

CONTENTS

LEGAL ENGLISH AND THE COMMON LAW *with* LEGAL GRAMMAR HANDBOOK

Presentazione - Legal English and the Common Law	Pag.	v
Summary	»	vii
Introduzione - Legal English and the Common Law	»	viii
General introduction - Legal English and the Common Law	»	ix
Introduction for Language Professionals - Legal English and the Common Law	»	xi
Introduction - Legal Grammar Handbook	»	xiii
Introduzione - Legal Grammar Handbook	»	xv
Ringraziamenti	»	xvii
Acknowledgements	»	xviii
About the authors	»	xix
Contents: Legal English and the Common Law	»	xxi
Contents: Legal Grammar Handbook	»	xxvii

LEGAL ENGLISH AND THE COMMON LAW

CHAPTER ONE

ENGLISH IN LEGAL CONTEXTS

English legal texts, contexts and terminology in national and international perspectives

1.1. Introduction	Pag.	5
1.1.1. Introduzione - versione italiana	»	7
1.1.2. Vocabulary in the Law: dictionary use and examples in context ...	»	9
1.2. Reading, vocabulary and context: Long Walk to Freedom	»	12
Vocabulary focus	»	13
Collocations	»	13
Grammar patterns	»	14
Your personal terminology system	»	14
1.3. A Selection of texts on legal themes	»	14
1.3.1. Global reading activity – identifying legal texts (key)	»	26
1.3.2. Commentary on the selection of texts	»	26
1.4. English legal contexts and english legal texts	»	35

1.4.1.	Summary of contexts and text types	Pag.	35
	Legal contexts for legal texts in English	»	35
	Primary legal texts typical of a common law legal system	»	35
	Primary legal texts typical of the international and EU legal orders	»	36
	Secondary legal texts: academic and professional literature	»	36
1.4.2.	Textbooks, case books and law reviews	»	36
1.4.3.	Reflections for you as a language user: legal Englishes?	»	37
1.4.4.	Reflections for you as a language user: text types	»	38
1.5.	Features of English Legal Texts and Language	»	39
1.5.1.	Legal texts and text types	»	39
1.5.2.	The function of legal texts: producing legal effects	»	40
1.5.3.	Not just documents: the role of language in law	»	41
1.5.4.	Written and oral texts	»	43
1.6.	Reflection: opinions on legal language – advanced	»	45
	Ideas for further reading	»	47

CHAPTER TWO

THE LANGUAGE OF A LEGAL SYSTEM
Laws, courts and constitutions

2.1.	Introduction	Pag.	49
2.1.1.	Introduzione – versione italiana	»	51
2.1.2.	Terminology focus: laws and legislation, courts and cases	»	53
2.1.3.	Translating legal terminology	»	53
2.1.4.	Introducing the Principal Sources of English Law	»	55

PART ONE

2.2.	Legislation and the Legislature	»	58
2.2.1.	Legislation	»	58
2.2.2.	The legislature: the Queen in Parliament	»	59
2.2.3.	Constitutional monarchy	»	60
2.3.	Consulting Legislation: British Constitutional Reform	»	64
2.3.1.	The Scotland Act 1998: Devolution	»	64
2.4.	The Legislature: House of Commons and House of Lords	»	70
2.4.1.	The House of Lords and the House of Commons	»	70
2.4.2.	Case study: A Controversial Law – the Hunting Ban	»	72

PART TWO

2.5.	Legislation and the Courts: Advanced	»	76
2.5.1.	The relative roles of legislation and judicial precedent	»	76
2.5.2.	The different roles of the legislature and the courts	»	77
2.5.3.	Examples of legislation: Contract law and Criminal law	»	79
2.6.	Constitutional Legislation and EU Law: Advanced	»	84
2.6.1.	Legislation as a source of constitutional law	»	84
2.6.2.	Parliamentary sovereignty and the supremacy of EU law	»	86

2.7.	Reflection and Comparison by Federica Giardini	Pag.	90
	<i>La formazione della regola giuridica in ambito familiare: il caso italiano</i>	»	90
2.7.1.	Formazione della regola giuridica: l'avvicinamento tra gli ordinamenti di <i>civil law</i> e di <i>common law</i>	»	90
2.7.2.	Formazione della regola giuridica: il diritto italiano della famiglia e delle persone	»	91
	Filiazione e affidamento condiviso	»	91
	Procreazione medicalmente assistita	»	93
2.7.3.	Conclusione	»	95
	Ideas for further reading	»	96

CHAPTER THREE

THE EUROPEAN DIMENSION

Treaties and judgments. The impact of European Union law and the European Convention on Human Rights

