# LEARNING LEGAL SKILLS AND REASONING



## LEARNING LEGAL SKILLS AND REASONING

### **Sharon Hanson**



Fourth edition published 2016 by Routledge

2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

and by Routledge 711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2016 Sharon Hanson

The right of Sharon Hanson to be identified as author of this work has been asserted by her in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

First edition published 1999 by Cavendish Publishing Ltd

Third edition published 2010 by Routledge

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Hanson, Sharon, LLB. author.

[Legal method, skills and reasoning]

Learning legal skills and reasoning / Sharon Hanson. - Fourth Edition. pages cm

1. Law-Great Britain-Methodology. 2. Law-Great Britain-Interpretation and construction. 3. Law-Great Britain-Language.

4. Law-Methodology. I. Title.

KD640.H36 2016

340'.1-dc23

2015016572

ISBN: 978-0-415-83020-1 (hbk)

ISBN: 978-0-415-83019-5 (pbk)

ISBN: 978-1-315-67847-4 (ebk)

Typeset in Helvetica Neue by Apex CoVantage, LLC Printed and bound by CPI Group (UK) Ltd, Croydon, CR0 4YY

## **FIGURES**

1.1	The function of this 'how to' text	5
1.1	Correct reference to primary legislation	12
1.2	Synonyms for secondary legislation and types of secondary legislation	13
1.3	Types of secondary legislation	24
1.4	Statutory instruments: meaning of terms of art: laid, made, in force	26
1.5	Types of UK domestic legislation	27
2.1	UK court structure: also showing its relationship with the tribunals,	
	the Privy Council and two key European courts	53
3.1	Standard issues to bear in mind when dealing with treaties	61
3.2	The layout of a treaty	62
3.3	Dualist and monist legal traditions	67
3.4	Changing a treaty	68
4.1	The institutions of the Council of Europe	75
4.2	Statutory duties imposed by ss 2-4, 6 and 19 of the HRA 1998	84
5.1	Areas you need to understand when dealing with European Union law	88
5.2	The legal competency of European Union law	90
5.3	EU treaties 1957-2007	92
5.4	The three pillars of the European Union	93
5.5	The key law making institutions of the EU	98
5.6	The three key institutions for law making	99
5.7	The general principles of EU law	104
5.8	Possible horizontal and vertical legal direct effect	107
5.9	Basic procedure for a preliminary ruling under Article 267 of TFEU	110
6.1	How the volume of different types of legal resources compare	121
6.2	A selection of legal resources available on the internet	128
6.3	A selection of the different types of legal internet sites	129
6.4	Types of resources in standard university library collections	130
7.1	Annotated screenshot of home page	147
7.2	Screenshot of retrieved Race Relations Act	149
7.3	Screenshot of changes to legislation results for the Race Relations	
	Act 1976	150
7.4	Screenshot of changes to the Race Relations Act 1976, with entry	
	noting its repeal highlighted	150
7.5	Screenshot of UK Statutory Instruments	155
7.6	Screenshot of the whereabouts of the Affordable Homes Bill 2014-2015	156
7.7	Screenshot of SIs sub divided by methods for approval	158

