CONSEJO GENERAL
DEL PODER JUDICIAL

FORO
DE
ESTUDIOS JURÍDICOS
RUIZ-JARABO

DRIVING JUDICIAL PERFORMANCE IN THE EUROPEAN AREA OF JUSTICE: MUTUAL ASSISTANCE IN CRIMINAL MATTERS THAT PRODUCES RESULTS

Calpe (Alicante), 17 - 21 June 2013

LEGAL ENGLISH - CRIMINAL

SE1396

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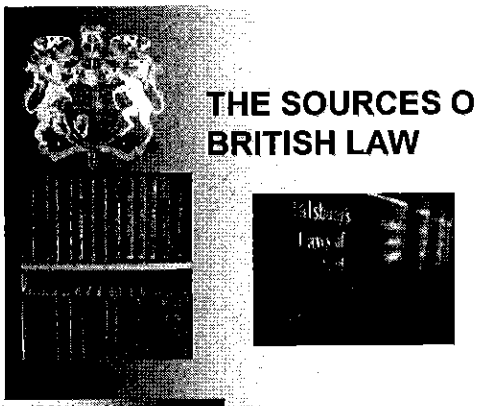


THE SOURCES OF BRITISH LAW

The Sources of British Law

1. **COMMON LAW** (property, personal injuries, breach of contract).

2. **EQUITY [but not Scotland]** (ownership, wills, intestate/testate successions, trusts).

3. **STATUTE LAW** (Parliament: acts / statutes, statutory instruments).

4. **CASE LAW** (The Judges → judge-made law).

5. **EU LEGISLATION + INTERNATIONAL AGREEMENTS** (must be formally incorporated into English law before courts obliged to apply them; e.g. *European Convention on Human Rights and Fundamental Freedoms* –ECHR-, 1950 → *Human Rights Act 1998*).

Common Law

In common law systems (as against civil law systems) **JUDICIAL PRECEDENTS ARE BINDING** as opposed to persuasive.

Common Law

- **THERE IS NO STATUTE MAKING MURDER ILLEGAL.** It is **a common law crime,** so although there is no written Act of Parliament making murder illegal, it is illegal by virtue of the constitutional authority of the courts and their previous decisions.
- Common law, however, can be amended by Parliament.
  - Example: murder carries a mandatory life sentence today, but had previously allowed the death penalty.

Statute Law

Also "enacted law"

- Written laws or legislation passed by Parliament or the Scottish Parliament.
- Types:
  - (1) Acts of Parliament; Acts of the Scottish Parliament (statutes)
  - (2) Delegated legislation (statutory instruments or SIs: ministerial orders, regulations, rules, local bye-laws, etc.). Approx.3,000 each year.
- On the increase the last few years.

Case Law

Body of law created by judges' decisions on individual cases.

Also called "judge-made law"

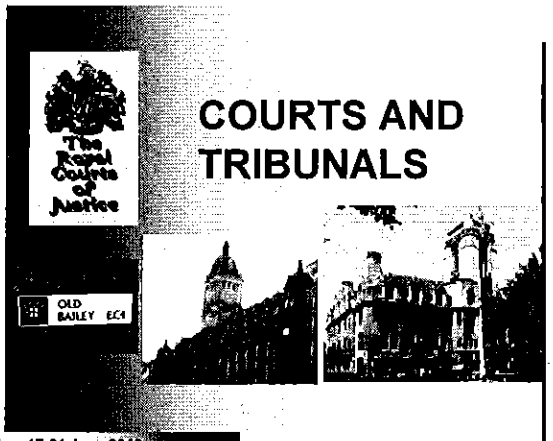
Case Law
Law Reports

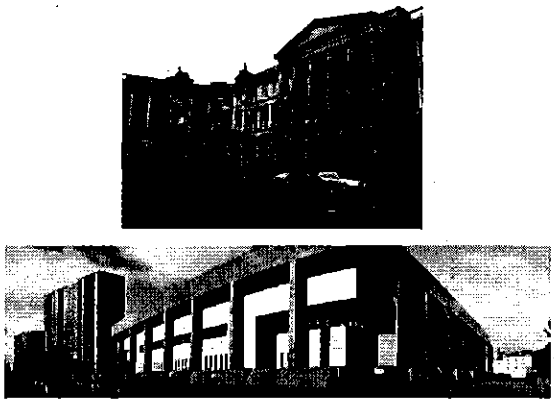
- Modern Law Reports (1865 - to present): Incorporated Council of Law Reporting.
- Earliest reports of particular cases: between 1275 & 1535 (Year Books).
- Because some cases lay down important legal principles, over 2,000 each year are published in law reports.

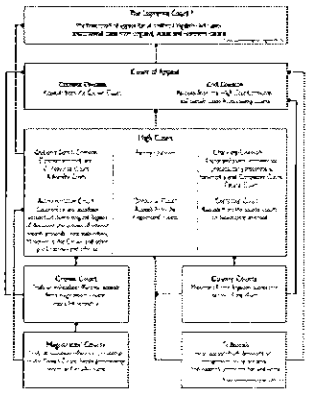
Scotland

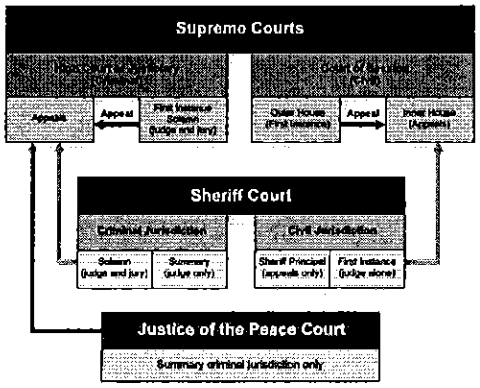
- Session Cases – cases of the Judges of the Court of Session
- Scottish Criminal Case Review [SCCR] – Criminal cases of the Scottish Appeal Court
- Scots Law Times – Cases from the Sheriff Court and the Court of Session
- Scottish Criminal Law (SCL) – a criminal law series

COURTS AND TRIBUNALS









Magistrates' Courts

Magistrates deal with three kinds of cases:

- **Summary offences**: less serious cases, such as motoring offences and minor assaults, where the defendant is not usually entitled to trial by jury.
- **Either-way offences:** these can be dealt with either by the Magistrates or before a judge + jury at the Crown Court. Examples: theft, handling stolen goods. A defendant can insist on their right to trial in the Crown Court. Similarly, Magistrates can decide that a case is sufficiently serious that it should be dealt with in the Crown Court – which can impose tougher sentences if the defendant is found guilty.
- **Preliminary stages of indictable-only offences,** such as murder, manslaughter, rape and robbery. These must be heard at a Crown Court (commit for trial).

Justice of the Peace Court

- A lay-justice assisted by a legally qualified adviser
- Criminal jurisdiction only
- Minor offences: road traffic, theft, public disorder

County Courts

- Since 1998, no restrictions on their jurisdiction.
- Majority of civil litigation: debt repayment, personal injury, breach of contract (concerning goods or property), family issues (divorce or adoption), housing disputes (mortgage, etc.).
- Governed by County Courts Act 1984 + Civil Procedure Rules 1998 (CPR).
- District judges.

Crown Court

- Trials for indictable offences (serious criminal cases: murder, rape, robbery), appeals from magistrates' courts, cases for sentence.
- Except in very limited circumstances, all trials take place with a jury.
- Trials: 1 judge + 12-person (randomly selected citizens) jury.
- Presided over by High Court Judges, Circuit Judges or Recorders.
- Divided into regions, not circuits.

Sheriff Court

- First Instance court of universal jurisdiction
- All civil, all criminal, court of initiation
- Presided by Sheriffs. Shire reeve.
- Criminal everything except murder, rape, terrorism
- Five year sentencing power
- Family law, divorce, commercial law, personal injury, obligations

Sheriff Court

- Protection of children
- Appeals and referrals from Children's Panel, a lay tribunal dealing with child care issues
- Appeals from administrative and licensing tribunals
- Adults with Incapacity, Alzheimer's disease, welfare and financial guardianship

High Court of Justice

- **Queen's (or King's) Bench Division (72 Judges)**: contract and tort (civil wrongs), judicial reviews and libel. Also claims for judicial review of administrative decisions or decisions of inferior tribunals.
- **Chancery Division (18 Judges)**: company law, partnership claims, conveyancing, land law, probate, patent and taxation cases. It handles cases involving large sums of money and nationally important legal financial issues.
- **Family Division (19 Judges)**: family law and probate cases.

High Court in Scotland

- Thirty five Senators of the College of Justice
- Criminal jurisdiction: murder, rape, terrorism, offences carrying a sentence of more than 5 years' custody
- Civil jurisdiction: actions with a value in excess of £150,000; personal injury; family law; obligations; and judicial review

Court of Appeal of England and Wales

- **CRIMINAL DIVISION**: Lord Chief Justice. Lord Judge. President of the Courts of England and Wales, Head of the Judiciary of England & Wales and President of the Criminal Division of the Court of Appeal (The Right Honourable). (My Lord/Lady).

- **CIVIL DIVISION**: Master of the Rolls (The Right Honourable) Lord Neuberger of Abbotsbury
- (My Lord/Lady)
- **Rest: Lords (Justices) of Appeal.**
- **Three judges sitting as a panel.**

Court of Appeal Scotland

- Criminal appeal court

- Civil appeal court

The Supreme Court

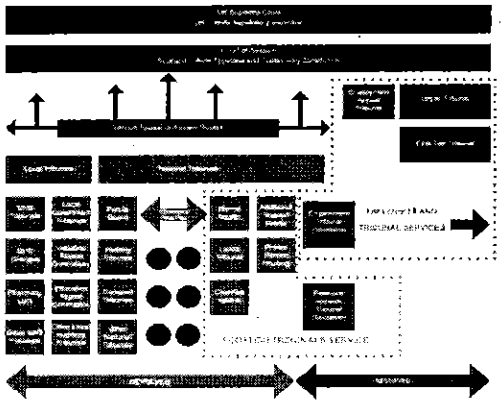
- The Supreme Court is the final court on points of law for the whole of the United Kingdom in civil cases and for England, Scotland, Wales and Northern Ireland in criminal cases.
- UK body legally separate from the England and Wales Courts since it will also be the Supreme Court of both Scotland and Northern Ireland. As such it falls outside of the remit of the Lord Chief Justice of England and Wales in his role as head of the judiciary of England and Wales.