3.1.	Introduction	Pag.	97
3.1.1.	Introduzione – versione italiana	»	99
3.1.2.	Terminology focus – European acronyms	»	101

PART ONE

3.2.	Languages in international legal contexts	»	104
3.2.1.	The Council of Europe	»	104
3.2.2.	The United Nations	»	107
	The International Court of Justice	»	108
3.2.3.	The European Union and multilingualism	»	109
	The Treaties	»	109
	Founding treaties and accession treaties	»	111
	The European Court of Justice	»	113
	Multilingualism – conclusions	»	115
3.2.4.	Parallel texts as a language resource – the Treaty of Rome	»	116
3.3.	Consulting treaty law: the European Union	»	119
3.3.1.	The Treaty on European Union	»	119
3.3.2.	Citizenship of the European Union	»	120

PART TWO

3.4.	The European Convention on Human Rights	»	127
3.4.1.	The European Convention on Human Rights	»	127
3.4.2.	Britain and the Convention before the Human Rights Act 1998	»	128
3.4.3.	The Human Rights Act 1998 (HRA)	»	130
3.4.4.	Protection of rights under the HRA: reading comprehension	»	131
3.4.5.	Constitutional questions raised by the Human Rights Act 1998	»	136
	Parliamentary sovereignty and the declaration of incompatibility	»	136
	Fundamental law	»	138

3.5.	Freedom of Religion: Advanced case study	Pag.	139
3.5.1.	Freedom of thought, conscience and religion: Article 9 ECHR	»	140
3.5.2.	Freedom to manifest religion: the <i>Denbigh High School</i> case	»	140
3.6.	Reflection and comparison by Serena Forlati	»	149
	<i>L'Italia e la Convenzione europea per i diritti dell'uomo</i>	»	149
3.6.1.	La partecipazione dell'Italia alla Convenzione	»	149
3.6.2.	L'adattamento del diritto italiano alla Convenzione	»	150
3.6.3.	Gli effetti della CEDU nel diritto italiano e confronto con l'ordinamento britannico	»	151
	Ideas for further reading	»	154

CHAPTER FOUR

THE LANGUAGE OF CRIMINAL LAW

Criminal prosecution and trial. Homicide and self-defence

4.1.	Introduction	Pag.	155
4.1.1.	Introduzione – versione italiana	»	157
4.1.2.	Terminology focus – The terminology of criminal and civil law ...	»	159

PART ONE

4.2.	Criminal prosecution: the crown prosecution service	»	163
	Introduction: prosecution and defence	»	163
	The Crown Prosecution Service – CPS	»	163
4.3.	Criminal trial and conviction	»	166
4.3.1.	The adversarial trial	»	166
4.3.2.	A criminal conviction – Case study: <i>R v Hayter</i>	»	169

PART TWO

4.4.	The elements of a crime: actus reus and mens rea – Advanced	»	171
4.4.1.	Latin maxims	»	171
	<i>Actus reus and mens rea</i>	»	173
4.5.	Homicide and Defences – advanced	»	175
4.5.1.	Homicide and defences: key terms and concepts	»	175
4.5.2.	Homicide: murder and manslaughter	»	176
	US law compared	»	178
4.5.3.	Defences	»	179
4.6.	Self-defence: case studies and law reform	»	182
4.6.1.	The defence of self-defence	»	182
4.6.2.	Case studies in self-defence and a proposal for law reform	»	183
4.7.	Reflection and comparison by Guido Casaroli	»	189
	<i>Legittima difesa e self-defence a confronto</i>	»	189
4.7.1.	Comment on the English case studies	»	189
4.7.2.	Self-defence, <i>legittima difesa</i> , and law reform in England and Italy	»	190
	Ideas for further reading	»	194

CHAPTER FIVE
THE LANGUAGE OF CIVIL LAW
The law of torts, the English judgment and common law method

5.1. Introduction	Pag.	196
5.1.1. Introduzione – versione italiana	»	197

PART ONE

5.2. Terminology focus – civil law and language	»	200
5.2.1. The law of tort or the law of torts?	»	200
5.2.2. Tort, contract, and the protection of interests	»	201
5.2.3. Functions and remedies in the law of torts	»	204
5.2.4. Actions in tort: trespass and negligence	»	205
A civil case: <i>Letang v Cooper</i>	»	205
A cause of action	»	207
The tort of negligence	»	207
The tort of trespass	»	209
5.2.5. Convention rights and tort law	»	210
5.2.6. Focus on remedies: damages and injunctions	»	211