7.8 7.9	Screenshot of Statutory Instruments Lost No 14, 7 November 2014 Screenshot of the list of statutory instruments subject to the	158
	negative resolution	159
7.10	Annotated front page of Westlaw showing quick search boxes	160
7.11	Westlaw: retrieved results for a search of 'Race Relations Act'	161
7.12	Westlaw: advanced search page	162
7.13	Westlaw: result of search for versions of Race Relations Act 1976, s 3	162
7.14	Screenshot of Eur-lex home page	165
8.1	The types of generalist reports available in print and online	175
8.2	Constituent parts of a neutral citation	180
8.3	Court structure showing neutral citation abbreviations used for court and	
	jurisdiction	180
8.4	Constituent parts of citation for a criminal case published in the ICLR	
	Law Reports series	184
8.5	Constituent parts of citation for a civil case published in the ICLR Law	
	Reports series	184
8.6	Retrieved results 1–3	191
8.7	Westlaw: Screenshot of login page	192
8.8	Westlaw: screenshot of detailed search in cases	192
8.9	Lexis®Library screenshot of quick find page	193
8.10	Lexis®Library screenshot of cases web page	194
8.11	Lexis®Library screenshot of retrieved cases	195
8.12	Bailii: Screenshot of sign in page	196
8.13	Case law search options	197
8.14	Bailii screenshot of retrieved case of George Mitchell v Finney Lock Seeds	197
8.15	The constituent parts of a European law report citation	199
9.1	Accessing Parliamentary Papers	216
9.2	Deconstructing the URL of the http://www.canterbury.ac.uk/induction	
	/students website	219
10.1	UK court structure: with arrows showing hierarchical relationships	228
10.2	Q & As on similarities	230
10.3	Wambaugh's method for location of the precedent	231
10.4	Differing methods of finding the ratio	232
10.5	A flow chart to determine whether a previous reported law case	
	(previous case) is a precedent for the case you are considering currently	
	(current case)	234
10.6	Issues to be considered when handling law reports	237
10.7		239
10.8		
	George Mitchell v Finney Lock Seeds [1983] 2 AC 803	240
10.9	Screenshot of George Mitchell v Finney Lock Seeds	240
	O Screenshot of retrieved case of George Mitchell v Finney Lock Seeds	
	indicating anatomy of the report as shown	241
10.1	1 The basic framework of the law of contract	242
	2 The procedural history of the case	246
	3 Verbatim text of G & H of Lord Bridge's judgment on p 811 set out in	
	different text layout to aid understanding	249
10.1	4 Verbatim text of Lord Bridge from page 811, with annotations to check	
	for understanding	250
10.1	5 Annotation of Lord Bridge's paragraphs G & H p 811 of his judgment	251

10.16	The imposition of relabelling on the relevant condition	252
10.17	Layout of the modified s 55 of the Sale of Goods Act 1979	263
10.18	Revised diagram of section 55	264
10.19	Summary: court's rationale for decision	272
	Skills required for understanding legislation	280
11.2	The different elements of a statute	282
11.3	Screenshot of arrangement of Equality Act 2010	284
11.4	pdf from Westlaw of original print version open at table of contents	285
11.5	Screenshot of the Equality Act 2010 showing part of the table of contents	
	from www.legislation.gov.uk (accessed 29/10/14)	286
11.6	Screenshot of changes to s1 Equality Act from www.legislation.gov.uk	
	(accessed 29/10/14)	286
11.7	The general layout of the Equality Act 2010	287
11.8	Tree diagram of s 9 of the Equality Act 2010 as originally enacted.	
	Blue text indicates that a sub-section has subsequently been amended.	291
11.9	Layout of s 9 of the Equality Act 2010	292
11.10	Layout of s 19	298
11.11	Comparison of S3 RRA 1976 and s9 EA 2010	299
11.12	The three main official rules of statutory interpretation	304
	Illustration of the basic layout of a regulation	343
12.2	Illustration of the basic layout of a directive	344
12.3	The layout of the ECHR	346
12.4	The layout of the human rights act 1998	357
13.1	The Latin, French and English meanings of 'to argue'	365
13.2	Different meanings of the word 'argument' as used in English	366
13.3	Skills required for good argument construction	367
13.4	Twining and Miers' problem-solving model	374
13.5	The definition of a rule	375
13.6	Classification of rules	376
13.7	A vocabulary of rule-making verbs	377
	Definition of logic	380
	The components of a deductive reasoning argument	382
13.10	Types of standard generalisations which can find their way into inductive	
	argument	383
14.1	Section 1 of the Theft Act and the five required elements in the definition	
	of theft	398
14.2	Basic argument for the prosecution in the case of R v Anna showing	
	relationships between inductive and deductive reasoning	404
14.3		405
14.4		412
16.1	,	447
17.1	Interconnection between the four stages of reading	476
17.2		488
17.3		496
17.4		497
17.5		498
18.1	Example spray diagram using the keyword 'STUDY'	524
18.2		525
18.3		526
19.1	Checklist for when to reference source material	534