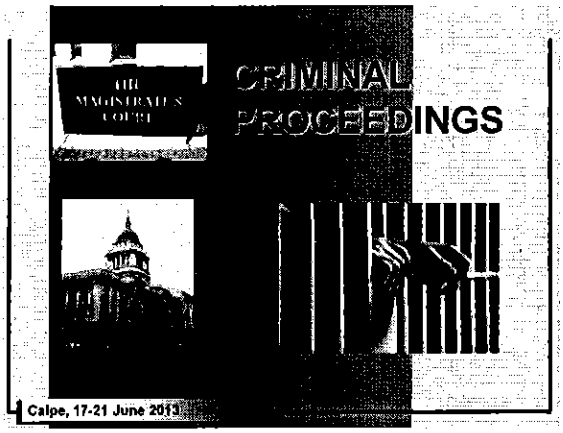
The Supreme Court

- This is not the final court for a criminal appeal from Scotland, unless there is a fundamental issue involving the right to a fair trial (Articles 5 and 6 of the ECHR)

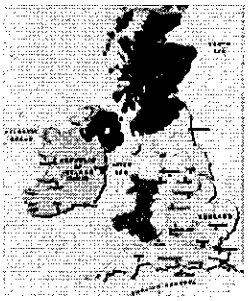
Tribunals

- Tribunals Service created in April 2006, executive agency of Ministry of Justice.
- See http://www.justice.gov.uk/global/forms/hmcts/index.htm
- The Tribunals, Courts and Enforcement Act 2007 creates a two-tier system: First-tier tribunals and Upper Tribunals.
- Separate Chambers within each Tier.





Criminal Justice systems in the UK



Distinct jurisdictions: England and Wales; Scotland; Northern Ireland.

Separate legal systems, laws, courts, prosecution services, central authorities.

Criminal Justice in Scotland, England & Wales

- **Home Office**: oversees Police, Prison Service and National Justice Board.
- **Ministry of Justice**: oversees Magistrates' Courts, Crown Court, Appeal Courts and Legal Services Commission.
- **Attorney General's Office**: oversees the Crown Prosecution Service.
- **Crown Office**: oversees prosecution in Scotland

The Home Office

- Head of Home Office: Home Secretary (Theresa May).

- The Cabinet Secretary for Justice (Kenny MacAskill) has devolved responsibility for justice issues in Scotland.

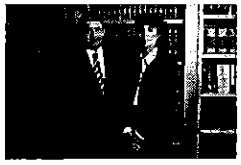
The Attorney General's Office

- Attorney General: Dominic Grieve QC MP.

- Solicitor General (the Attorney General's deputy): Edward Garnier QC MP.
- Attorney General's Office for England and Wales: https://www.gov.uk/government/organisations/attorney-generals-office

The Office of the Advocate General for Scotland

- Lord Advocate: Frank Mulholland QC
- Solicitor General: Lesley Thomson QC
- The Office of the Advocate General for Scotland: https://www.gov.uk/government/organisations/office-of-the-advocate-general-for-scotland

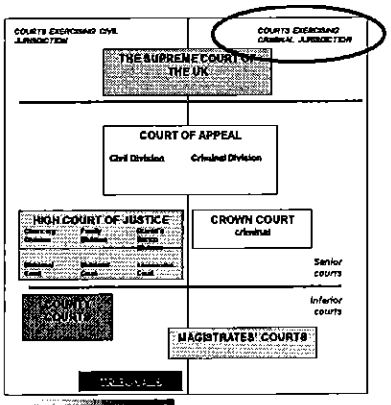


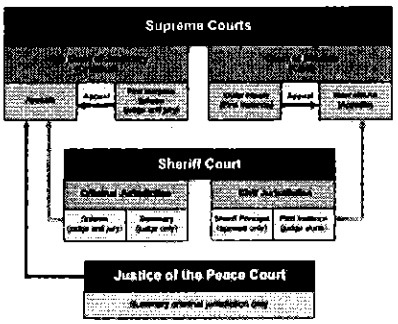
The Crown Prosecution Service (CPS)

- The Crown Prosecution Service: http://www.cps.gov.uk/

Crown Office and Procurator Fiscal Service

- The Crown Office and Procurator Fiscal Service: http://www.crownoffice.gov.uk/





Arrest & Charge (UK)

- Arresting officer MUST caution the person under arrest.

Caution in the UK: Right to be silent.

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something that you later rely on in court. Anything you do say may be given in evidence."

The Scottish Caution

"I am now going to ask you questions about (crime/offence). You are not obliged to answer any questions but anything you do say may be noted, may be audio and visually recorded and may be used in evidence. Do you understand that?"

Arrest & Charge

- IF charges are laid, the police may:
  - Hold the detainee in custody.
  - But only for 12 hours in Scotland (guarde a vue)
  - Remand the accused on bail:
    - bail with a security = conditional bail;
    - bail without a security = unconditional bail.
  - Remand the accused in prison.
  - Order him/her to be brought before a Magistrates' Court (24 hours).

[Habeas corpus]

Arrest & Charge

[Habeas corpus]

The great writ of Habeas corpus does not run in Scotland. Instead there are strict time limits on the period a person can be remanded before trial;

- *40 days summary,*
- *110 days Sheriff Indictment,*
- *140 days High Court Indictment*

Criminal proceedings: Offences

- <u>Types of offence</u>

1. **Summary offences** (lesser crimes).
2. **Indictable offences** (serious or very serious crimes).
3. **Offences triable either way** ('either way offences': intermediate offences).

❖Offences triable either way do not apply in Scotland.

Summary Offences

[Petty offences / Misdemeanour]

- Lesser crimes: *motoring offences, assault on police, petty theft.*
- Lesser, lighter or more lenient punishments.
- Trial by magistrates, JPs or Sheriffs summarily (without a jury). Defendant not entitled to trial by jury.

Indictable Offences

[Felony is the term used in England. Serious offence is the term used in Scotland]

- Serious or very serious crimes: *rape, armed robbery, murder.*
- Tried before a jury at Crown Court after formal indictment by CPS.
- Tried before a Sheriff and Jury where sentence likely to be 5 years' or under. This is called a Solemn case.
- Most serious offences tried before High Court Judge and a Jury in Scotland. Again referred to as trial under Solemn procedure.

Offences triable either way. Unknown in Scotland.

- Intermediate offences: *theft.*
- Depending on seriousness of facts alleged, they may be deemed more suitable for trial by Magistrates or by Crown Court.
- Accused entitled to insist on trial at Crown Court if s/he prefers jury (BUT: greater sentencing powers of Crown Court).

No right to elect trial by jury in Scotland

- Summary procedure is before a JP or a Sheriff
- Solemn procedure is before a Sheriff and Jury or a High Court Judge and Jury
- The prosecutor decides which form of procedure to use.
- Summary procudure before a judge alone
- Solemn procedure before a Sheriff or Judge and jury

CRIMINAL PROCEEDINGS & COURTS

Criminal proceedings: Magistrates' Court

- Information before a Magistrates' Court
  - Prosecutor/any individual (*private criminal prosecution)* may lay an information before a Magistrates' Court for an alleged offence,
  - Magistrate may issue a summons or a warrant for arrest.

1) Preliminary hearing -> discharge the accused / charge him with a crime.

Criminal proceedings: Magistrates' Court

2) **Indictable-only offence -> committal proceedings (= paper commital) → if** there is a case to answer).

- Commit the case to the Crown Court (with jury).
- Magistrates do not examine the case, just send the case on the grounds of documentary evidence.

Criminal proceedings: Magistrates' Court

3) **Triable either way offences (I)** -> Magistrates may, before deciding the venue, ***plea before venue*** (the accused pleads guilty / not guilty)

- If s/he pleads **guilty** the court will hear the prosecution case against him and mitigation of the defence, and then determine the sentence (if greate than Magistrates' Court has power to impose -> commital to Crown Court for sentence).
- If s/he pleads **NOT guilty**, Magistrates' Court will decide if:
  - trial on indictment (by a jury, in Crown Court);
  - summary trial (in Magistrates' Court).

Criminal proceedings: Magistrates' Court

3) **Triable either way offences (II)**

- If the accused does not accept summary trial -> **commital proceedings** (examining magistrates).
- At this stage, Magistrates take evidence, and the Crown sets out the case.

Scotland

- No committal proceedings
- Decision on forum and how to prosecute entirely at the discretion of the Lord Advocate or his deputies, the Procurators Fiscal.

Criminal proceedings: Crown Court

Arraignment (reading of indictment, that is, of charges):

- Identification of the accused
- Indictment [*THE QUEEN v (Defendant) charged as follows...]*
  - Introductory matters.
  - Charges.
  - Sections of statute.
- Plead guilty / not guilty.
- Submission of no case to answer / motion for dismissal.
- Counsel for the defence -> *pleas in bar*

If accused pleads guilty:

- Counsel for the prosecution-> summary of evidence, background and record.
- Counsel for the defence-> plea for mitigation.
- Judge-> verdict / sentence.
- If accused pleads guilty of a lesser offence (change of plea)

Criminal proceedings: Final/Closing speech

- Closing argument or statement:
  1) **C. for the prosecution** must prove *actus reus, mens rea, no defences.*
  2) **C. for the defence must** NOT prove the accused's innocence because (s)he is presumed innocent until proved guilty.
- Summing-up by the judge (Jury summation in AmE):

Scotland

- No opening speeches
- No arraignment
- Crown lead evidence
- No burden on the accused
- Defence speak last
- Judge or Sheriff charges the jury

SENTENCE

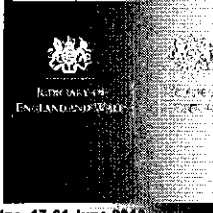
Conviction and sentence

- Sentence: decision for judge, magistrate, JP or Sheriff.
- Prosecutor's role: to draw court's attention to any aggravating or mitigating factors, victim personal statement, evidence of impact of offending on community, statutory provisions or sentencing guidelines.
- Defence: plea in mitigation.
- Sentencing guidelines issued by Sentencing Council to ensure consistency:

  http://www.sentencingcouncil.org.uk/sentencing-guidelines.htm

  There is no Sentencing Council in Scotland where sentencing is at the discretion of the trial judge.

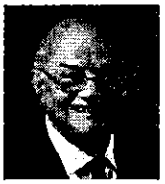
THE JUDICIARY OF ENGLAND AND WALES



The Scottish Judiciary

- Kirking of the court each year
- Other images
- Lord President & Lord Justice Clerk

Lord Chancellor (Secretary of State for Justice) & Lord Chief Justice



Cabinet Secretary and Lord Advocate

Kenny MacAskill Frank Mulholland

The Judiciary of Scotland, England & Wales

"THE BENCH":

judges, JPs & magistrates sitting in court

The Judiciary: Wigs

- Types of wigs: full-bottomed wig (ceremonial) and bench/tie wig.

The lay magistracy: Justices of the Peace

- **Laymen** (no legal qualification BUT training before and during the time they hold office).
- They sit in JP Courts (Scotland), Magistrates' Courts and Youth Courts.
- British nationality NOT a requirement (Oath of Allegiance).
- Appointed by Lord Chancellor on the advice of local committees, First Minister on advice of local communities in Scotland.

Recorders (do not exist in Scotland)

- Barrister or solicitor of ten years' standing. A five-year appointment.
- Part-time Crown Court Judge (in County Courts too): normally they sit between 4 and 6 weeks a year; rest of the time → private practice.

