

THIRD EDITION

LEGAL METHOD, SKILLS AND REASONING

SHARON HANSON



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Third Edition

Sharon Hanson





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PREFACE TO THE THIRD EDITION

This extensively revised and expanded third edition retains the user friendly and practical approach of the first and second editions while adding new chapters exploring study skills and self management, IT skills, use of the law library, the contexts of law, oral skills and examination strategies. For the first time, the book is also supported by an extensive companion website.

The title of the book, as well as its content, continues to grow. Now legal method and reasoning have been joined by skills, to give the title *Legal Method, Skills and Reasoning*. The changes made reflect the need for new law undergraduates to grasp a broad range of skills. As a consequence there are five new chapters at the start and end of the book (Chapters 1, 2, 3, 10 and 11) covering these areas.

As with previous editions, the book enters into a direct dialogue with the reader, explaining how to break into legal texts and showing how to understand and construct arguments. 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, so, instead of plunging into pages of detailed diagrams and narrative concerning access conventions for law reports and statutes, the student is more casually talked around the law library and its print and electronic collections. Libraries are daunting places to the new undergraduate, but they become the core of intellectual and creative work when properly understood and used.

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 it has now been possible to add a companion website containing student and teacher areas, intended to provide 'food for thought' for the further development of basic legal method, legal reasoning and legal skills. For the student there are a range of exercises with suggested answers to test development of reading and arguing skills. There are also glossaries of troublesome terms. For the teacher there are suggestions for practical class-based exercises, PowerPoint slides and

specimen assessments with guidance answers. This material has been carefully considered as I thought long and hard about how a companion website could be of use to students and teachers.

INTRODUCTION TO THE BOOK

Careful thought has gone into the structure of this book. If it is approached in order, you will gain skills vital to the academic stage of legal education. If you already possess some knowledge and wish to look only at specific skills, then many discrete chapters stand alone, such as Chapter 4 on domestic and European legislation or Chapter 5 on reading law reports.

This is a method and skills book and it is therefore no substitute for texts in your substantive areas of study such as criminal law, the law of contract, or the English legal system. The book draws on a range of areas of law to demonstrate skills development and to alert you to some of the confusions and mistakes easily made. It is a book that bridges the gap between substantive legal subjects and the skills that need to be acquired in relation to:

- commencing study;
- finding the law;
- reading the law;
- writing legal answers;
- argument construction;
- speaking the law (in presentations, moots or negotiations).

The nature of legal study, and the range of skills required to engage in that study, can be described, like many things in life, as a journey. We will use this journey theme throughout the book, to assist you in making interconnections. The climbers on the front of this book



have just reached the end of their journey to the summit of a mountain. They reached the end successfully because they were well prepared, appropriately dressed, had the necessary ropes in place and knew how to build stamina for the task. They achieved their goal by working together, with each individual also using their own independent skills.

If you were climbing a mountain you would not knowingly set out in bad weather. You would not set out without a reliable map giving clear guidance on distances, tracks and paths. But a map is not much use without a compass to indicate the right direction of travel. The map has an indication of north printed on it, but only a compass can show you where north is. You of course would need to make sure you had a reliable and finely calibrated compass. It would not be wise to climb a mountain with a novelty compass designed to be a toy.

With a reliable map and a reliable compass you will know where you are and how you got there and be able to plan where you are going. If you know something about the movement of the sun, or the positioning of the stars, you may well be able to navigate roughly without a compass. In life, as in study, knowledge determines what you are able to do.

You would no doubt wish to take climbing ropes, a torch in case you found yourself in the dark, and emergency food supplies to keep your energy levels high. You would prepare yourself by finding out what is available and which is the best approach for you to take.

Many students embark on the journey of studying without the equivalent of a map that indicates the area incorporated in study, or a compass indicating the appropriate direction. A study map is essential because you need to see both the fine detail and also the larger context within which the detail is situated. Zooming in and zooming out of your map of the terrain of law reveals the complex, sophisticated understanding required. This ability to see the micro and macro contexts is one that will be referred to several times in this book. The competent study of law ideally involves you, the student, in the micro tasks of discussions concerning the meaning of words and phrases used in legal rules, and the macro tasks of reviewing the entire legal system, or a discrete area of law, considering appropriate reforms.

There will be many journeys throughout your study of law. As you constantly end one and start the next you always begin from a stronger position, as preparation is built in to all of the tasks you perform. Each part and chapter of this book begins with a quotation. Look at the quotation for Part One and consider how it might relate to your studies at the start of your journey.