PART TWO

5.3. Introduction to common law method	»	213
5.3.1. The law reports and judicial precedent	»	213
5.3.2. <i>Stare decisis</i> – the doctrine of binding precedent	»	214
5.3.3. Following precedent: the <i>ratio decidendi</i> and the hierarchy of the English courts	»	215
5.3.4. Precedent from the American perspective	»	221
5.4. Understanding case law: reading a civil judgment	»	224
5.4.1. The key elements of an English case	»	224
5.4.2. Framework for reading an English judgment: the case log	»	226
5.4.3. Reading an English civil judgment: <i>Miller v Jackson</i>	»	227
Table – references in judgments: the proceedings and the parties ..	»	238

PART THREE

5.5. Understanding case law – advanced: <i>donoghue v stevenson</i>	»	239
5.5.1. Reading an English civil judgment: <i>Donoghue v Stevenson</i>	»	239
5.6. <i>Donoghue v Stevenson</i> and common law method: advanced	»	252
5.6.1. The rules of precedent	»	253
Persuasive precedents	»	254
5.6.2. Interpreting the judgment as law: the <i>ratio decidendi</i>	»	254
Determining the <i>ratio decidendi</i>	»	256
5.6.3. The <i>ratio of Donoghue v Stevenson</i>	»	256
Conclusion: the influence of <i>Donoghue</i> in the development of tort law	»	260
The modern three-stage duty of care test	»	261

5.6.4. English judicial reasoning: developing common law principles	Pag.	264
Reasoning by analogy	»	264
Developing common law principles: four cases after <i>Donoghue</i> ...	»	266
5.7. Reflection and comparison by Giovanna Grelli	»	271
<i>Due casi a confronto: Donoghue v Stevenson e il caso Saiwa della Corte di Cassazione</i>	»	271
5.7.1. <i>Il damnum iniuria datum</i>	»	271
5.7.2. La sentenza inglese ed italiana a confronto: <i>negligence</i> o <i>strict liability</i> ?	»	273
Ideas for further reading	»	277
Case log for copying	»	279

CHAPTER SIX

THE LANGUAGE OF CONTRACT

Introduction to contract law and the language of commercial contracts

6.1. Introduction	Pag.	282
6.1.1. Introduzione – versione italiana	»	284
6.1.2. Terminology in context: A celebrity wedding	»	286
Vocabulary focus: collocations	»	289

PART ONE

6.2. The language of contract law: introduction	»	291
6.2.1. A definition of <i>contract</i> – contract and agreement	»	291
6.2.2. The terms of the contract	»	293
Conditions and warranties	»	294
6.2.3. The parties to the contract	»	296
Corporations	»	297
British and American terminology	»	297
The European Community	»	298
6.2.4. Discharge of contract	»	299
Frustration of contract and <i>force majeure</i>	»	302
6.2.5. An international dispute in contract law: <i>Apple v Apple</i>	»	304
Choice of law, jurisdiction, and language in international contracts	»	306
Governing law and jurisdiction clause	»	308
Entire agreement and Amendments clauses	»	309

PART TWO

6.3. The key elements of an English contract: formation	»	310
6.3.1. Form and formalities	»	310
6.3.2. Intention	»	311
6.3.3. Agreement	»	313
Offer and acceptance	»	313
<i>Consensus ad idem</i>	»	315
Illegality	»	315

6.3.4. Consideration	Pag.	316
6.3.5. The elements of a contract: reading selection and analysis	»	319

PART THREE

6.4. Commercial contracts	»	325
6.4.1. The structure of a commercial contract	»	325
6.4.2. Clauses and subclauses: organisation and interrelation	»	327
6.4.3. Examining a commercial contract: content, language and effects ..	»	329
6.4.4. Additional contractual clauses	»	339
6.5. Reflection and comparison by Massimiliano De Benetti	»	342
<i>Concetto e formazione del contract</i>	»	342
Ideas for further reading	»	349

LEGAL GRAMMAR HANDBOOK

CHAPTER SEVEN

TEXT LAYOUT AND USE OF FORMAL TERMINOLOGY

*Historical overview, text-mapping devices, lexical variation,
and capitalization*

7.1. Historical background	Pag.	355
7.2. Textual-mapping devices	»	356
7.3. Capitalization	»	357
7.3.1. Initial capitalization	»	357
7.3.2. Emphasis within the clause	»	358
7.3.3. Job titles and institutions	»	358
7.3.4. Specific words	»	358
7.4. Punctuation	»	359
7.5. Lexical variation	»	359
7.5.1. Archaic words and phrases	»	359
7.5.2. Law French and Law Latin	»	360
7.5.3. Variation in pronunciation	»	361
7.6. All-inclusiveness	»	362
7.6.1. Frequent repetition of lexical items, expressions, and syntactic structures	»	362
7.6.2. Doubling or tripling words and synonym strings	»	363
7.6.3. Compound subjects/objects/adjectives/verbs	»	364
Key and Commentary	»	364

