

MAKING SENSE of

**ENGLISH
IN
THE LAW**

Chambers

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English in
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Preface

Law is all about the meaning of words. A friend of mine recently became entangled in a tricky court case. Immediately he was awash with the language of the law: affidavits, pleadings, easements, bailments, injunctions and interlocutories. Even simple black-and-white words he thought he understood, like 'land', seemed to take on a shade of grey when lawyers used them, worsening that feeling of powerlessness which anyone who has ever been on the wrong end of a legal action will recognize.

Without a rough idea of what law language means, you're at a disadvantage if you have a legal problem. All of us as citizens are deemed—that's a word defined in the book—to know the law, thousands of pages of it, paragraph by paragraph. This is a legal fiction—another defined term—but it's at the root of an important maxim, that ignorance of the law is no excuse. In other words, if you offend unwittingly against the civil or criminal law, you are as much to blame as someone who offends knowingly. Most people have a rough idea of the main features of the criminal law, but the civil law, concerned with shopping, housing, contracts etc, is complicated and full of terms which are rare in everyday speech.

This book doesn't tell you everything you need to know and doesn't aim to give specific guidance on any legal case you may be involved in. But it should prove a useful starting point for your enquiries, whether you're just going to discuss the making of a will with your solicitor or take out a summons in the county court.

Naturally, any conversation you have with a solicitor will be held in the English of the late 20th century. Yet a legal document drawn up by the same solicitor, or a consumer contract you sign in a shop, could well be written in a strange mixture of medieval and modern language. Words extinct in the common tongue, like 'expiration' and 'effluxion', find a last refuge in these documents, to the confusion of non-lawyers.

Preface

It is true there are certain ‘terms of art’ which lawyers need. They are a useful shorthand, part of the specialized language which every industry or profession uses to communicate among its own members—terms like ‘Mareva’, ‘distress’, ‘diligence’, ‘negligence’ and ‘duty of care’. But many words traditionally considered terms of art are merely legal flavouring, like ‘hereof’, ‘hereto’, ‘hereinafter’, ‘thereof’, ‘thereto’, and ‘aforesaid’. Such words have no special meaning; lawyers can, if they wish, replace them with the modern equivalents given in this book.

Similarly, the long unpunctuated sentences favoured by lawyers can be chopped into shorter ones or broken down into lists without sacrificing accuracy or precision. As one professor of law said, the only solution to the problem of long sentences is to say less and use full stops more. And the story that legal documents must not be punctuated is simply untrue. If it were true, every Act of Parliament would be unlawful.

Some lawyers already agree that their use of language must be improved, banding together to fight for plain language in their profession, and some judges are renowned for the clarity of their judgments in complicated cases. Public reports of judges’ decisions in important cases, written by barristers and checked by the judges themselves, are often admirably clear and concise. In the last few years, the clarity of language and layout has improved in legal documents like insurance policies. So it can be done.

The training of lawyers in writing and other communication skills is at fault. Many receive little or no instruction in how to draft understandable leases or letters to clients. As a result, young lawyers tend to copy how their seniors write—indeed their seniors often force them to follow the same turgid and unreadable style. Thus, by each successive generation of lawyers, the public is sold the ancient myth that legal writing must always be full of gobbledygook.

The more people know that this myth is without foundation, the less likely lawyers are to get away with perpetuating it. And the more people know about the language of the law, the better they will understand their lawyers’ advice and be able to take informed decisions on it. I hope this book will help in both respects.

Preface

English in Law gives information about the law of England and Wales as I understand it at October 1991, together with definitions of many common Scots law terms.

I am grateful for the help of Judith Philip, who commented on certain entries concerning EC law, and Amanda Petrucci, who commented on entries concerning Scots law.

Martin Cutts

Pronunciation Guide

Vowels

i:	need	/ni:d/
ɪ	pit	/pɪt/
i	very	/'veri/
ɛ	pet	/pɛt/
æ	pat	/pæt/
ʌ	other	/'ʌðəʳ/
ʊ	book	/bʊk/
u:	too	/tu:/
u	influence	/ˈɪnfluəns/
ʊ	cough	/kʊf/
ɔ:	ought	/ɔ:t/
ɜ:	work	/wɜ:k/
ə	another	/ən'ʌðəʳ/
ɑ:	part	/pɑ:t/

Glides

eɪ	plate	/pleɪt/
aɪ	sigh	/saɪ/
ɔɪ	ploy	/plɔɪ/
oʊ	go	/goʊ/
aʊ	now	/naʊ/
ɪə	hear	/hɪəʳ/
ɛə	fair	/fɛəʳ/
ʊə	poor	/puəʳ/