HOW TO USE THIS BOOK

Successful legal study depends upon the simultaneous development of the different, but complementary, skills set out in Figure I.1. Developing competency in any one skill can be relatively easy. However, addressing the full range of skills can be more of a challenge. At the beginning of law study it can be all too easy to feel overwhelmed by too much information, too soon. It is particularly important to remember that you are not expected

Study skills	how to develop independent and highly efficient learning strategies
IT skills	email, word-processing, virtual learning environments, internet searches, e-library use, database manipulation
Language skills	how to competently understand and use ordinary English and legal English terminology
Critical thinking skills	how to develop the ability to constantly question, seeking the underlying assumptions behind arguments, taking nothing for granted, seeking evidences for your assertions, questioning your own positions
Legal research skills	how to find law and texts about law through highly effective library skills
Legal method skills	how to approach legal documentation
Argumentative skills	identification, construction and evaluation skills
Reading skills	how to read legal rules, judges' opinions, academic critiques of law reports and more
Writing skills	how to write notes, summaries, essays, legal problem solutions, exams, reports and more
Speaking (oral) skills	debating, mock trials (mooting), mediation, negotiation, presentation
Substantive law	legal knowledge, for example of criminal law, contract law and so on

Figure I.1 The skills required for the successful study of law

to be highly competent in every area immediately. You should also remember that you will already have some competencies in place, which can be developed further.

For many of you this will be your first sustained time away from home, without the guidance of school patterns or teacher-discipline. You may need to work hard to develop your skills of self-management and independent learning. At university the academics who teach you are most likely also to be researchers and writers. They, like you, are engaged in study. They will expect you to develop your own timetable and to work independently to prepare for group work. You will be expected to read, and if you choose not to you will lack understanding and fall behind. You must monitor your own progress. Your university lecturer is not there to cajole, entreat or bully you.

Some of you will be beginning your legal studies as part-time students, with a number of other family or employment responsibilities. It is worth understanding from the start that, unlike individual topics which may be spread across terms or years, you will need to develop the full range of skills simultaneously. Remember that you can develop competency in English by reading good novels, and you can increase your IT competency by experimenting with the internet.

Or, on the other hand, you may have studied English as a second language, and be moving away from your home country to study in England. It may take a few months to become accustomed to being surrounded by English and to understand the range of accents that you will hear. You may find that you encounter difficulties relating to the meaning of words as law brings its own technical vocabulary. You will also encounter some issues with grammar, spelling and structure. Do not panic; these matters just take time. As the weeks pass you will not feel so pressured.

All areas of skills development will be tackled during the course of the first year, and in most cases over the course of the first term¹. Being aware of the range of skills in which you need to develop competency is a good beginning. Many students are unprepared for the broad range of competencies required to engage in effective legal study. They find the need for excellent IT, language, oral and library skills particularly unexpected.

Structure of the book

The chapters in this book are grouped into four parts:

- Part One: Preparing for the Journey contains three chapters dealing with the development of good study skills and library skills, e-learning strategies and basic IT skills. Finally it introduces you to the contexts of law.
- Part Two: Mapping the Territory contains three chapters dealing with essentials: reading texts of law (legislation, treaties and law cases) and reading texts about the law (philosophical or historical texts, social scientific texts, or textbooks explaining areas of law)².
- Part Three: Arguing the Law The Construction of Argument contains two chapters dealing with the anatomy and design of argument construction and legal reasoning.
- Part Four: Putting it All Together Last Things as You Arrive contains three chapters dealing with writing skills, oral skills and examination techniques.

The function of this 'how to' text

This book will consider all of the above skills, study skills, and effective methods for presenting work in writing or in speech alongside reference to the contexts of English law and the basic structure of the English legal system. Throughout, however, you will note that the primary focus of this book is inevitably text based. Texts of the law (statutes, law reports) and texts about the law (textbooks, journals, reports, proceedings in Parliament, articles) will be the main objects of analysis. Studying these will help you to:



¹ To assist you to have a view of where you are in each of these areas you can make use of the skills checklists on the companion website.

² This distinction between texts of law and texts about law is important to grasp. Texts of law contain the actual legal rules. These are called primary texts. Texts about law look at law from a range of perspectives, questioning, critiquing or summarising the state of law. These are called secondary sources because they are commentaries about the legal rules in the primary texts.

- understand the ways in which legal rules are put together;
- acquire skills of argument construction, analysis and critique;
- appreciate links between and within the texts;
- understand the importance of language and appreciate contexts such as culture or politics;
- use your knowledge and understanding of legal rules to solve legal problems and answer posed essay questions for both coursework and exams.

As you gain increasing competencies in these areas you will increase your critical ability to analyse law. This will sharpen your thinking. You will learn to ask questions, never taking anything for granted and always looking for evidence to support arguments.

The majority of books on the market that deal with legal skills and legal method (that is, the way in which legal rules are used to resolve certain types of disputes) do so in the context of legal process or legal theory. Inevitably, many of these books tend to be weighted in favour of explaining the English legal system, its processes, personnel and doctrines. They do not give time to an appreciation of how to break into texts, how to read and understand them. But if you cannot get inside legal rules, and fully appreciate their various dimensions, you will not be able to be successful in your legal studies.

Although this text acknowledges the complexities of legal rules, the importance of critique and the construction of arguments, it also attempts, in a user-friendly manner, to make interrelationships within and between texts. It presents language clearly, and uses these interrelationships to allow the commencement of the task of understanding and reading the law, of seeing and evaluating arguments and of constructing your own arguments.