District judge (same jurisdiction as Sheriff)

- Judges who sit in County Courts or Magistrates' Courts.
- Expected to sit for a minimum of 215 days .
- Full-time judges.
- Appointed by the Queen on the recommendation of the Lord Chancellor.

Circuit judge (same jurisdiction as Sheriff)

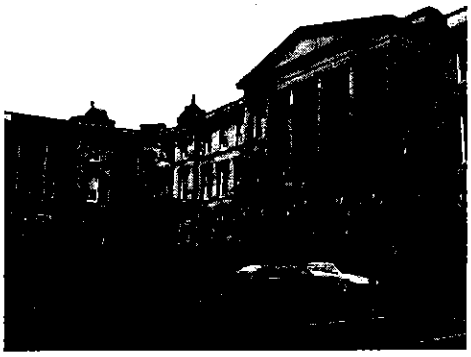
- Senior judges who sit in Crown Courts, County Courts and specialised divisions of HCJ. "Purple judges".
- Expected to sit for a minimum of 210 days, although the expectation is for between 215-220 per year.

High Court judge

- Barristers / solicitors / circuit judges with two years' service in County Court.
- In Scotland, lawyer of at least 10 years' experience

Court of Appeal judge

- Lords Justices of Appeal. They are Privy Councillors.
- Called Senators of the College of Justice in Scotland.



Divisional Heads

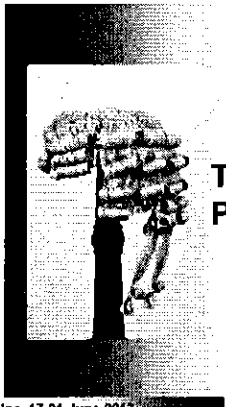
- The **Lord Chief Justice** is the Head of the Judiciary for England and Wales and the President of the Court of Appeal Criminal Division.
- The **Master of the Rolls**, who heads the civil branch of the Court of Appeal and is the Head of Civil Justice.
- The **President of the Queen's Bench Division.**
- The **President of the Family Division.**
- The **Chancellor of the High Court**, who heads the Chancery Division.

Scotland

- The Lord President, Lord Justice General – Head of the Scottish Judiciary

Supreme Court

- Justices of the Supreme Court: 11. http://www.supremecourt.gov.uk/about/biographies.html
- Two Scottish Judges: Lord Reed and Lord Hodge



THE LEGAL PROFESSION

The Legal Profession

- **SOLICITOR**: Member of the legal profession chiefly concerned with advising clients and preparing their cases and representing them in some courts. They may also act as advocates before certain courts or tribunals.
- **BARRISTER**: A member of the bar, the branch of the legal profession which has rights of audience before all courts.
- **ADVOCATES** (IN SCOTLAND): Audience before all courts and tribunals.
- **SOLICITORS** (IN SCOTLAND): Audience before Sheriff, Justice of the Peace and Tribunals
- **SOLICITOR ADVOCATES** (IN SCOTLAND): Audience before all courts and tribunals

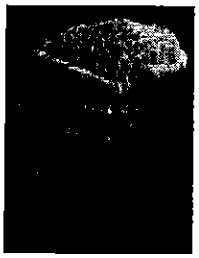
↓

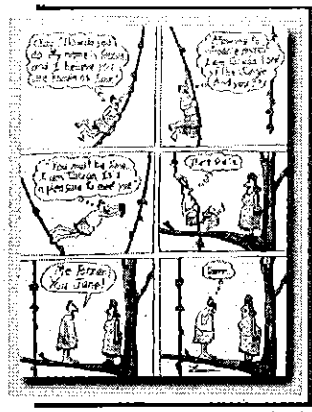
- **RIGHTS OF AUDIENCE**: entitlement to appear before a court in a legal capacity and to conduct proceedings on behalf of a party [before High Court: Higher Court Qualification required].

Barristers and Advocates

- The Bar: collective term for Barristers and Advocates
- Barristers and Advocates are "instructed" (hired) by solicitors. Since 2004 members of the public may approach a barrister directly, but it is very rarely done.
- In Scotland an Advocate can recieve instruction directly from a professional person, like an accountant or an architect but not a member of the public.
- Solicitors give barristers and advocates the "brief": written instructions to counsel to appear at a hearing on behalf of a party. The brief is prepared by the solicitor and it sets out the facts of the case and the case/s relied upon.

Bar Wigs





GETTING IT RIGHT: PRONOUNCING ENGLISH

VARIANTS OF ENGLISH

- 3 *major* geographic variants of English:
  - **British English:** BBC English/Queen's English // RP –Received Pronunciation:
  - **American English:** Boston English // GA – General American:
  - **Australian English.**

(+ others: Scottish English, Irish English, Welsh English, South African English, New Zealand English, Canadian English, etc.

BrE vs. AmE

- **Orthography**: theatre (BrE)/theater; colour (BrE)/color; centre (BrE)/center, pyjamas(BrE)/pajamas, through (BrE)/thru, tonight (BrE)/tonite, etc.
- **Morphology**: She hasn't got up yet (BrE)/She hasn't gotten up yet; He's different from (BrE)/than you. The team/family/police is/are (BrE). To have a shower (BrE).
- **Syntax**: Did you ever fly there?/Have you ever flown there? (BrE); If you had come, I would have said nothing (BrE)/If you would have come, I would have said nothing.
- **Vocabulary**: lift (BrE)/elevator; torch (BrE)/flashlight; lorry (BrE)/truck; biscuit (BrE)/ cookie.
- **Stress**: ✕secretary (BrE)/ ✕secre✕tary; ✕translate (BrE)/ ✕trans✕late.
- **Pronunciation** (phonemes): vitamin (/ɪ/ vs. /aɪ/), tomato (/eɪ/ vs. /eə/); schedule (/ʃ/ vs. /sk/); either/neither (/aɪ/ vs. /i:/).

BrE vs. AmE

- Main differences in pronunciation:

/ɑ:/ → /æ/	bath, fast, clerk, can.
/ɔ/ → /ɑ/	shop, not, box.
/ʊ/ → /ʌ/	love, bus, cup.
/rɪ/ → /r/	forty, thirty, party.
/ɜ:/ → /ɜ:r/	bird, sir.
/ɔ/ → /ɒ/	fox, rot, cot.
/l/:	milk, look, ill, call, real, well, tell.
/t/ after n, m → /n/	rented, twenty, plenty, wanted.
/t/ in intermediate position → similar to /r/	butter, better, letter.
/ɒ:/ → /ɔ:/	saw, law, fall, raw. Followed by /r/ → /ɔr/: This cord is short.

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THE ARBITRARINESS OF ENGLISH

- **ENGLISH**:

  45 phonemes (sounds), only **26 letters** to represent them → ARBITRARINESS

  45 sounds > 26 letters

- **A COMPARISON WITH SPANISH**:

  24 phonemes, **29 letters** to represent them.

  24 sounds > 29 letters

CALPE 2013

- **Examples of 1 sound (*phoneme*) → several letters (*graphemes*):**

  /f/ can be written as:

  Ph (photograph)
  Gh (laugh)
  F (family)

  /i:/ can be written as:

E (these)	ee (seed)	ay (quay)
Ea (read)	ie (piece)	ey (key)
Eo (people)	i (machine)	

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- **Example (1 letter → several sounds):**

Letter "a" can be pronounced as:

/æ/ → cat /ɔ:/ → ball
/a:/ → car /ə/ → luggage
/e/ → many /meɪ/ → take … etc.

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AS IF THAT WASN'T ENOUGH!!

- Some words have a double pronunciation:

Often	/ɒfən/	/ɒftən/
Been	/bi:n/ (str.)	/bən/
Vitamin	/vətəmən/ /vɪtəmɪn/	
Privacy	/prəvacy/	/prɪvacy/
Tomato	/mə/	/mɑ:/
Direct	/ə/	/aɪ/

CALPE 2013

- Some words are pronounced differently when their category changes (*homographs*):

Tear	/tɪə/	/teə/
Lead	/li:d/	/led/
Read	/ri:d/	/red/
Live	/lɪvz/	/laɪv/

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UNPREDICTABILITY:

TRICYCLE // TRILOGY

BIGAMY // BILINGUAL

SUGAR

APPLE // ACORN

EARTH

VOWELS

PROBLEMS:

English has 12 vowels (Spanish 5)

English has short and long vowels

VOWEL KEY

/iː/ long "i" (feet, eat, free)
/ɪ/ (sit, pills)
/e/ "e" (tell, when, get)
/æ/ Mixture between "a" and "e" (bag, man, cat)
/ɑː/ Long "a" (dark, part, car)
/ɒ/ Between "o" and "a", closer to "o" (gone, long)
/ɔː/ Long "o", close to "u" (short, door, call)
/ʊ/ Between "u" and "o", closer to "u" (took, cook, put)
/uː/ Long "u" (fool, food)
/ʌ/ Between "a", "o" and "u" (duck, luck, much, some)
/ɜː/ Long "e" (bird, learn, work)
/ə/ Between "a" and "e" but closer to "a" (work*er*, cov*er*, lat*er*). [schwa]

Relatively difficult for speakers of languages from the Latin family (5 long vowels):

/ɑː/ dark, heart, far
/ɜː/ heard, word
/iː/ feel, meet
/ɔː/ lord, pork
/uː/ moon, soon

Very difficult for speakers of languages from the Latin family :

/æ/ bag, man, sat
/ɒ/ lock, strong
/ə/ work*er*, *a*bout, woman
/ʌ/ duck, luck, fuss
/ʊ/ wood, took, cook

/iː/

Spellings: ee (see, bee)
ea (read, sea)
ie (field, shield)
ei (receive)
e (these)

/iː/	/ɪ/
peach	pitch
leap	lip
read	rid
beach	bitch
bean	bin
beat	bit
seat	sit

The s*ea*ts on the b*ea*ch are ch*ea*p

/ɪ/

Might be perceived as */e/*: mill, houses, teaches, wanted, waited.
- Very frequent in: some plurals (*watches*), 3rd person singular of some verbs (*he fixes*) and past/participles of some verbs (*it ended*).

Spellings: i, y (lady, milk)
any grapheme (unstressed position): money, minute, language

/ɪ/	/i:/
will	wheel
still	steal
/ɪ/	/e/
till	tell
built	belt
wilt	well

The pink dishes are in the sink

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/e/

Spellings: e (bed, ten, pen)
ea (head, dead)
a (many, any)
u (bury)

/e/	/ɪ/
bell	bill
sell	sill
/e/	/i:/
met	meat
said	seed
stem	steam

He said the television set was red

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/æ/

Mouth open to say "a", but say "e"
Spellings: a (flash, lamp, hand)

/æ/	/e/
man	men
sat	set
bad	bed
bag	beg

He sat in the back of the taxi

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/ɑ:/

- Typical of R.P., difficult to distinguish from /ɒ/: car, market. Tongue in same position as when yawning.
- After /f, θ, n, s/ in British English pronounced as /a:/, in American English as /æ/: father, path, bath, after, grass, laugh, dance.