19.2	Examples of different placement of superscript footnote numerals in OSCOLA	536
19.3	Example reference 1: Adler v George [1964] 2 QB 7 (QB)	542
19.4	Example reference 2: Evans v Amicus Healthcare Ltd [2004]	
	EWCA Civ 727; [2005] Fam 1	543
19.5	Example reference 3: R v Moloney [1985] 2 AC 905 (HL)	544
19.6	Example reference 4: R v Rafferty [2007] EWCA Crim 1846; [2008]	
	Crim LR 218	545
19.7	Demonstration of insertion of short and long verbatim quotations in text	546
19.8	Correct pinpoint reference for book	546
19.9	Correct pinpoint reference for a journal article	546
	Latin references as referencing shortcuts	549
20.1	Types of oral skills exercises	561
20.2	Summarises the nature of these six components	562
20.3	The inter related components of competent oral skills exercises	563
21.1	Examples of essay questions	577
21.2	Method for the preparation and construction of essays	582
21.3	Radial diagram for essay question 3	584
21.4	Annotated version of essay question 4	585
22.1	Four stage method of problem solution mapped against standard	
	structure of written solution	603
22.2	First breakdown of problem question: Initial questions that will begin a	
	breakdown of questions to form legal issues and lay the foundation of a	
	search through relevant case law	605
22.3	Locating the contract	607
23.1	The range of skills that examiners look for	621
23.2	Revision session timing	624
23.3	Revision activities	631
23.4	Good habits on exam day	632
24.1	Eight initial questions flowing from a proper consideration of the	
	demonstration presentation question: 'Should the English legal system	
	allow a cultural defence as a valid plea in criminal cases?'	640
25.1	Model 1	652
25.2	Model 2	652
25.3	Model for approaching mooting	655
26.1	The three stages of negotiation	674
26.2	The basic macro-level of arrangements for the negotiation	675
26.3	The micro-dynamics of the negotiation	678
27.1	The dispute resolution continuum	685
27.2	Common civil/commercial mediation phases	686
27.3	Mediator skills	693

## **TABLES**

2.1	An illustrative list of equitable maxims, remedies and rights	36
2.2	Range of references to role/hierarchy of court	40
2.3	Supreme Court, and the Court of Appeal: function judges and jurisdiction	43
2.4	Superior courts: High Court and Crown Court: role, judges, divisions and	
	jurisdiction	45
2.5	Inferior courts: county court and magistrates' court: role, judges and	
	jurisdiction	46
2.6	Tribunals tier system: role, adjudicators and jurisdiction	49
2.7	Privy council: function, role, judges, and jurisdiction	50
2.8	European Courts impacting the English legal system; role and jurisdiction	52
4.1	European Court of Human Rights: sittings, appointment of judges,	
	jurisdiction, procedure, judgments and enforcement: ECHR requires all	
	hearings to be in public	76
5.1	Chronological list of treaties developing the EU	96
5.2	Current treaties of the EU in force	97
5.3	Trying to avoid naming confusions!	101
5.4	Core sources of EU law	103
5.5	Hierarchy of legal norms	105
7.1	Quick reference: accessing primary legislation using print and	
	electronic sources	152
7.2	Quick access: How to locate domestic secondary legislation (SI)	
	in print and online	163
8.1	Technical meaning of key words/phrases used in relation to court cases	
	and their reporting	173
8.2	Abbreviations for law reports published in print	182
8.3	Correctly citing law cases before and after 2001	185
8.4	How to locate law reports in print collections	186
8.5	How to locate law reports: online databases	188
9.1	Illustrative examples of journal, type, areas and abbreviations	208
9.2	Journal abbreviations	209
9.3	Full citation of journal articles	210
10.1	Comparing verbatim text of Lord Bridge's judgment in George Mitchell v	
	Finney Lock Seeds illustrating accurate summarising of the range of	
	legal issues and the argument as it is built by Lord Bridge	254
10.2	Information required for a case note	273