Essentially, this is a book about practical matters. The practical skills of studying, using IT, practical thinking and legal research, intellectual and presentational skills, all rely on reader reflection and activity. If you actively engage with the book, you will develop your critical thinking³ skills and your ability to engage in highly competent analysis. The text draws a map of your studies, setting out the territory at the macro level. But it also provides smaller maps to enable you to locate and understand legal texts. Ultimately you will be able to recall relevant memorised knowledge concerning general or specific contexts and apply or interpret it confidently with a clear understanding of the interrelationships between rules, arguments and language, in the search for plausible solutions to real or imaginary problems.

This text is not a philosophical enquiry that asks why English law prefers the methods of reasoning it has adopted. Although such texts are of the utmost importance, they will mean more to the student who has first acquired a thorough competency in a narrow field of practical legal method and practical reason. Then a philosophical argument will be

³ This is discussed in detail in Chapter 2, and referred to in Chapters 6, 9 and 10.

appreciated, considered, evaluated and either accepted or rejected. This is not a theoretical text designed to discuss in detail the importance of a range of legal doctrines such as precedent, although you must also carefully study these. Further, this is not a book that critiques itself or engages in a post-modern reminder that what we know and see is only a chosen, constructed fragment of what may be the truth. Although self-critique is a valid enterprise, a fragmentary understanding of 'the whole' is all that can ever be grasped. We can only ever see part of the whole collection of stories that is the law. This means we should approach the study of law carefully, checking that our arguments and our criticisms are plausible, and checking that the arguments and criticisms of others are also plausible.

The book will draw attention to the fact that there is often more than one solution to a legal problem. Judges make choices when attempting to apply the law. The study of law is about critiquing the choices not made as well as the choices made.

The diagrams used in this text are integral to the successful understanding of legal skills, legal method and legal reasoning as presented in this text. They have been specifically designed to:

- provide a way of taking students to deeper levels of understanding;
- give a basic description or blueprint for an area;
- demonstrate interconnections between seemingly disconnected areas, texts and skills.

An ability to comprehend diagrammatic explanations will be encouraged throughout the text. Diagrams present another way of seeing, and the sheer novelty value of seeing the interconnections in a diagram can sometimes be enough to transform confusion into comprehension. It is hoped that you will also begin to construct diagrams for yourself.

This is above all a 'how to' text, a practical manual. Bearing in mind the list of skills set out, it concerns itself primarily with the issues identified in Figure I.2. Carefully read the list as it constitutes your marching orders for the rest of the book and for your legal study.

The parts and chapters in this book are intended to be read, initially, in order, as material in earlier chapters will be used to reinforce points made later. Parts One to Three lead you through various skills to Part Four, which concentrates on piecing together a range of skills to engage in the finished products of written coursework, oral skills presentations and written examinations. Colloquially the header for this final part remains as in earlier editions 'putting it all together'.

Patient study will be rewarded by clear progress in the ability to research and understand the substantive law, and to move towards interpretation and argument construction using legal rules and academic texts. If you work through this text methodically, you *will* reach a place of understanding where you know how to present arguments competently. You can then develop these skills during the course of your studies.

How to ...

- Effectively engage in general study skills and become an independent and interdependent learner.
- Engage in efficient legal research using your institution's print and electronic library collections as well as non-academic open access internet resources.
- 3. Develop an awareness of the importance of understanding the influence and power of language, including how to effectively use legal dictionaries and glossaries
- 4. Understand the European influence on English law.
- 5. Identify the relationship of the text being read to those texts produced before or after it.
- 6. Effectively use and deploy IT resources
- Read and understand texts of law: law cases, legislation (in the form of primary legislation or secondary, statutory instruments, bye-laws, etc.) and European Community legislation (in the form of regulations and directives).
- Use texts about the law and texts of the law to construct arguments to produce plausible solutions to problems (real or hypothetical, in the form of essays, case studies, questions and practical problems).
- Make comprehensible the interrelationships between cases and statutes, disputes and legal rules, primary and secondary texts.
- 10. Read and understand a range of different texts about the law: secondary textual sources from the discipline or from other disciplines such as philosophy, psychology, sociology, anthropology, history and politics.
- 11. Identify, construct and evaluate legal arguments.
- 12. Search for intertextual pathways to lay bare the first steps in argument identification.
- 13. Write legal essays, answer problem questions, perform oral skills and prepare for exams.

Figure I.2 The function of this 'how to' text

COMPANION WEBSITE



This third edition of the text also introduces a new dimension: the companion website, where you can find extra material, templates for the range of self-management charts referred to in the text, extra exercises to hone your skills, along with skills checklists to check your progress. There are also three workbooks to enable you to compile sets of tasks that demonstrate you have understood a particular area. Each comes with a self-marking scheme.

The companion website does not give you copious links to other sites, primarily because you need to discover these for yourself. However, specific links are referred to as appropriate.

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