Consonants

p	pit	/pɪt/
b	bit	/bɪt/
t	ten	/tɛn/
d	den	/dɛn/
k	cap	/kæp/
g	gap	/gæp/
ʃ	shin	/ʃɪn/
ʒ	pleasure	/'pleɜʒəʳ/
tʃ	chin	/tʃɪn/
ɔʒ	budge	/bʌɔʒ/
h	hit	/hɪt/
f	fit	/fɪt/
v	very	/'veri/
θ	thin	/θɪn/
ð	then	/ðɛn/
s	sin	/sɪn/
z	zones	/zoʊnz/
m	meat	/mi:t/
n	knit	/nɪt/
ŋ	sing	/sɪŋ/
l	line	/laɪn/
r	rid	/rɪd/
j	yet	/jɛt/
w	quick	/kwɪk/

ʳ indicates an 'r' pronounced only before a following vowel
' precedes the syllable with primary stress

Guide to Readers

Bold type, eg **assault** at **battery**, **offence** at **false accounting**, or **property** under **restitution**, is used to refer the reader to other entries in the book.

A

abandonment

1 The **offence** by a parent or **guardian** of leaving a **child** under 16 to look after itself without adequate care and protection. A **court** may allow such a child to be adopted without its parents' consent.

2 The giving up of a legal right. This would include the abandonment of a mortgaged property to the lender or of rented property to the landlord.

3 The giving up of an **action** by a **plaintiff** or **pursuer**, or the giving up of an **appeal** by someone found guilty of a crime.

abatement of nuisance

Bringing to an end or destroying the cause of a **nuisance** by the individual who is being annoyed: a form of self-help. Someone seeking to end a nuisance must not do more damage than is necessary, and would be unwise to enter someone else's property for this purpose without giving **notice** to the owner.

abduction

Taking away without consent a **person**, such as a wife from a husband, or a **child** from its parent or **guardian**. It is an **offence** to take a child from someone's lawful **custody** without authority or good excuse.

abode, place of

Where someone usually lives.

abortion

Terminating a pregnancy by miscarriage or the expulsion of a fetus before the pregnancy reaches its full term. Doctors in England, Scotland and Wales can lawfully perform an abortion during the first 24 weeks of pregnancy if:

1 the mother's life would be at risk if the pregnancy continued;
or

absolute discharge

2 her (or her children's) physical or mental health would be at risk if the pregnancy continued; or

3 there is substantial risk of the **child** being born with a serious abnormality.

The consent of two doctors must be obtained. Unless the mother's life is at risk, doctors and nurses may refuse to take part in an abortion on grounds of conscience. A husband (or partner) has no legal right to prevent his wife having an abortion. A girl under the age of 16 needs parental consent to an abortion, though a **court** can override parental refusal if it is satisfied that abortion is in the best interests of the girl. Girls under 16 may not normally be given advice or treatment on contraception or abortion without parental consent. Abortion is illegal in Northern Ireland except when the mother's life is at risk.

absolute discharge

A **Crown Court** or **magistrates' court** decision that a **guilty** individual should not be punished. It is, nevertheless, a **conviction** and can be appealed against. **Courts** sometimes give an absolute discharge if they think the police should have turned a blind eye to the **offence** (for example, when the driver of a fire engine goes through a red traffic light on the way to an emergency). The decision does not bring a previous **suspended sentence** into effect.

absolute discretion

Complete freedom to act. Often called, in long-winded **legalese**, *absolute discretion without the necessity of obtaining any consent*.

absolvitor

In Scots law, **judgment** in favour of the **defender**.

abstracting electricity

The **offence** of dishonestly using, wasting or diverting electricity. In Scots law the offence is also covered by the **common law of theft**.

ACAS

The Advisory, Conciliation and Arbitration Service, a **statutory body** which promotes the improvement of industrial relations and collective bargaining between **trade unions** and employers. ACAS, at the request of one or more of the **parties**, can offer help in **trade disputes** and help the parties in an **industrial tribunal case** to reach a **settlement**.

accessory

Someone who successfully incites another to commit a **crime** or who helps him or her to do so.

accomplice

Someone who helps to commit a crime or is an **accessory** to it.

accord and satisfaction

A **creditor's** acceptance of an agreement suggested by the **debtor**, which satisfies the debt and so prevents the creditor suing the debtor.

account of profits

See **tort**.

accused

The individual alleged by the **prosecution** to have committed a **crime**.

acquittal

A **court** decision that the **accused** is **not guilty**.

acknowledgement of service

A document, accompanying a **writ** (sense 1), which a **defendant** should return to the **court** on receiving the writ.

act

To perform the duties of a **solicitor**, as in *We act for Mr Grumble in this matter*.

action

action

A legal proceeding in the **civil courts**.

act of God

An extraordinary event or circumstance, such as an earthquake or hurricane, which directly causes an accident and could not have been foreseen and guarded against. **Insurance policies** sometimes do not provide cover against their effects. A gust of wind which directly causes a car to veer off the road is an act of God, but heavy rain or fog which drivers respond to inappropriately, causing an accident, is not. Claiming that an event is an act of God is now a rare **defence**.