11.1	s 9 EA annotated	290
11.2		294
12.1	Guided reading (van Gend en Loos)	325
12.2	Guided reading: Annotated of the verbatim text of NV Algemene	
	Transport-en Expeditie Onderneming van Gend & Loos v Netherlands	
	Inland Revenue 1963 ECR Administration [1963] ECR 3	326
12.3	The layout of a treaty: standard layout	340
12.4	The standard layout of a regulation	342
12.5	The standard layout of a directive	345
12.6	ECHR Section I: Article 1 the General Obligation and Articles 2–18 the	
10.7	Convention rights consolidated version 2010 including Protocol 14	347
12.7		348
12.8		~= /
101	no. 55721/07) taken from non-official private report (2011) 53 EHRR 18	354
16.1	Cottrell's learning styles	438
16.2		439
16.3	Honey and Mumford's learning styles	440
16.4	What is your style of learning, and what are you willing to try?	441
16.5	Typical academic cycle for a year 1 student on a degree divided into terms	448
16.6	Hypothetical year 1 subject showing teaching hours and independent study hours	451
16.7	The State of the S	431
10.7	sessions	453
16.8		455
17.1		472
17.2		112
1 7 1	descriptions and examples	481
17.3		489
17.4		
	French) and used to construct English words	490
17.5		
	derived from other languages	491
17.6		491
17.7		
	conclusion drawn	492
18.1	Grammar: Explanation of terms and detail concerning conventional use	
	of grammar	509
18.2	Punctuation symbols: names, functions and examples	512
18.3	What do you do with an 'e'?	517
18.4	Understanding the role of sentences and paragraphs in the construction	
	of writing	519
19.1	Types of material that will require referencing (non-exhaustive)	537
19.2		547
19.3		
	Harvard	552
19.4		553
19.5		
	Harvard	554
196	Dealing with the referencing of edited volumes	554

#### TABLES (XXXII)

21.1	General: Latin abbreviations used in standard academic writing and	
	legal writing	573
21.2	Definition of standard words used in essay instructions	578
22.1	Two specimen problem questions	596
22.2	Indication of the ranges of methods of the analysis of problem questions	
	and indication of ideal structure of your final answer to problem question	599
23.1	A sample exam inventory chart	613
23.2	A sample hypothetical examinable topics inventory chart for criminal law	616
23.3	Testing your assumptions about exams	619
23.4	Sample revision timetable	625
23.5	Sample knowledge summary for examinable topics	628
23.6	Learning styles and memory tactics for enhancing your revision	630
25.1	Ordering of legal argument	664
25.2	Judicial titles in the Supreme Court	665
25.3	Judicial titles in the Court of Appeal	666

#### PREFACE

This new 27 chapter text, Learning Legal Skills and Reasoning, is based on the success of the 11 chapter Legal Method, Skills and Reasoning. Retaining the well-known user-friendly and practical approach of the previous text Learning Legal Skills and Reasoning contains 16 additional chapters exploring sources of law, general academic skills (writing, reading, referencing, speaking and study skills) and extending the original oral skills chapter into four chapters dealing with presentation and debating, mooting, negotiation and mediation.

The book reflects the need for new law undergraduates to grasp a broad range of skills and my commitment to delivering these in one manageable text retaining all that has gone before together with additions. The book enters into a direct dialogue with the reader, explaining how to understand and apply the full range of legal and academic skills required by law students. It covers basic issues of concern for many students as well as more sophisticated skills relating to arguing and reading the law.

Practical manuals do not aim to be encyclopaedic, and this one is no exception. It aims to engage the reader in a highly personalised conversation, at times presuming to voice their worst fears, 'What if I am not good enough?', 'What if I cannot understand?', 'What if I fail something?' At every point the book gives a context, and engages the student in a conversation about the matters under consideration. I retain my belief in the importance of diagrams to demonstrate interconnections that are not apparent from just reading or hearing narrative. They remain one of the particular characteristics of this text.

I am also particularly delighted that current colleagues at Canterbury Christ Church University have been able to be involved in the text. I am indebted to Dr Tobias Kliem, Senior Lecturer in Law for his careful consideration of the chapters on treaties and the EU. I am also extremely pleased that the director of our mediation clinic, Ben Waters, has been able to write the chapter on mediation. For the student there are a range of exercises and activities with suggested answers to test development of skills, together with glossaries of troublesome terms.

This book would not have been possible without the incredible support received from my editor Fiona Bridon and her assistant Emily Wells. I am indebted to you and the rest of the team.

