on his front driveway, were not



clear enough to indicate that the man wanted to revoke their implied licence to be there.

Quite what words would have been clear enough to revoke the officers' implied licence to be on the driveway was not explained in any great detail by Mr Justice Forbes. This is curious. Someone who steadfastly remained somewhere, having been told what the officers were told, might be opening themselves to an enquiry from their aggressor such as 'What part of "fuck off" do you not understand?' However, the court's unusual interpretation of language might be explicable when the wider story of the case is taken into account.

On 17 April 1981, Brian Snook had been out drinking when he drove his Ford Cortina home near Lydney in Gloucestershire. He drove in an erratic manner and reached speeds of 55 mph in a built-up area. Two policemen followed him home in a police car. Mr Snook drove up his front driveway, got out of the car and then threw his keys into a flowerbed. The officers walked on to his drive and told him they suspected him of driving while under the influence of alcohol. They requested a breath sample. He declined, saying he was on his own drive. He was eventually arrested and convicted for drink-driving. The court decided that police officers, like other citizens, had an implied licence to be on someone's driveway between the front gate and the front door if they thought they had legitimate business with the occupier. In this case, the words 'fuck off', uttered by a man who had been drinking, were not 'a sufficiently express rebuttal' of the implied licence the police officers had to be on the drive.

Finally, on this theme, there are occasions when bad language can be used by a lawyer with an ulterior motive. Sir Robert Megarry has recounted an instructional account from the memories of W.A. Fearnley-Whittingstall QC. In the early 1930s, a barrister who was opening a prosecution for housebreaking was plagued by a fidgety juror. The trouble lay in the juror's mackintosh. He began by keeping it on, then he took it off and sat on it, then, finding this uncomfortable, he put it on the edge of the jury box; next he put it on the floor under his seat, and finally he picked it up and put it on his lap. This done, he embarked on a discussion with his neighbour in conversational tones, possibly about the lack of amenities in the jury box. At this time the prosecuting barrister had been trying to open the case, and had reached the point when the householder had left his dinner to go to his study and there encountered the accused.

Although the barrister had looked hard and often at the juror, the juror had continued his fidgeting, unconcerned and perhaps oblivious of the unrest he was creating. His conversation with his neighbour proved to be the last straw. The barrister paused, looked straight at the juror and said, with great emphasis, 'Keep



still, or I will knock your fucking block off.'

For a few seconds there was a deadly hush in court. The judge was bereft of words. The barrister then continued, imperturbably, 'Those, members of the jury, were the words the accused uttered to the householder when he entered his study.'


CONCISENESS

'Succinct' is not always the first word people would choose when describing lawyers. In 2001, a Practice Direction for the civil courts aimed to cut down the number of case citations lawyers make in their arguments. Now only relevant and useful citations are permitted. This rule was designed to produce shorter cases and briefer law reports. Law reports of over 50 pages are not uncommon today, and some from earlier times are notably more lengthy. One House of Lords' decision, *R v Millis* (1844), for example, offers 120 pages summarising lawyers' arguments, followed by over 200 pages of judgments from the Law Lords, on the law concerning the validity of Presbyterian marriages. Not all law reports are that long. Glasses should be raised to the leading judge in *Hall v Hall* (1788), and to its court reporter. The entire report runs simply: 'Reprizal was said by Lord Thurlow C. to be a common drawback.'

Sometimes a case can be neatly encapsulated in a short but intriguing report title. One to raise an eyebrow is the 1836 case reported under the exquisite heading *The King v Forty-Nine Casks of Brandy*. This dispute between the king and the estate of William Bankes, owner of coastal land including Corfe Castle, concerned who had the best title to casks that had washed ashore near Poole in Dorset. The court divided the casks between the disputants. It is not recorded how they celebrated their gains.

In 2005, a controversial service for literature students was launched, aiming to deliver potted versions of major works, including *Bleak House*, in a few lines of mobile text message. The summary of *Romeo and Juliet* begins 'FeudTween2hses – Montague&CapuletRomeoMfalls_<3w/_JulietC@marrySecretly' (A feud between two houses – Montague and Capulet. Romeo Montague falls in love with Juliet Capulet and they marry secretly). Although concision is not always seen as a typical lawyerly characteristic, much legal work involves great expertise in the art of precis. Law has long enjoyed a sophisticated system of concision in 'headnotes' above law reports. Thus a 93-page law report for *A and others v Secretary of State for the Home Department* (2005) appears with a trenchant one-page synopsis of its judicial reasoning. A decision made by Mr Justice Parke in 1830 is succinctly headnoted as 'Possession in Scotland evidence of stealing in England'.

According to Cicero, *legem brevem esse oportet* ('a law should be brief'). Those



who have drafted the Companies Act 2006 would not accept Cicero's dictum as a universal truth. The Act runs to 1,300 sections and is the longest piece of legislation ever drafted. But shorter legislation can be just as intricate. The Civil Jurisdiction and Judgments Act 1982, which facilitates a person suing in one European Community country for alleged wrongs done in another, is a shorter Act, but it drew some memorable criticism in Parliament because of its intellectually challenging intricacy. It was described by Lord Foot as being a body of law that 'gives to the word "complexity" a new dimension'. Speaking of the draft legislation in 1981, Lord Hailsham, the Lord Chancellor, said, 'There is nothing whatever I can do to make my speech short, and those who expect to find it of throbbing human interest will, I fear, be wholly disappointed. The road lies uphill all the way.'