Spellings: a (ask, grass) er (clerk) ear (heart)
al (half, calm) au (aunt, laugh)

/a:/	/æ/
bark	back
March	match
/a:/	/ʌ/
calm	come
heart	hut

My father can't park his car in the yard

/ɒ/

- More central in AmE = perceived as /a/: shop, not, what, hot.
Problems to distinguish: hot/hut; lock/luck, stock/stuck

Spellings: **o** (not, box, dog) **a** (want, watch)
au (because) **ou** (cough)

/ɒ/	/ʌ/
shot	shut
long	lung
gone	gun
/ɒ/	/ɑ:/
pot	part
cod	card
stock	stark

The shop is locked at five o'clock

/ɔ:/

- More and more frequently pronounced as /ʌ/ - short, taught, daughter.

Spellings: **o** (horse) **oar** (board) **oo** (poor) **ou** (bought)
ore (more) **our** (four) **aw** (saw) **a** (all)

/ɔ:/	/ɒ/
caught	cot
stalk	stock
/ɔ:/	/ɑ:/
lord	lard
pork	park
/ɔ:/	/ʌ/
bought	but
dawn	done

The lord was born near the court, of course

/ʊ/

- Allophone /u:/: foot, look, took, book, good.

Spellings: *u* (put) *oo* (book, look)
ou (could, should) *o* (bosom)

/ʊ/	/ɜ:/
look	lurk
hood	heard
/ʊ/	/əʊ/
bull	bowl
could	code
brook	broke

Look, put your hood on the hook.

CALPE 2013 32

/u:/

- Allophone /ʊ/: lose, who, food.
- Sometimes shorter: group, soup, route (followed by voiceless consonant).

Spellings: *oo* (spoon, boom) *ou* (soup, route, look)
o (do) *u* (flu)
ew, ue, ui, oe (shoe, blue)

/u:/	/ʊ/
fool	full
pool	pull
/u:/	/ɔ:/
fool	fall
boot	bought

The Duke will shoot the fool.

CALPE 2013 33

/ʊ/

- Several allophones throughout Great Britain: /ɒ/, /ɜ:/.

Spellings: *u* (sun, run, fun) *o* (come, done)
ou (young, country) *oo* (blood, flood)

/ʊ/	/ɒ/
cup	cap
but	bat
some	Sam
run	ran
/ʊ/	/e/
money	many
but	bet

Your uncle doesn't have much money.

CALPE 2013 34

/ɜ:/

- In AmE the "r" following it is pronounced: earth, firm, word, nurse, sir, birth.
- It is like a long schwa /ə/.

Spellings: ***ir*** (first) ***or*** (word)
er, ear (earth) ***our*** (journey)
ur (nurse)

/ɜ:/	/e/
bird	bed
word	wed
learned	lend
/ɜ:/	/ʌ/
hurt	hat
bird	bad
/ɜ:/	/ɔ:/
worm	warm
firm	form

He turned and murmured: 'Sir!'

/ə/ "schwa"

- Very strong tendency towards it in English: "know", "old", "toe", "nose", "no" were pronounced "o", not any more.
- Mouth as if to say "a" in Spanish: not moving lips or tongue, say gentle "a/e" (mixture of "a", "e" and "o").
- When in final position, very open: almost /a/ (mother, worker, daughter, cover).[vs. AmE]

Spellings:

ANY vowel or group of vowels. Any unstressed syllable can be /ə/: famous, woman, letter, cupboard, should, etc.

A photographer was present when the accident happened

SEMIVOWELS

/j/ quick "i" (as in 'you').

/w/ quick "u+ vowel" using lips, not throat

/j/	/dʒ/
you	Jew
yet	jet
your	jaw
Yale	jail
yam	jam

/w/	/g/
wood	good
wet	get
west	guest

DIPHTHONGS

9 diphthongs:

/ai/ time, cry, fly, my, buy, sight, fly, pride, try.
/eɪ/ day, stay, same, say, May, tray, cake.
/ɒɪ/ boy, toy, noise, foil.
/aʊ/ cow, now, how, shout, crowd, trout.
/əʊ/ no, show, boat, coat, note, slow, robe.
/ɪə/ here, beer, tear, fear, hear, sheer.
/eə/ there, where, care, stare, pear.
/ɒə/ poor. [No dipthong in AmE]
/ʊə/ sure [Allophone: /ɒː/], cruel, fuel.

TRIPHTHONGS

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5 triphthongs:

/a͡ɪə/	fire, wire, liar.
/e͡ɪə/	player, layer.
/ɔ͡ɪə/	destroyer, employer.
/a͡ʊə/	shower, flower, vowel.
/ə͡ʊə/	slower, lower, blower.

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CONSONANTS

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- Initial /p, t, k/: /p^h, t^h, k^h/ (voiced)

  pin, Peter, pocket

  tin, ten, Tom

  cap, cough, cot

- /d/ and /t/ are dental in many Latin family languages ("dedo") and alveolar in English:

  day, duck, dark, dish, desk

  time, teeth, till, tale, told

- Always pronounce ***CLEARLY*** final consonants:

  Final "d": bed, bad, bird, cod.

  Final "g": bag, fog, beg, wig.

  Final "b": rub, club, rob, pub.

  Final "t": get, forget, hot, sit.

  Final "p": drop, tip, sleep, nap.

  Final "k": sick, sock, pick, lack.

-Careful with /f/, /b/ and /v/.

/v/ does not exist in Spanish :

fish, find, coffee, tough, staff, enough

victory, very, ever, clever, drive, save

/b/	/v/
best	vest
bolt	volt
robe	rove

- Careful with /θ/ and /ð/:

/θ/ : think, thank, nothing, truth.

/ð/: then, this, there, brother, weather, without, bathe, with.

- Careful with /s/ (voiceless) and /z/ (voiced).

/z/

zoom, zoo, zebra, busy, crazy, comes, prize

/s/	/z/
race	raise
rice	rise
pence	pens
Sue	zoo
sip	zip
buses	buzzes

/s/ drops, shirts, walks, roofs, paths

/z/ pubs, beds, bags, sails, climbs,rains, songs (after b, d, g, v, l, m, n, ŋ)

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- Careful with /s/, /ʃ/ and /ʒ/:

/s/	/ʃ/
sip	ship
sort	short
sin	shin

- In /ʒ/ vocal cords vibrate: measure, explosion, conclusion, garage.

/ʃ/ nation, creation, reduction, motion.

/ʒ/ vision, explosion, decision, exclusion

To practice with /ʒ/, replace by /ʃ/ and see what happens: treasure, strange, pleasure, cushion, division, television.

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- Practice with /h/

Him, her, home, hurt, hope, help, high, who, hit, here.

Behind, overhear, somehow, ahead.

BUT!!!

Honest, honour, heir, hour, forehead. EXHIBIT

AND in dialects / relaxed talk (**TRY NOT TO DO IT**):

Do you find him [/ðm/] pleasant? I like him

I don't love him. Do you love her?

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- Watch out for initial /s/.

Spain (not "Espain"), stop (not "estop"); BUT "escape", "escalators".

still, spray, split, student, street, strong.

school, sky, slow, smooth, small, SHREK ("es-rek" in Spanish).

- Voiceless consonants (some more than others):

- **mb:** climb, lamb, bomb, crumb, plumber.
- **mn:** hymn, damn (silent "n"); mnemonic (silent "m").
- **gh:** high, sigh, fight, night, weight, neighbour.
- **l:** calm, could, should, would, talk, walk, calf.
- **ps:** psychology, psychiatrist, psalm (silent "p").
- **r:** warm, farm, learn, north.
- **h:** hour, heir, honest, forehead, John.
- **w:** lawn, dawn, crawl.

Her Majesty's Advocate v. Malcolm Traquair

At 14.10 hours on 15th December 2012 three men wearing black baseball caps and white sky jackets entered The Royal Bank of Scotland, Colquhoun Street, Glasgow.

As soon as they got inside the bank they each pulled black handkerchiefs up over the lower part of their faces and approached Iona McCorquindale, one of the three cashiers on duty at that time.

One of the men (Male 1) pulled out a revolver, pointed it at Ms McCorquindale and said "*Get all the money from the three tills and give it to me. Do exactly as you are told or you will be shot.*" Ms McCorquindale complied.

Meanwhile, the other two men had also produced guns, which they were pointing at the other cashiers and two customers who were in the bank in the time and who had been told to face the wall.

They put the money handed over by Ms McCorquindale into two large holdalls and the three men put away their guns, pulled down the handkerchiefs that had been covering the lower part of their faces and left the bank. They ran straight to a black Ford Focus motor car that was parked immediately outside the bank on double yellow lines (no parking at any time). The driver of the car was also wearing a black baseball cap.

Male 1 got into the front seat of the car and was heard by a young man, Angus Armstrong (a solicitor's clerk on his lunch break), who was at the cash point outside the bank and about 5 metres from the car to say to the driver "*Let's go Wheels. Get us out of here*". The car moved off with its wheels spinning but, about 100 metres from the bank, it was prevented from leaving Colquhoun Street by a passing police car that had been alerted by the emergency call from the bank and had driven across the road to prevent the car from getting away. The driver attempted to reverse the Ford Focus but could not do so because of the presence of other vehicles behind it.

Two police officers got out of the police car, approached the Ford Focus and arrested the four occupants on suspicion of robbery. The four men were cautioned and made no reply. By this time other police vehicles had arrived on the scene and they were taken away. The money from the bank was recovered from the holdalls found on the laps of the two men in the rear of the car. Each of the three passengers was found to be in possession of an imitation revolver. All four men were taken to Saracen Street Police Station where they were interviewed (questioned by police) and the interviews were tape recorded. The three passengers answered all of the questions that were put to them and admitted their parts in the bank robbery. The driver declined to answer any of the questions he was asked. All four men were charged with robbery and appeared on Petition the following day at Glasgow Sheriff Court. The three passengers pleaded guilty to robbery and were later sentenced to lengthy terms of imprisonment. The driver, Malcolm Traquair, pleaded not guilty and the case was adjourned for trial. The prosecution having served on Malcolm Traquair's solicitors copies of the statements of all the prosecution witnesses. The Judge directed the accused to serve a

Defence Statement within 14 days. In it the accused denied any involvement in the robbery and said that he had driven into Glasgow that day with his nephew, Rudriah MacSporran, but had got lost and had stopped near a small tobacconist's shop where the nephew got out in order to ask for directions. He had kept his engine running in case the police came along as he realised that he had parked illegally. He was taken completely by surprise when the three men got into his car. The one who got into the front seat was holding a gun which he pointed at him and told him to drive off and get them out of there. He was very relieved when the police car blocked his path as he thought that the men were going to shoot him.