#### **ACKNOWLEDGEMENTS**

The publishers would like to acknowledge the following publishers for kind permission for the use of their materials for this book:

- Screenshots taken from Legislation.gov.uk reproduced under Open Government Licence v 3.0
- Screenshots taken from parliament.uk site reproduced under Open Parliament Licence v 3.0
- Screenshots taken from WESTLAW UK, reproduced with permission from THOMSON REUTERS (PROFESSIONAL) UK LIMITED
- The European Union belongs to its citizens: Three immodest proposals by JJ Weiler, referenced with permission from THOMSON REUTERS (PROFESSIONAL) UK LIMITED
- Screenshots taken from BAILII (www.bailii.org) reproduced with permission from BAILII Executive Director
- Screenshot taken from EUR-Lex reproduced with permission from EUR-Lex
- Screenshots taken from Lexis Library reproduced with permission from LexisNexis

## CONTENTS

List of figures

	List of tables	XXXV
	Preface	XXXIX
	Acknowledgements	xli
	Introduction to the book	1
PART	1: SOURCES OF LAW	7
0	Domestic legislation	9
	Learning outcomes	9
	Introduction	10
	What is domestic legislation?	10
	Naming conventions for legislation	11
	The statute book	11
	Finding legislation	12
	What is Parliament?	14
	The House of Commons	14
	The House of Lords	14
	Royal Assent	14
	The power of government to create legislation	15
	Types of domestic legislation: primary and secondary	15
	Types of primary legislation	15
	Public General Acts	15
	Private Acts	15
	Hybrid Acts	16
	Orders in Council by virtue of the royal prerogative	16
	Private members' bills	16
	Introducing a private member's' bill in the House of Commons	16
	The ballot	16
	The ten minute rule (under House of Commons Standing	47
	Order 23)	17
	Presentation (House of Commons Standing Order 39)	17
	Introducing a private member's bill into the House of Lords	17

xxxi

The procedures leading to the enactment of a Public General Act Pre-legislative procedures for a Public General Bill Public consultation, Green Papers and White Papers Drafting of a Public General bill by parliamentary counsel The parliamentary legislative timetable The passage of a public bill through Parliament Passage of a bill through the House of Commons Passage of a bill through the House of Lords Amendment consideration Royal Assent Date in force of the Act Secondary legislation Parliamentary control over secondary legislation Procedure for making statutory instruments  The negative resolution procedure The affirmative resolution procedure The super-affirmative procedure Debates to affirm or annul SIs Other parliamentary procedures Lists of statutory instruments laid before Parliament Using legislation and understanding judicial statutory interpretation Conclusion Chapter summary	17 17 18 18 19 20 22 23 23 23 25 26 26 27 27 27 27 27 28 29 29
Domestic case law Learning outcomes Introduction The development of the common law Development of equity Custom English law and the doctrine of precedent The courts Generic term applied to courts Description of the main domestic courts Appellate courts Superior courts Inferior courts Tribunals Courts outside the hierarchical system of the English legal system The Judicial Committee of the Privy Council The European Court of Human Rights ECtHR The Court of Justice of the European Union CJEU	31 32 32 35 37 38 40 40 42 44 47 48 51 51 51

	The hierarchy of the domestic courts (with reference to tribunals and European courts)	51
	Chapter summary	54
3	European and international treaties	57
	Learning outcomes	57
	Introduction	58
	Definition of a treaty	58
	The legal effect of treaties when concluded between states	58
	Public international law (PIL)	58
	The International Court of Justice (ICJ)	59
	The Vienna Convention on the Law of Treaties 1969 (VCLT)	59
	The contractual approach to treaties adopted by the states under the Vienna Convention	59
	Synonyms for a treaty	60
	The subject matter of treaties	60
	The form taken by written treaties	60
	Standard issues to bear in mind when dealing with treaties	60
	The standard layout of a treaty	60
	The preamble	62
	The main body of a treaty	62
	Parties to a treaty	63
	The process of formalising an agreement of states to be	
	bound by a treaty	63
	Signature	63
	Ratification	64
	The methods to minimise dissent in the negotiation process	
	of a treaty	64
	Reservations: occur during negotiation of the treaty	64
	When is a treaty actually 'in force'?	66 66
	The legal effect of a treaty	66
	Monist position  Dualist position	66
	Treaty names	67
	General procedures for changing (amending) treaties	67
	Protocols	67
	New treaties	68
	Accession treaties	68
	Procedures for a state to cease to be bound by a treaty:	
	abrogation/denunciation	69
	Official records of treaties - originals and certified copies	69
	Conclusion	70
	Chapter summary	70