ARCANE LEGAL WORDS AND PHRASES

In Gulliver's Travels, Jonathan Swift wrote about lawyers who had 'a peculiar Cant and Jargon of their own, that no other Mortal can understand'. Today, a fair part of legal language is still just as esoteric. Some mysterious words are explained below.

chose in action (noun, pronounced 'shows in action'): a legal right to procure a sum of money owed. A cheque is such a financial entitlement. There is a popular myth that a cheque can be written on anything and still be valid. The origin of this myth might be an A.P. Herbert story, 'Uncommon Law', published in 1935 and dramatised on television in June 1967. In this story, a fictitious character called Albert Haddock wrote a cheque for £57 to the Inland Revenue on the side of a white cow, and led the cow to the tax offices. Missing the fact that this story was merely a joke, an American newspaper, the *Memphis Press-Scimitar*, published the case of 'the negotiable cow' as true. Since then, this myth has often been repeated.

deed poll: a legal document made by one person, or several, simply expressing a common intention. Contrast an indenture, which is a document made by two or more people agreeing to do something or create obligations. Historically, deeds were short, so two or more copies were written on one piece of parchment. Some words (such as the word cirographum, 'handwriting') were written in between the copies. A wavy or indented line was cut through the dividing words. This might afterwards show that the severed deed tallied with the other part or parts. By contrast with those sorts of document, a simple declaration (for example if a person declared an intention to change his name from Smithie to Smith) that did not need to match with another undertaking was simply cut evenly from the rest of the parchment, as when a coupon is torn



across a dotted line.

The section was thus cut, or 'polled', and the deed became known as a deed poll.

defalcation (noun): misappropriation of money, or the amount misappropriated. In 1988, the Privy Council dismissed an appeal by Chan Man-sin against his conviction in Hong Kong for theft. While an accountant, Chan had forged cheques for \$HK4.8 million on company accounts, depositing them in his accounts. He was charged with theft when his defalcations were discovered.

engross (verb): this does not mean to participate regularly in negotiations during sumptuous legal luncheons and dinners, but to prepare a final copy of a deed or contract with all the formal clauses included, prior to its execution (i.e. signing) by the parties.

hearsay: the evidence of someone other than the person who is testifying in court, or statements in documents offered to prove the truth of what is asserted in court. If, for example, you did not see a man in a red shirt run out of the bank holding a briefcase, but you heard an office colleague who was looking out of an office window across the street from the bank say, 'I think I know that man in a red shirt who has just run out of the bank holding a briefcase', then the only evidence that a man in a red shirt ran out of the bank holding a briefcase is hearsay evidence. You are not a direct witness, but you can report what a witness is supposed to have seen and said. Although there are exceptions to it, the general rule is that hearsay is inadmissible evidence. In an episode of *The Simpsons*, the judge rebukes the hapless lawyer Lionel Hutz: 'Mr Hutz, we've been here for four hours. Do you have any evidence at all?' To which Hutz optimistically replies, 'Well, your Honour. We've plenty of hearsay and conjecture. Those are kinds of evidence.'

laches (pronounced 'lay-cheese'): an unconscionable delay. The doctrine of laches bars an action if it is stale. Negligence or unreasonable delay in asserting a right will defeat its enforcement. In a dispute between family members about a family business, the Court of Appeal in 2000 rejected a claim by a son where the relevant events involving his father and brothers had occurred between 19 and 37 years prior to the commencement of proceedings.

misfeasance (noun): an old term meaning the unlawful performance of a lawful act. For the tort of 'misfeasance in a public office' it is not necessary to prove malice. In a case in 1984, the Ministry of Agriculture banned the importation of French turkeys in order to protect British producers. The Court of Appeal ruled



that it did not matter that the Ministry had not acted to harm French interests but merely to protect those in Britain. It was enough that an official knew he was acting beyond his powers, and that his action would financially injure others.

recuse (verb): to refuse. To reject a judge in a particular case as unsuitable through having a real or apparent interest in the case. Often used in the reflexive form 'he recused himself'. This is an old civil and canon law term. In 1999, at Winchester Crown Court, Judge Patrick Hooton, who had participated in pheasant shoots, recused himself from presiding in a case involving an animal rights protester. The Court of Appeal has said that recusal should not be based on 'the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge'.

time immemorial: time beyond legal memory. Not how long a late-afternoon land law lecture seems to have lasted to its wearied listeners, but the formal beginning of English law, which commenced on 3 September 1189 – the accession of Richard I. Today, an ancient custom can have the force of law, like a right over land, if it can be shown to have existed since 'time immemorial'. The Statute of Westminster in 1275 fixed 1189 as the earliest date from which evidence in land disputes could be considered, because then, in 1275, a living man might be able to testify about what his father had told him existed in 1189.

voire dire (noun): a preliminary examination by the judge of a court witness in which he is required 'to speak the truth' in answer to questions put to him. If he appears incompetent, for example not of sound mind, he can be rejected as a witness. The word 'verdict' has a similar etymology. Kings in England spoke French for centuries after the Norman conquest in 1066, and more than 10,000 French words were absorbed into the language, including many legal words used at court.

The writer Flann O'Brien said, 'I suppose that so long as there are people in the world, they will publish dictionaries defining what is unknown in terms of something equally unknown.' There are, however, several good legal dictionaries to assist with the reading of the law. *The Oxford Dictionary of Law*, 7th edition, edited by Elizabeth A. Martin and Jonathan Law, and the *Collins Dictionary of Law*, 2nd edition, by W.J. Stewart and Robert Burgess, are both very helpful texts.

The language of the law is important in any general language, but especially so in English. As one prominent English and American practitioner has noted, although English is a relatively young language, it is more widely used than any language ever has been, and 'the English-speaking trial is recognisably the same animal,



from the Antipodes to Alberta'. So, a good knowledge of English and an appreciation of the language of English law affords an understanding of a phenomenon that has spread over much of the world.