Act of Parliament

A document setting out the **law**; normally it has been passed by the **House of Commons** and **House of Lords**. Modern Acts begin with a long title which summarizes their aims, and end with a short title which can be easily quoted in other documents.

See **interpretation; Parliament**.

Acts of Adjournal

In Scots law, procedural regulations made by the High Court of Justiciary.

Acts of Sederunt

In Scots law, procedural rules made by **judges** in the **Court of Session**. They are recorded in the Books of Sederunt.

actus reus

[Latin: prohibited act] For someone to have committed a **crime** they must be proved to have satisfied two tests: the actus reus and the **mens rea** (intention). For example, **rape** consists of an actus reus (unlawful **sexual intercourse** by a man with a woman without the woman's consent) and a mens rea (knowledge that the woman did not consent). Unless both tests are satisfied, the **jury** must acquit. In some **offences**, however, the **court** regards the committing of the offence as sufficient proof of guilt—intention is assumed. These are called **strict liability** offences.

address for service

See **service**.

ad idem

[Latin: towards the same] Agreement on a point between, say, opposing **barristers**, or between **parties** as to what terms should be included in a **contract**.

adjournment

The postponement of a **court** or **tribunal hearing**. This may be to a fixed date or indefinitely.

ad litem

See **guardian ad litem**.

administration order

A method which a **debtor** can use to make a single payment regularly into the **county court** office which shares it equally among his or her **creditors**; they cannot then pursue the debtor for their money. The order can be used for total debts below £5 000, though this is to change in 1993.

administrative law

The body of **law** relating to the administrative powers of central and local government. **Courts** can examine the use of such powers on legal but not policy grounds.

Admiralty Court

An English **court**, part of the **Queen's Bench Division** of the **High Court**, which deals with maritime claims in **civil law**, such as **salvage**. In Scotland, similar matters are disposed of by the **Court of Session**.

adopted as holograph

In Scots law, a statement in the signatory's handwriting at the end of certain kinds of **deed** which says that although the deed is not in the signatory's handwriting, the signatory regards it as being so. The deed is then valid without having to be witnessed.

adoption

adoption

A procedure in which a **civil court** makes an order giving **parental responsibility** over a minor to someone other than its natural parents. On adoption, the minor becomes the legal child of its adoptive parents. In Scotland, a child over 12 years old must give consent to adoption unless unable to do so, while a child over 16 must always give consent.

ad rem

[Latin: to the matter] This indicates that a decision or statement has a general significance not confined to the **case** in question.

adversarial (accusatorial) procedure

The system of criminal trial in England and Wales in which the **prosecution** presents a **case** against a **defendant**, the **defence** tries to undermine and demolish the case, and the **judge** acts as impartial umpire. Very little of importance is decided before the trial starts and the outcome may hinge on the performance of each side's **advocate**.

The French system, known as *inquisitorial*, differs in that, when a serious **crime** is committed, an examining magistrate, usually a junior judge, has wide powers to collect and weigh **evidence** for and against a suspect before deciding whether to prosecute. In theory this means that an independent mind studies the evidence in an attempt to weed out flimsy cases. The examining magistrate takes no part in the trial. Scottish procedure shares some characteristics of the French.

The adversarial system is used in English **civil cases**, though family proceedings involving children have abandoned it in favour of reaching a consensus in the best interests of the children.

See **procurator fiscal**.

advocate

In Scotland, a member of the Scottish **Bar** and a **lawyer** who practises. The term is equivalent to **barrister** in England, though it could apply to a **solicitor** who is a member of the Society of Advocates in Aberdeen.

affidavit

A written **statement** to be used as **evidence** in court proceedings. The individual making the affidavit *swears* or *affirms* that it is true before a **commissioner for oaths**, court official or **solicitor** (who must not be his or her own solicitor). In Scotland, the solicitor must be a **notary public**. A deliberately false statement in an affidavit is **perjury**.

affiliation and aliment

In Scotland, an order of the **sheriff court** or **Court of Session** declaring someone to be the father of a **child** and providing for the child's **maintenance**.

affiliation order

A **magistrates' court** order compelling a man alleged to be the father of an **illegitimate child** to make payments towards its upkeep.

affinity

A relationship by **marriage**. Countries generally have rules prohibiting marriage between certain people where there is an affinity, for example between parents and step-children.