4	European Convention on Human Rights	71
	Learning outcomes	71
	Introduction	72
	Understanding the Council of Europe	72
	Background to the establishment of the Council of Europe	73
	The Council of Europe flag and anthem for Europe	74
	The institutions of the Council of Europe	74
	European Court of Human Rights (ECtHR)	74
	Understanding the European Convention on Human Rights 1950	76
	Pilot judgments of the ECtHR	77
	Leaving the ECHR	77
	Protocols to the ECHR	78
	Derogations and reservations	78
	The ECHR, its protocols and their legal impact on English law	78
	The UK and violations of the ECHR and its protocols	79
	The treaties office of the Council of Europe	80
	The UK Human Rights Act 1998 (HRA)	80
	Background to the Human Rights Act 1998 and current concerns	81
	The key sections of the Human Rights Act 1998	81
	Conclusion	85
	Chapter summary	85
	Understanding the Council of Europe	85
	Understanding the European Convention on Human Rights	85
	Understanding the Human Rights Act 1998	86
_		
5	European Union law	87
	Learning outcomes	87
	Introduction	88
	Understanding the European Union (EU)	89
	What is the EU?	89
	The founding treaties of the EU	89 89
	European citizens Core functions of the EU	89
	Understanding the development of the EU through its	09
	treaties 1957–2007	90
	The Treaty of Rome (No 2) 1957, date in force 1 January 1958	91
	The Brussels Treaty 1965 (The Merger Treaty), date in force	31
	1 July 1967	91
	The Single European Act 1986 (SEA), date in force 1 July 1987	93
	The Treaty of Maastricht 1992 (TEU), date in force 1 November 1993	93
	The Treaty of Amsterdam 1997, date in force 1 May 1999	94
	The Treaty of Nice 2001, date in force 1 February 2003	94
	The 'failed' Constitutional Treaty 2004	94
	The Treaty of Lisbon 2007	95
	The main treaties	95

	The consolidated version of the two founding treaties 2010 Table of equivalences	95 97
	EU enlargement	97
	Understanding the institutions of the EU	97
	The European Council: the key policy/political institution	98
	The three key institutions for law making	98
	The European Commission (the Commission)  Law making powers	99 100
	Judicial powers	100
	The Council of the European Union (also referred	100
	to as the 'council of ministers' or the 'council')	100
	Powers of the Council	100
	Warning: potential naming confusions concerning institutions	100
	The European Parliament (EP)	101
	Court of Justice of the European Union (CJEU)	101
	Understanding the EU legal order and EU law	102
	The EU legal order: the acquis communautaire	102
	The sources of EU law	102
	Primary law of the EU	103
	Secondary law of the EU	103
	General principles of EU law (developed by the Court of	
	Justice)	105
	Hierarchy of legal norms	105
	The legal effect of EU primary and secondary EU law	105
	Effect of EU law on member states	106
	EU law that is 'directly applicable'	106
	EU law that is binding 'as to outcome': directives	106
	The effect of EU law on private organisations and	
	individuals: direct effect	106
	Enforcement of EU law	109
	The role of the Commission	109
	The role of the CJEU in enforcing EU law	109
	Preliminary rulings	110
	Institutions acting in excess of their powers (ultra vires) Understanding the supremacy of EU law and the impact	111
	of EU law on the English legal system	111
	What does the EU understand by the supremacy of EU law?	111
	English law and the supremacy of EU law	112
	Conclusion	115
	Chapter summary	115
PAR	T 2: FINDING LAW - EFFECTIVE LEGAL RESEARCH	117
6	How to get the most out of your university print	
	and e-library	119
	Learning outcomes	119