The prosecution decided to call the following witnesses at the trial:-

- Iona McCorquindale- the bank cashier.
- Angus Armstrong - the young man who had been at the cash point.
- Police Constable Crawfurd Campbell -the arresting officer (who had also interviewed the accused).

The defence decided to call the accused and his nephew Rudriah MacSporran.

The dramatis personae for the trial are as follows:

- The Right Honourable Lord Jauncey of Tullichettle, Trial Judge
- Alan Breck-Stewart, Clerk of Court
- Findlay Turnbull, Court Officer
- Malcolm Traquair, Accused
- Ms Morag Galbraith, Advocate Depute
- Callum Abernethay, Defence Counsel
- Iona McCorquindale
- Angus Armstrong
- Police Constable Crawfurd Campbell
- Three Jury members.

CONSEJO GENERAL
DEL PODER JUDICIAL

FORO
DE
ESTUDIOS JURÍDICOS
RUIZ-JARABO

DRIVING JUDICIAL PERFORMANCE IN THE EUROPEAN AREA OF JUSTICE: MUTUAL ASSISTANCE IN CRIMINAL MATTERS THAT PRODUCES RESULTS

Calpe (Alicante), 17 - 21 june 2013

LEGAL ENGLISH - CRIMINAL

SE1396

TEXTS & EXERCICES

Neil McMahon
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Con el apoyo financiero del Programa de Justicia Penal de la Unión Europea
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OBJECTIVES & TEACHING METHODOLOGY

1. OBJECTIVES

a) The analysis of the English legal system

The teachers will acquaint participants with the English legal system, particularly with civil and criminal proceedings. Where appropriate, a comparison will be made with continental systems.

b) The study of English legal language

The teachers will help students to learn the major English legal terms both through texts and in systematic linguistic arrangements such as definitions, synonyms, collocations, phraseology, etc.

c) The improvement of communicative English

This will focus on three aspects: (1) choice of words and arrangement of sentences, especially with regard to correctness, clearness and effectiveness; (2) correct pronunciation, and (3) effective oral communication in social intercourse.

2. TEACHING METHODOLOGY

a) Seminars

Some of these seminars will be devoted to the analysis of the English legal system (objective a) and others will deal the linguistic aspects of English legal language (objectives b and c). Active participation of students in these seminars is essential.

b) Workshops

Students will be requested to discuss specific issues in groups; sometimes they will also have to debate some topics.

EXERCISES

Give the appropriate term/expression for each definition.

a) Law derived from custom and from precedent rather than from written, codified statutes:
b) Each of the parts of a court, depending on its jurisdiction:
c) Previous case or legal decision, taken as a guide for future cases:
d) Judicial order establishing some kind of remedy, either compelling somebody to do something or restraining him from doing something:
e) To become approved by a legislature or body empowered to sanction or reject:
f) To establish by legal and authoritative act; specifically: to make a bill into law:
g) To revoke or abrogate (an act) by legislative enactment:
h) To end the observance or effect of something:
i) To put off a legal hearing to a later date:

Match Latinisms with the appropriate definition

After the event
Of sound mind
Guilty mind
In good faith
In private
Guilty act
In the capacity of
Beyond somebody's power

a) It was said that the agents had acted *ultra vires*.
b) The witness was held to be *compos mentis* at the time of the event.
c) He represented himself as a *bona fide* purchaser.
d) There were allegations of negligence by the expert acting *qua* expert.
e) Some crimes require proof of both *actus reus* and *mens rea*.
f) *Ex post facto* laws are prohibited in many constitutions.
g) The documents were submitted for *in camera* inspection by the court.

Complete the following sentences with the appropriate word.

a) The agreement was declared _____ and void.

b) A bona _____ purchaser is a purchaser for value in good faith.

c) _____ and entering has become a common crime in residential areas.

d) To the best of my knowledge and _____, the information I have given is true.

e) The expression "Mareva injunction" has now been replaced by "_____ order."

f) The right to a fair and speedy _____ is recognized by most constitutions.

Complete the following sentences with the correct word. Most of the answers are grammatically correct, but only one occurs naturally in Legal English.

a. The Tribunal may, on its own _____ ,or on the application of either party ...
a) motion b) desire c) discretion d) authority

b. I solemnly declare that I shall give evidence to the best of my _____ and belief.
a) wisdom b) capacity c) knowledge d) awareness

c. These Rules shall come into _____ on 1 February 2004.
a) force b) vigour c) strength d) validity

d. The defendant, while in police _____, was questioned by police officers.
a) custody b) wardship c) protection d) imprisonment

e. The confession was admitted into evidence despite the _____ of defence counsel.
a) protest b) objection c) complaint d) opposition

f. You have the right to remain _____, and anything you say will be used against you in court.
a) mute b) dumb c) quiet d) silent

g. This Court has _____ over the subject matter of this action.
a) power b) competence c) jurisdiction d) authority

Give the appropriate term/expression for each definition (from *Peter Collin's English Law Dictionary*).

a) Act of setting a person free because s/he has been found not guilty:
b) Finding that a person accused of a crime is guilty:
c) When criminals are not sent to prison provided that they continue to behave well under the supervision of an officer:
d) Release of a defendant from custody until his next appearance in court (sometimes subject to security being given):
e) A defendant's reply to a charge put to him:

Fill in the gaps with the appropriate term. Sometimes there is a clue to help you, sometimes there isn't:

When an _____ [*criminal*] is sentenced, they can get one of four main types of _____:

- discharges
- court fines
- community sentences
- prison sentences

There may also be other requirements for the offender known as court orders.

When the court decides someone is _____, but decides not to punish them at this time, they will be given a _____. These are given for minor _____.

There are two types of discharges:

- an _____ discharge means that no more action will be taken
- a _____ discharge means that the offender will not be punished unless they commit another offence within a set period of time

Court fines

Most sentences are for minor offences. The majority of these will get a court fine. Fines are given for offences like:

- driving and road traffic offences, e.g. _____ [*driving too fast*] or not having insurance
- minor offences of theft or criminal damage
- not having a TV licence

The fine amount depends on how _____ a crime is and the offender's _____ to pay. An offender may also have to pay _____ to the victim and an extra payment called the 'victims' surcharge'.

COLLOCATIONS – ENFORCEMENT OF FOREIGN CRIMINAL JUDGMENTS

The following are collocations frequent in the field of cooperation in criminal matters. Provide the missing word/s. In most cases there is a prompt for you:

custody, enforcement, indefinite, provisional, rendered, sentencing, supporting

1. At the request of the _____ (adjective: imposing a sentence) State
2. Prior to the arrival of the documents _____ (adjective: giving support to) request
3. Requests for _____ (adjective: not final, temporary) measures shall include the information mentioned in paragraph 3...
4. The penal position of the person shall not be aggravated as a results of any period spent in _____ (noun: deprivation of liberty)
5. If you have been granted _____ (adjective: of no specified duration) leave to remain on asylum or family grounds
6. A state may refuse _____ (noun: application of the law), if it considers that the sentence relates to a fiscal or religious offence.

7. A person in respect of whom a European criminal judgment has been _____ (verb: pass, give) may for the same act neither be prosecuted nor sentenced nor subjected to enforcement of a sanction in another Contracting State....

INTRODUCTION TO THE VOCABULARY OF THE ENFORCEMENT OF CRIMINAL JUDGMENTS

Insert the correct prepositions in the spaces provided:

by, for, for, into, to

The administering state may opt _____ one of these methods: it either converts the foreign judgment _____ one of its own judgments, _____ means of a judicial or administrative decision, or continues _____ enforce the sentence imposed abroad, which is the system Spain has opted _____.

about, at, after, for, from, in

In Spain the National Criminal Court (Audiencia Nacional) –Article 65.3 LOPJ– is responsible _____ enforcement of foreign sentences. Where the situation is reversed, i.e., transfer _____ Spain, there is a void in the law, meaning that the practice followed by the Ministry of Justice consists _____ informing the sentencing court _____ the existence of the request; if no report (_____ least no negative report) is issued _____ a reasonable period of time has passed, the Council of Ministers takes the decision.

Article 2 – Persons having fled from the sentencing State

before, by, in, of, of, over, to

1. Where a national _____ a Party who is the subject _____ a sentence imposed _____ the territory of another Party as a part of a final judgment, seeks _____ avoid the execution or further execution of the sentence in the sentencing State _____ fleeing to the territory of the former Party _____ having served the sentence, the sentencing State may request the other Party to take _____ the execution of the sentence.

INTRODUCTION TO THE VOCABULARY OF THE ENFORCEMENT OF CRIMINAL JUDGMENTS

Replace the underlined words with the appropriate legal vocabulary

applied, committed, consents, country, declaration, discharge, enforcement, leave, country, offence, prior to, requested, restricted, sentenced, submitted, surrender, under

A condemned person detained in the requesting State who has been given to the requested State for the purpose of application shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence done before his surrender other than that for which the sentence to be applied was imposed, nor shall he for any other reason be limited in his personal freedom, except in the following cases:

a when the State which surrendered him agrees. A request for consent shall be sent, accompanied by all relevant documents and a legal record of any declaration made by the convicted person in respect of the wrongdoing concerned. Consent shall be given when the offence for which it is requested would itself be subject to extradition according to the law of the State asking for enforcement or when extradition would be excluded only by reason of the amount of the punishment;

b when the sentenced person, having had an opportunity to go out of the territory of the nation to which he has been surrendered, has not done so within 45 days of his final release, or if he has returned to that territory after leaving it.

Judicial cooperation

Building a fully-fledged freedom and security area calls for progress in the creation of a single area of ..... A European dimension is often present in criminal matters. To fight a criminal organisation active in several EU countries, or to bring to justice an ..... who tries to hide in a different EU country or also hear the ..... of a witness who is in a different country, judicial cooperation is necessary.

Strengthen judicial cooperation

When they need to take specific steps or execute certain decisions within the framework of criminal investigations or proceedings, national ..... may count on the assistance of criminal authorities in a different EU country.

Judicial cooperation in criminal matters is based on the principle of .... of judgements and judicial decisions by EU countries. It was introduced by the Maastricht Treaty under Title V (provisions on a .... and security policy).

The EU has worked in different areas in order to strengthen judicial cooperation between the criminal justice authorities in the EU countries.

Different forms of judicial cooperation

Mutual ..... assistance is the traditional form of judicial cooperation.

A judicial authority sends a letter of request ("..... ..... ") to a foreign judicial authority to perform an action in its territory. For example, legal assistance may be ..... to search a building or confiscate a property.

This form of judicial cooperation is not exclusive to EU members and may be slow and complex at times.

A more advanced form of judicial cooperation is the mutual recognition of ..... and judicial decisions.