CHAPTER EIGHT
PUNCTUATION
*The apostrophe, comma, semicolon, colon, parentheses,
dash, hyphen, brackets, ellipses*

8.1.	The apostrophe [']	Pag.	368
8.1.1.	Contractions	»	368
8.1.2.	Singular possessive	»	368
8.1.3.	Plural possessive	»	369
8.2.	The comma	»	370
8.2.1.	Commas in salutations, closures, and dates	»	370
8.2.2.	Commas separating items in a series	»	371
8.2.3.	Commas join independent clauses	»	372
8.2.4.	Introductory words or phrases are followed by a comma	»	372
8.2.5.	Commas to indicate parenthetical statements	»	373
8.2.6.	Non-restrictive and restrictive elements	»	374
8.2.7.	A dependent clause (subordinate clause) and the main clause	»	374
8.2.8.	Commas separate two or more coordinate adjectives	»	375
8.2.9.	Commas to contrast	»	375
8.2.10.	Use of the comma in quotations	»	375
8.3.	The semicolon	»	376
8.3.1.	A semicolon for items in a series	»	376
8.3.2.	Semicolons and independent clauses	»	377
8.4.	The colon [:]	»	378
8.4.1.	Introduces a list of items, a summary, a further elaboration, or for emphasis	»	378
8.4.2.	The colon introduces a long quotation	»	379
8.5.	Parentheses [()]	»	379
8.6.	The dash [-], [?]	»	380
8.7.	The hyphen [-]	»	381
8.8.	Square brackets []	»	382
8.9.	Ellipses [. . .] [. . . .]	»	382
	Key and Commentary	»	385

CHAPTER NINE
BASIC SENTENCE STRUCTURE
Subject and predicate, phrases and clauses, modifying sentences

9.1.	The independent clause	Pag.	390
9.1.1.	Verb phrases in independent clauses	»	391
9.2.	Position of the subject	»	392
9.2.1.	Subject omission	»	393
9.3.	Dependent clauses and phrases	»	393
9.3.1.	A dependent clause	»	393
9.3.2.	A phrase	»	393
9.4.	Front structures in sentences	»	394

9.5.	structures to modify the subject: noun phrases	Pag.	395
9.6.	Structures inserted after the subject	»	396
9.6.1.	Noun phrase (appositive)	»	396
9.6.2.	Non-finite -ed participle and non-finite -ing form	»	396
9.6.3.	Dependent clauses	»	397
9.6.4.	Restrictive clauses and non-restrictive clauses	»	398
9.7.	Expanding the predicate: adding a verb	»	398
9.8.	Expanding the object	»	398
9.9.	Structures inserted at the end	»	399
	Key and commentary	»	400

CHAPTER TEN

VERB FORMS

Present simple, present perfect, the passive, modality

10.1.	Overview of verb tenses	Pag.	404
10.2.	Quick grammar review	»	407
10.3.	Pronouns	»	410
10.3.1.	Referential pronouns	»	410
10.3.2.	Referential pronouns as subjects	»	411
10.3.3.	Relative pronouns as subject of clause	»	412
10.4.	Present simple	»	413
10.4.1.	The legal authority as the subject	»	413
10.4.2.	Present simple in subordinate clauses	»	414
10.4.3.	Present simple in <i>that</i> -clauses	»	414
10.5.	Modality	»	415
10.6.	Present perfect	»	419
10.7.	The passive	»	421
	Key and commentary	»	422

CHAPTER ELEVEN

ADVERBIAL CLAUSES AND NOMINAL STRUCTURES

Adverbs, adverbial phrases and clauses, nominal structures

11.1.	Adverbial forms, meaning, and position	Pag.	428
11.2.	Adverbs and adverb phrases	»	429
11.2.1.	Prepositional phrases	»	430
11.2.2.	Noun phrases	»	430
11.3.	Adverbial clauses	»	430
11.3.1.	Coordination with and/or	»	431
11.3.2.	Adverbial clauses and semantic categories	»	431
11.3.3.	Grammar Review – Types of meaning expressed by contingency adverbials	»	432
11.4.	Nominal structures	»	435
	Key and commentary	»	436

Language focus tasks	Pag. 437
Language focus tasks: solutions	» 458
Glossary of grammar terms	» 467
Glossary of law terms	» 469
Bibliography	» 479
List of cases	» 487
National legislative texts	» 490
International and european union legal texts	» 491
Other legal texts	» 492
List of websites	» 494
Subject index: legal english and the common law	» 497