

HELEN GUBBY

English legal terminology

Legal concepts in language

Second edition

BOOM JURIDISCHE STUDIEBOEKEN

BJu

Boom Juridische uitgevers

English legal terminology

Legal concepts in language

Helen Gubby M.A., Barrister

Boom Juridische uitgevers
Den Haag
2007

For Richard and my parents Harry and Mary Gubby

Second Edition

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Acknowledgments

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Helen Gubby
Capelle aan den IJssel, the Netherlands

June, 2004

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Rotterdam, the Netherlands

August 2007

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Introduction

It used to be Latin. Now it is English. English has taken over not only as the language of international academia but also of trade and commerce. It is, therefore, not surprising that the international language of the legal transaction is English too. Unfortunately, legal English and ordinary English are not identical languages. A non-native speaker could be very proficient in ordinary English and still be lost for words in a legal discussion. Even a native English speaker may find legal English quite inaccessible if he has no legal training. This is because legal English is a professional language and uses certain words and expressions that are totally outside the experience of a layperson. Some words are only found in legal English, for example the word 'rescission'. Sometimes the word is the same as an ordinary English word but with a quite different, specific legal meaning, for example the word 'consideration'.

For students who have studied law, but have not done so in English, this legal terminology is not familiar. However, ignorance of legal English can hold students back if they are studying law in English. Having to read, write and discuss legal matters entirely in English is often a daunting task for international students.

Legal English may also pose problems for legal practitioners who have not studied law in English, even though their command of ordinary English may be very good. Law firms, with an international clientele, correspond with their clients in English. A Dutch lawyer, for example, may find himself having to write a letter in English to an American client explaining the legal position according to Dutch law. It is also quite possible that neither party is a native English speaker: a letter giving legal advice in English could just as easily be between a German lawyer and a Polish client. In these cases, English law itself is not relevant. Nonetheless, English legal terminology has to be used to explain another country's law. Getting the legal terminology wrong could be a costly mistake.

When I began teaching legal English in the Netherlands, I found that I had to develop my own course material. There were many excellent English legal dictionaries available, ditto textbooks on English law. However, there were no books aimed at teaching English legal terminology itself. English law textbooks are, of course, geared up to teaching the intricacies of English law. Legal dictionaries are helpful, but they are organised according to the traditional framework for dictionaries, i.e. alphabetically. Essentially this means that words are presented to the reader in isolation. Yet English legal terminology can only be understood properly in context. The terminology arises from the common law and must always be viewed against this background. There is a need for law students who have not studied in

English to have a primer that would explain legal terminology while not getting them bogged down in the complexities of English law. This book is based on my experience of teaching legal English to undergraduates, post-graduates and legal professionals at the Erasmus University, Rotterdam and elsewhere. It is aimed in particular at law students and young practitioners, although it will also be of use to legal translators.

How to use this book

The legal subjects selected in the book are the type of core subjects most law students will study at some point in their education. Each chapter is devoted to one of these areas of law. Each chapter also follows the same general pattern.

Vocabulary

The first item in the chapter is a **vocabulary**. The vocabulary is ordered alphabetically but, unlike legal dictionaries, it contains a set of words associated with that particular subject-matter. In this way, the relevant terminology is grouped together. There are, of course, words that are not exclusive to one branch of law but will arise in various contexts, for example the word 'claimant'. In order to prevent the needless repetition of terms that may be found in the vocabulary of an earlier chapter, the reader will be directed to the vocabulary of the chapter in which the terms have already appeared. Sometimes, however, a term will appear in the vocabulary of more than one chapter, for example 'damages' which appears in the vocabulary of civil procedure, tort and contract. In the vocabulary of civil procedure a basic definition is given of damages, then in the tort vocabulary a definition in the context of tort damages and finally one in the context of contract law damages.

Text: terminology in context

The second item is the **terminology in context**. The words from the vocabulary are highlighted in this text so that the reader can see how the terminology fits into the structure of the law. It gives a brief outline of the relevant English law. The word English is used rather than British, as the legal system in Scotland is not identical to the English system. 'English' is also used here as a shortened description of the law applicable to England and Wales.

The legal terminology derived from English law forms the basis for all other common law jurisdictions. However, the law in other common law jurisdictions has not developed in exactly the same way as in England. This means that while there is still much shared terminology, there may also be terminology that will be found in some but not all of the common law jurisdictions. For example, American criminal law terminology includes the terms 'first degree murder' and 'second degree murder'. This is a distinction unknown in English law, as this approach to grading offences in degrees is not used in England. As mentioned above, the outline given in the text is