Using EU agencies

The EU has set up specific structures to facilitate mutual assistance and support ..... between judicial authorities:

- Eurojust: an EU body comprising experienced judges or ..... who support and strengthen ..... and cooperation between national authorities in relation to serious crime;
- European judicial network in .... (EJN): a network of magistrates and prosecutors who act as contact points in EU countries to facilitate judicial cooperation.

common foreign, prosecutors, Testimony, Justice, letter rogatory, judgments, offender, cooperation, authorities, legal, mutual recognition, coordination, requested, criminal matters

LEGAL TEXTS

Criminal proceedings in England and Wales

Categories of offences

Criminal offences are split into three categories as follows:

i) *Triable only on indictment*

These offences are the most serious breaches of the criminal law and must be tried at the Crown Court. These 'indictable-only' offences include murder, manslaughter, rape and robbery.

ii) *Triable either way*

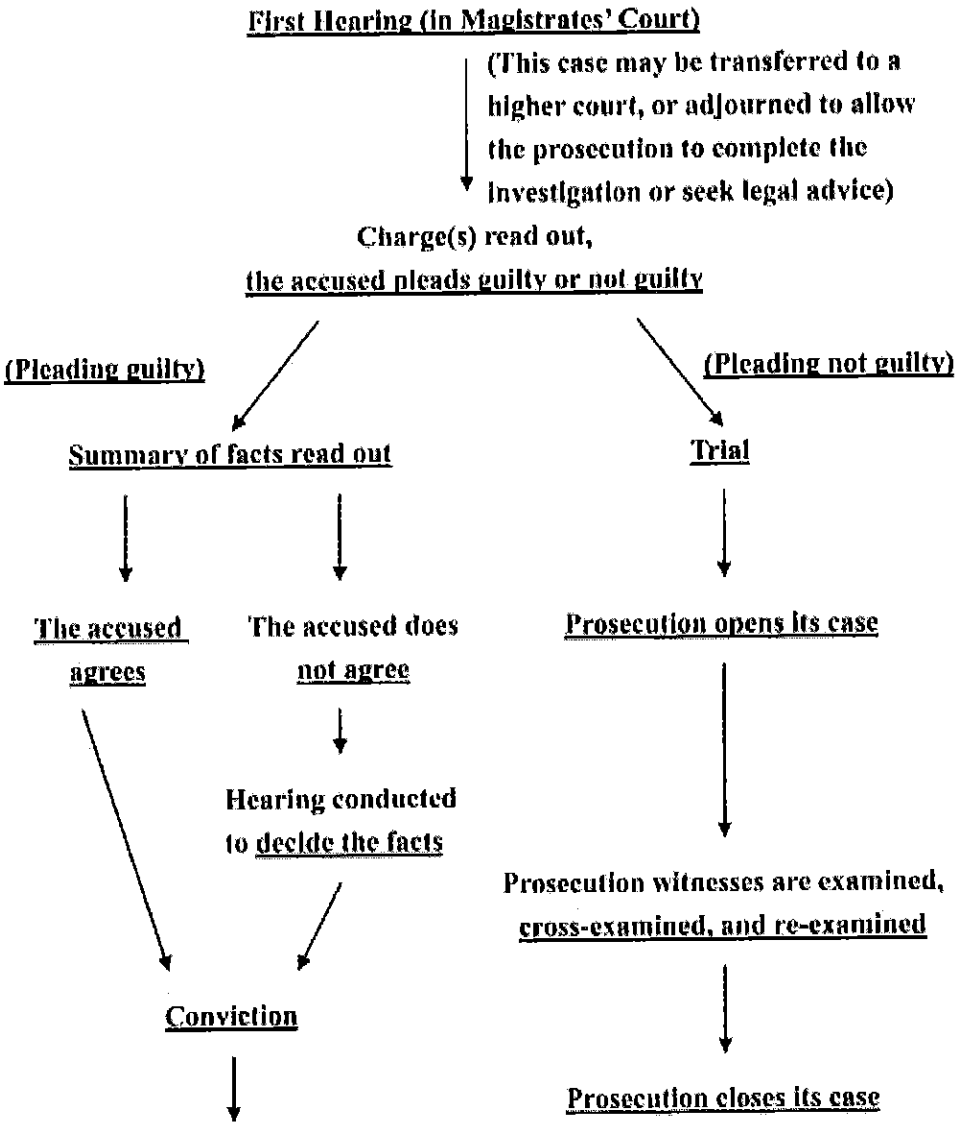
These offences may be tried either at the Crown Court or at a magistrates' court. These offences include criminal damage where the value is £5,000 or greater, theft and burglary.

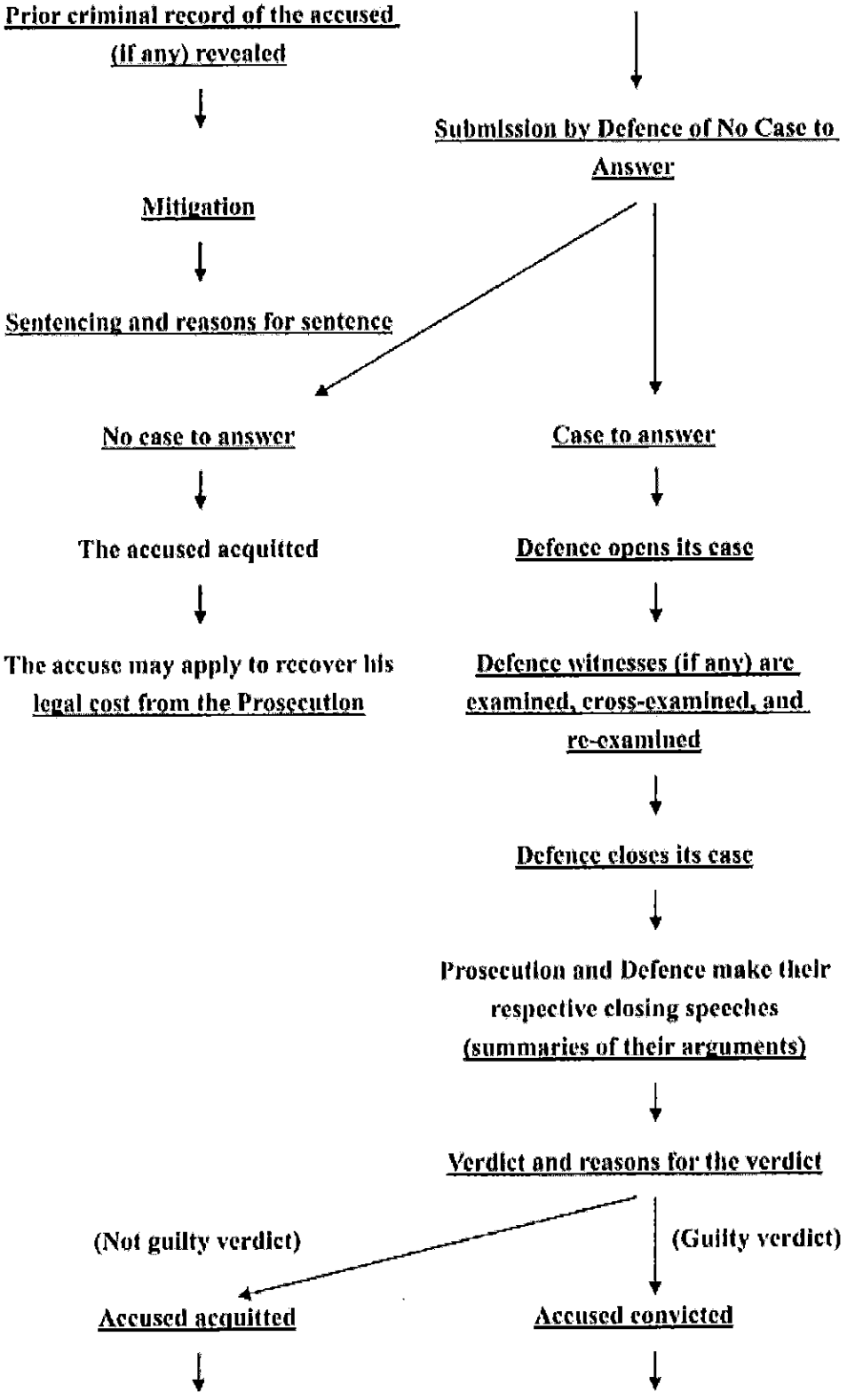
iii) *Summary*

These offences are triable only by a magistrates' court. This group is dominated by motoring offences for some of which fixed penalties can be issued, but also includes such offences as common assault and criminal damage up to £5,000.

A criminal trial

CHART: CRIMINAL TRIAL




Prior criminal record of the accused (if any) revealed
Submission by Defence of No Case to Answer
Mitigation
Sentencing and reasons for sentence
No case to answer
Case to answer
The accused acquitted
Defence opens its case
The accuse may apply to recover his legal cost from the Prosecution
Defence witnesses (if any) are examined, cross-examined, and re-examined
Defence closes its case
Prosecution and Defence make their respective closing speeches (summaries of their arguments)
Verdict and reasons for the verdict
(Not guilty verdict)
(Guilty verdict)
Accused acquitted
Accused convicted

Accused may apply to recover his legal costs from the Prosecution

Prior criminal record of the accused (if any) revealed

↓

Mitigation

↓

Sentencing and reasons for sentence

Judge's role in a Crown Court criminal case

Before the criminal trial starts the judges familiarise themselves with the details of the case by reading the relevant case papers. These include the indictment which sets out the charges on which the defendant is to be tried, witness statements, exhibits and documentation on applications to be made by any party concerning the admissibility of evidence in the trial.

The judge supervises the selection and swearing in of the jury, giving the jurors a direction about their special place in the trial in deciding the facts and warning them not to discuss the case with anyone else.

Once the trial has commenced the judge ensures that all parties involved are given the opportunity for their case to be presented and considered as fully and fairly as possible. The judge plays an active role during the trial, controlling the way the case is conducted in accordance with relevant law and practice. As the case progresses the judge makes notes of the evidence and decides on legal issues, for example, whether evidence is admissible.

Once all evidence in the case has been heard the judge's summing up takes place. The judge sets out for the jury the law on each of the charges made and what the prosecution must prove to make the jury sure of the case. At this stage the judge refers to notes made during the course of the trial and reminds the jury of the key points of the case, highlighting the strengths and weaknesses of each side's argument. The judge then gives directions about the duties of the jury before they retire to the jury deliberation room to consider the verdict.

If the jury find the defendant guilty then the judge will decide on an appropriate sentence. The sentence will be influenced by a number of factors: principally the circumstances of the case, the impact that the crime has had on the victim, relevant law especially guideline cases from the Court of Appeal. The judge will equally take into account the mitigation and any reports and references on the defendant. Only once the judge has considered all of these factors will the appropriate sentence or punishment be pronounced.

Magistrates' role in court

Magistrates hear less serious criminal cases including motoring offences, commit serious cases such as rape and murder to the higher courts, consider bail applications, deal with fine enforcement and grant search warrant and right of entry applications. They may also consider cases where people have not paid their council tax, their vehicle excise licence or TV licences.