See **prohibited degrees of relationship**.

affirm

See **oath**.

affray

The **offence** of using or threatening violence (but not by words alone). In Scotland the offence is covered by **breach of the peace**.

aforementioned

A reference to something already mentioned, as in *If the policyholder has any of the aforementioned medical conditions, the policy does not cover her for an event arising from that condition*. In such writing it is clearer and more precise to put *these* instead of *the aforementioned* or to specify in which paragraph the conditions are listed.

aforesaid

aforesaid

A reference to something already mentioned. Careful **lawyers** avoid it as being redundant and imprecise. For example, a document might mention the location of a house as *65 Cork Street, Middlesbrough in the county of Cleveland aforesaid*. The last word is redundant since no other Cleveland is in question.

See **said**.

age of consent

The age (16 or, in Northern Ireland, 17) at which a girl can legally consent to **sexual intercourse** or to some other act that would otherwise amount to **indecent assault**.

In England and Wales, men and women must be at least 16 before they can marry. Between the ages of 16 and 18 everybody (except a widow or widower) requires consent to marry, usually from a parent. If this is refused, a **court** may give consent. In Scotland, consent of a parent is not required after age 16.

age of responsibility

In England and Wales, under the age of 10 a **child** is regarded as *doli incapax* (Latin: incapable of committing a **crime**) and will not be charged. **Care** proceedings can be brought if the child's parents cannot or will not exercise control. In Scotland, children under 8 cannot be **guilty** of a crime. Children from 8–16 may only be prosecuted on the instruction of the **Lord Advocate**, otherwise the Children's Hearing system is used.

See **children in care**.

agency

The relationship existing where one **person**, the *principal*, authorizes another person, the agent, to act on his or her behalf in a transaction with a **third party**. The agent creates a legal relationship between the principal and the third party.

aid and abet

To help in a **crime**, while it is being committed or beforehand.

alibi

[Latin: elsewhere] If you say you were elsewhere when the **offence** was committed, that's your alibi. Before a **Crown Court** trial, you must give the **prosecution** plenty of warning of your alibi so that they have time to check it, but you can call **witnesses** in support.

In one case in 1974, Luke Dougherty was accused of **theft** but said that on the day of the **crime** he was miles away on a coach outing. His **defence** called two witnesses who were unconvincing under questioning and Dougherty was convicted because two shop assistants identified him as the thief. After nine months in prison his alibi was proved correct and he was released.

alien

Someone who is not a citizen of the state. In the UK, **aliens** may hold most kinds of property but may not vote or hold public office.

aliment

In Scotland, *interim aliment* is money agreed or ordered to be paid to a **child** or **marriage** partner during divorce proceedings. Payments after the divorce decree are called **periodical allowance**; if there are no divorce proceedings, they are known as aliment.

alimony

See **maintenance**.

allenary

A Scots term for *only*, which is important when associated with a **liferent** as it prevents the liferent being regarded as a **fee**.

All ER

See **Law Reports**.

all that land

Legalese for *all the land*.

amicus curiae

amicus curiae

[Latin: friend of the court] A **lawyer** appointed in certain **cases** to help the **court** by putting arguments in support of an interest that might not be adequately represented by the **parties** to the case, such as the public interest.

ancient lights

A landowner's right to have sunlight enter his or her windows. The right may be acquired by written agreement or by at least 20 years' continuous use. Structures which interfere with ancient lights cannot normally be erected. However, a **court** would take into account how much light the landowner needed for the **property's** normal use. Ancient lights does not give a right to protect a view. Similar rules apply in Scotland.

See **easement; light or prospect**.

ancillary relief

In **divorce** and separation proceedings, **court** orders concerning money and **property**.

annulment

A **court** declaration of nullity of **marriage**. A null marriage is one that has never been valid, for example because it was between people within the **prohibited degrees of relationship**. In all cases except non-consummation (failure to have **sexual intercourse**), annulment can only occur within 3 years of the date of the marriage.

answer

A written **pleading** given to the **court** in reply to a **claim**.

Anton Piller

In English **civil** actions, a powerful **High Court** order, named after a German manufacturing company which was among the first to get such an order. A **plaintiff** obtains it from a **judge** in secret without notifying the **defendant**. It acts as a **search warrant**, permitting entry and search of the defendant's home or business to obtain disclosure of confidential information that may otherwise be concealed or destroyed to frustrate the plaintiff's claim for **damages**.