All magistrates sit in adult criminal courts as panels of three, mixed in gender, age, ethnicity etc whenever possible to bring a broad experience of life to the bench. All three have equal decision making powers but only one, the chairman will speak in court and preside over the proceedings. The two magistrates sitting either side are referred to as wingers.

Most of the cases are brought to court by the Crown Prosecution Service but there are other agencies that prosecute more unusual cases such as RSPCA, Environment Agency, Department of Work and Pensions, English Nature etc. There is a huge breadth of legislation and although there may be many similar cases of the same offence, the details of both the individual offence and the offender can vary considerably.

Where a defendant pleads not guilty a trial will be held where the magistrates listen to, and sometimes see, evidence presented by both the prosecution and defence, decide on agreed facts and facts in dispute, decide which evidence they believe is the truth and consider whether the case has been proved beyond reasonable doubt.

Having found someone guilty or when someone has pleaded, the magistrates proceed to sentence using a structured decision making process and sentencing guidelines which set out the expected penalty for typical offences. They will also take note of case law and any practice directions from the higher courts and are advised in court by a legally qualified adviser.

Magistrates undergo basic training before they sit in court for the first time, have mentors for their first two years and are fully appraised. Training and appraisal are continuous throughout every magistrate's career to keep abreast of new legislation, new sentencing policy and new developments.

Cruelty to a child – factors to take into consideration

This guideline and accompanying notes are taken from the Sentencing Guidelines Council's definitive guidelines *Overarching Principles: Assaults on children* and *Cruelty to a child*, published 20 February 2008

Key factors

(a) The same starting point and sentencing range is proposed for offences which might fall into the four categories (assault; ill-treatment or neglect; abandonment; and failure to protect). These are designed to take into account the fact that the victim is particularly vulnerable, assuming an abuse of trust or power and the likelihood of psychological harm, and designed to reflect the seriousness with which society as a whole regards these offences.

(b) As noted above, the starting points have been calculated to reflect the likelihood of psychological harm and this cannot be treated as an aggravating factor. Where there is an especially serious physical or psychological effect on the victim, even if unintended, this should increase sentence.

(c) The normal sentencing starting point for an offence of child cruelty should be a custodial sentence. The length of that sentence will be influenced by the circumstances in which the offence took place.

(d) However, in considering whether a custodial sentence is the most appropriate disposal, the court should take into account any available information concerning the future care of the child.

(e) Where the offender is the sole or primary carer of the victim or other dependants, this potentially should be taken into account for sentencing purposes, regardless of whether the offender is male or female. In such cases, an immediate custodial sentence may not be appropriate.

(f) The most relevant areas of personal mitigation are likely to be:

- Mental illness/depression
- Inability to cope with the pressures of parenthood
- Lack of support
- Sleep deprivation
- Offender dominated by an abusive or stronger partner
- Extreme behavioural difficulties in the child, often coupled with a lack of support
- Inability to secure assistance or support services in spite of every effort having been made by the offender.

Some of the factors identified above, in particular sleep deprivation, lack of support and an inability to cope, could be regarded as an inherent part of caring for children, especially when a child is very young and could be put forward as mitigation by most carers charged with an offence of child cruelty. It follows that, before being accepted as mitigation, there must be evidence that these factors were present to a high degree and had an identifiable and significant impact on the offender's behaviour.

Children and Young Persons Act 1933, s.1(1)

Cruelty to a child

Triable either way:
Maximum when tried summarily: Level 5 fine and/or 6 months
Maximum when tried on indictment: 10 years

Identify dangerous offenders
This is a serious offence for the purposes of the public protection provisions in the Criminal Justice Act 2003 – refer to page 187 and consult legal adviser for guidance

Offence seriousness (culpability and harm)
A. Identify the appropriate starting point
Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
(i) Short term neglect or ill-treatment (ii) Single incident of short-term abandonment (iii) Failure to protect a child from any of the above	12 weeks custody	Low level community order to 26 weeks custody
(i) Assault(s) resulting in injuries consistent with ABH (ii) More than one incident of neglect or ill-treatment (but not amounting to long-term behaviour) (iii) Single incident of long-term abandonment OR regular incidents of short-term abandonment (the longer the period of long-term abandonment or the greater the number of incidents of short-term abandonment, the more serious the offence) (iv) Failure to protect a child from any of the above	Crown Court	26 weeks custody to Crown Court
(i) Series of assaults (ii) Protracted neglect or ill-treatment (iii) Serious cruelty over a period of time (iv) Failure to protect a child from any of the above	Crown Court	Crown Court

Offence seriousness (culpability and harm)
B. Consider the effect of aggravating and mitigating factors (other than those within examples above)
Common aggravating and mitigating factors are identified in the pullout card – the following may be particularly relevant but **these lists are not exhaustive**

1. Targeting one particular child from the family 2. Sadistic behaviour 3. Threats to prevent the victim from reporting the offence 4. Deliberate concealment of the victim from the authorities 5. Failure to seek medical help	1. Seeking medical help or bringing the situation to the notice of the authorities

Form a preliminary view of the appropriate sentence, then consider offender mitigation
Common factors are identified in the pullout card – see also note (f) opposite

Consider a reduction for a guilty plea

Consider ancillary orders, including compensation
Refer to pages 168-174 for guidance on available ancillary orders

Decide sentence
Give reasons

Becoming a Magistrate

Are you interested in joining the judiciary? Magistrates deal with about 95 per cent of all criminal cases, and are a vital part of the justice system.

www.judiciary.gov.uk

Magistrates

- Can be appointed from the age of 18, and retire at 70;
- Are volunteers, and there are around 28,000 from all walks of life;
- Do not need legal qualifications (they are assisted in court by a legal adviser);
- Must be available to carry out at least 26 half-day court sittings a year;
- Although unpaid, can claim expenses, typically for travel to and from court.

Becoming a magistrate

Candidates must satisfy the Lord Chancellor that they meet six criteria:

- Good character;
- Understanding and communication;
- Social awareness;
- Maturity and sound temperament;
- Sound judgement;
- Commitment and reliability.

Because of the need to maintain public confidence in the impartiality of the judiciary, people who work in certain occupations (for example, police officers) cannot become magistrates.

How to apply

Magistrates are recruited by local Advisory Committees in each region.

Recruitment takes place at different times from area to area, so it is important to check when it is happening in your area. You can telephone your local Advisory Committee to find out when they will be recruiting and discuss any other queries you may have.

Preparation and training

Before deciding whether or not to apply, you need to visit a magistrates' court to observe the magistrates sitting.

You will need to visit at least once (but preferably two or three times) when it is sitting in general session, in the 12 months before you apply.

Once they have been selected, all magistrates take the judicial oath – the same oath as that taken by judges.

They are trained before starting to hear cases and throughout their careers as magistrates, and are appraised regularly.

Time and money

Magistrates need to be able to commit at least 26 half-days per year to sit in court. Employers are required by law to grant reasonable time off work for magistrates.

Magistrates are not paid for their services. However, many employers allow time off with pay for magistrates.

If you do suffer loss of earnings you may claim a loss allowance at a set rate. You can also claim allowances for travel and subsistence.

Verdict on juries: placing blind trust in them helps no one

Research shows 23% of jurors misunderstand rules about internet use.

They need more guidance

Joshua Rozenberg
guardian.co.uk, Wednesday 15 May 2013

Almost a quarter of jurors in England and Wales currently misunderstand the restrictions on internet use during a trial, according to research just published.

A significant number, 16%, wrongly believe they are not even allowed to check their emails while they are on jury service. On the other hand, and more alarmingly, 5% believe there are no restrictions at all on internet use during a trial while 2% believe they can look for information about a case so long as they don't let it affect their judgment.

Jurors are routinely told that they must not do their own research on the cases they are trying. Last year, a juror was given six months' imprisonment because she had searched online for information about the defendant. But jurors are perfectly free to check their emails and conduct other business online when they are not sitting in court or deliberating.

The latest findings were obtained by Professor Cheryl Thomas, director of the jury project at the University College London law faculty. Her team spoke to 239 jurors immediately after they had returned verdicts in 20 different cases tried in London over the past year or so. Contrary to popular myth, such research is not prohibited by the Contempt of Court Act 1981 — which applies only to jurors' "deliberations".

Presenting her findings in the forthcoming issue of the Thomson Reuters journal Criminal Law Review, Thomas says they demonstrate that decisions about jury trial in the internet age should be based on empirical evidence. In its absence, the debate has become polarised around two extreme positions, neither of which she regards as justified.

Those who might prefer to see an end to jury trial argue that it is impossible to stop jurors obtaining information from the internet. Those who are opposed to media restrictions argue that we should simply "trust the jury" to decide cases on the evidence.

"Blind trust in juries is not just misguided," Thomas writes, "it is not what juries want themselves. The research reported here has shown that jurors are clearly asking for more and better guidance to do their job, they are being clear about what they want and they are being clear that they want it in written form."

They certainly are. Of those who received written directions from the judge, every single juror found them helpful. Of those who did not, 85% said they would have liked them.

But a disturbing large proportion — 82% of those questioned — said they would have liked more guidance on how to conduct their deliberations. This figure is up from 67% in 2010, when Thomas last researched the issue.

Asked what sort of guidance they needed, jurors mentioned advice on what to do if they were confused about a legal issue; how to ensure that no one was pressured into giving a verdict; and what to do if something goes wrong.

Three-quarters of those questioned said they would tell a court official or the judge if

another juror admitted finding information about the defendant that had not been disclosed in court. But 14% said they would not feel comfortable about doing anything at all.

As Thomas says, it is crucial to trial by jury that jurors understand what amounts to improper conduct. They must also understand the importance of drawing the court's attention to any concerns they have about it. The internet has some advantages here: it is possible to obtain incontrovertible evidence of electronic communications that, in a previous age, would have involved just a fleeting conversation in a corridor.

The way forward is clearly to provide jurors with the documents and support they need to reach a true verdict. Advising on what tools jurors need is, I am pleased to see, is the next part of Thomas's project. She acknowledges that she must plan for a time, not far off, when we shall no longer search for information; computers will know what we want before we do and send it to us unless we order them not to.

For those of us who thought that the hung jury in the first trial of Vicky Pryce must have damaged public confidence in the entire system of jury trial, Thomas has a gentle footnote pointing out that hung juries account for only 0.6% of all deliberations. If her careful research results in more jurors being steered back onto the path from which the internet has lured but a few, we shall be greatly in her debt.

Fill in the gaps in the text using the words provided below

The Supreme Court

The creation of the new Supreme Court means that the most senior _____ are now entirely separate from the Parliamentary process.

www.judiciary.gov.uk

The Constitutional Reform ____ 2005 made provision for the creation of a new Supreme Court for the United Kingdom.

There had, in recent years, been mounting calls for the creation of a new _____ Supreme Court separating the highest appeal court from the second house of Parliament, and removing the Lords of Appeal in Ordinary from the _____. On 12 June 2003 the Government announced its intention to do so.

Before the Supreme Court was created, the 12 most senior judges - the Lords of Appeal in Ordinary, or _____ as they were often called - sat in the House of Lords.

The House of Lords was the highest court in the land - the supreme court of _____. It acted as the final court on _____ for the whole of the United Kingdom in civil cases and for England, Wales and Northern Ireland in criminal cases. Its decisions _____ all courts below.

As members of the House of Lords, the judges not only heard cases, but were also able to become involved in debating and the subsequent _____ of Government legislation (although, in practice, they rarely did so).

The creation of a new Supreme Court means that the most senior judges are now entirely separate from the _____ process.

It is important to be aware that the new Supreme Court is a United Kingdom body, legally separate from the England and Wales courts as it is also the _____ of both Scotland and Northern Ireland. As such, it falls outside of the remit of the Lord Chief Justice of England and Wales in his role as head of the _____ of England and Wales.

The new Supreme Court opened for _____ in October 2009, at the start of the legal year.

bound *judiciary* *legislature* *judges* *Parliamentary* *business* *Act* *enactment* *free-standing* *Law Lords* *appeal* *points of law* *Supreme Court*

UK Supreme Court's YouTube channel:
http://www.youtube.com/user/UKSupremeCourt?feature=watch

GLOSSARY

This glossary is a guide to the meaning of certain legal expressions as used in The Criminal Procedure Rules 2011, as amended by The Criminal Procedure (Amendment) Rules 2011.

Expression	*Meaning*
account monitoring order	an order requiring certain types of financial institution to provide certain information held by them relating to a customer for the purposes of an investigation;
action plan order	a type of community sentence requiring a child or young person to comply with a three month plan relating to his actions and whereabouts and to comply with the directions of a responsible officer (e.g. probation officer);
admissible evidence	evidence allowed in proceedings (not all evidence introduced by the parties may be allowable in court);
adduce	to introduce (in evidence);
adjourn	to suspend or delay the hearing of a case;
affidavit	a written, sworn statement of evidence;
affirmation	a non-religious alternative to the oath sworn by someone about to give evidence in court or swearing a statement;
appellant	person who is appealing against a decision of the court;
arraign	to put charges to the defendant in open court in the Crown Court;
arraignment	the formal process of putting charges to the defendant in the Crown Court which consists of three parts: (1) calling him to the bar by name, (2) putting the charges to him by reading from the indictment and (3) asking him whether he pleads guilty or not guilty;
authorities	judicial decisions or opinions of authors of repute used as grounds of statements of law;
bill of indictment	a written accusation of a crime against one or more persons – a criminal trial in the Crown Court cannot start without a valid indictment;
case stated	an appeal to the High Court against the decision of a magistrates court on the basis that the decision was wrong in law or in excess of the magistrates' jurisdiction;
in chambers	non-trial hearing in private;
committal	sending someone to a court (usually from a magistrates' court to the Crown court) or to prison;

Expression	*Meaning*
committal for sentence	procedure whereby a person convicted in a magistrates' court is sent to the Crown Court for sentencing when the sentencing powers of the magistrates' court are not considered sufficient;
committal proceedings	preliminary hearing in a magistrates' court before a case is sent to be tried before a jury in the Crown Court;
compellable witness	a witness who can be forced to give evidence against an accused (not all witnesses are compellable);
compensation order	an order that a convicted person must pay compensation for loss or damage caused by the convicted person;
complainant	a person who makes a formal complaint. In relation to an offence of rape or other sexual offences the complainant is the person against whom the offence is alleged to have been committed;
conditional discharge	an order which does not impose any immediate punishment on a person convicted of an offence, subject to the condition that he does not commit an offence in a specified period;
confiscation order	an order that private property be taken into possession by the state;
Convention right	a right under the European Convention on Human Rights;
costs	the expenses involved in a court case, including the fees of the solicitors and barristers and of the court;
counsel	a barrister;
cross examination	questioning of a witness by a party other than the party who called the witness;
custody time limit	the maximum period, as set down in statute, for which a person may be kept in custody before being brought to trial – these maximum periods may only be extended by an order of the judge;
customer information order	an order requiring a financial institution to provide certain information held by them relating to a customer for the purposes of an investigation into the proceeds of crime;
declaration of incompatibility	a declaration by a court that a piece of UK legislation is incompatible with the provisions of the European Convention on Human Rights;
deferred sentence	a sentence which is determined after a delay to allow the court to assess any change in the person's conduct or circumstances after his or her

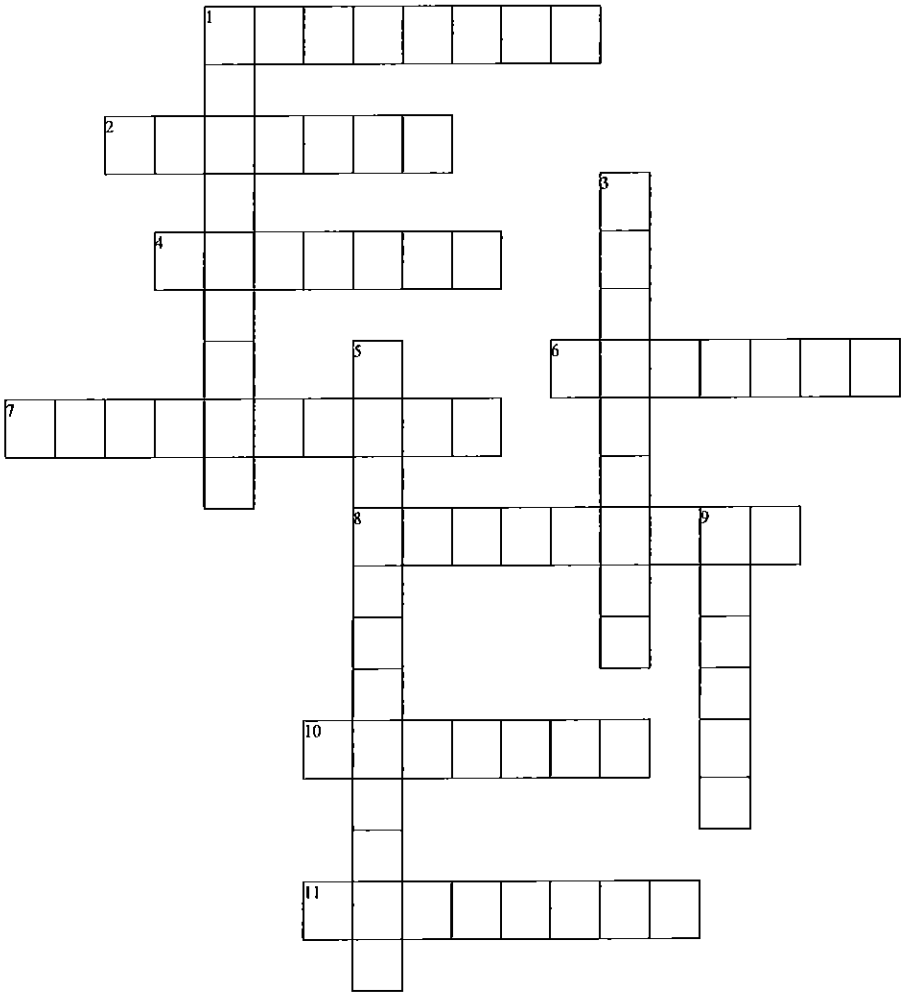
Expression	*Meaning*
	conviction;
deposition	written record of a witness' written evidence;
distress warrant	court order giving the power to seize goods from a debtor to pay his debts;
estreatment (of recognizance)	forfeiture;
examining justice	a magistrate carrying out his or her function of checking that a case appears on the face of the prosecution case papers to exist against an accused before the case is put forward for trial in the Crown Court – see committal and sending for trial;
exhibit	a document or thing presented as evidence in court;
forfeiture by peaceable re-entry	the re-possession by a landlord of premises occupied by tenants;
guardianship order	an order appointing someone to take charge of a child's affairs and property;
hearsay evidence	oral or written statements made by someone who is not a witness in the case but which the court is asked to accept as proving what they say. This expression is defined further by rule 34.1 for the purposes of Part 34, and by rule 57.1 for the purposes of Parts 57 - 61;
hospital order	an order that an offender be admitted to and detained in a specified hospital;
indictment	the document containing the formal charges against a defendant – a trial in the Crown Court cannot start without this;
informant	someone who lays an information;
information	statement by which a magistrate is informed of the offence for which a summons or warrant is required – the procedure by which this statement is brought to the magistrates' attention is known as laying an information;
intermediary	a person who asks a witness (particularly a child) questions posed by the cross-examining legal representative;
justice of the peace	a magistrate, either a lay justice, or a District Judge (Magistrates' Courts);
justices' clerk	post in the magistrates' court of person who has various powers and duties in a magistrates' court, including giving advice to the magistrates on law and procedure;
leave of the court	permission granted by the court;
leave to appeal	permission granted to appeal the decision of a

Expression	*Meaning*
	court;
letter of request	letter issued to a foreign court asking a judge to take the evidence of some person within that court's jurisdiction;
to levy distress	to seize property from a debtor or a wrongdoer;
local justice area	an area established for the purposes of the administration of magistrates' courts;
mandatory order	order from the Divisional Court of the Queen's Bench Division ordering a body (such as a magistrates' court) to do something (such as rehear a case);
nominated court	a court nominated to take evidence pursuant to a request by a foreign court;
notice of transfer	procedure used in cases of serious and complex fraud, and in certain cases involving child witnesses, whereby the prosecution can, without seeking judicial approval, have the case sent direct to the Crown Court without the need to have the accused committed for trial;
offence triable either way	an offence which may be tried either in the magistrates' court or in the Crown Court;
in open court	in a courtroom which is open to the public;
order restricting discharge	an order restricting the discharge from hospital of patients who have been sent there for psychiatric treatment;
parenting order	an order which can be made in certain circumstances where a child has been convicted of an offence which may require parents of the offender to comply with certain requirements including attendance of counselling or guidance sessions;
party	a person or organisation directly involved in a criminal case, either as prosecutor or defendant
prefer, preferment	to bring or lay a charge or indictment;
preparatory hearing	a hearing forming part of the trial sometimes used in long and complex cases to settle various issues without requiring the jury to attend;
realisable property	property which can be sold for money.
receiver	a person appointed with certain powers in respect of the property and affairs of a person who has obtained such property in the course of criminal conduct and who has been convicted of an offence – there are various types or receiver (management receiver, director's receiver, enforcement receiver);
receivership order	an order that a person's assets be put into the

Expression	*Meaning*
	hands of an official with certain powers and duties to deal with that property;
recognizance	formal undertaking to pay the crown a specified sum if an accused fails to surrender to custody;
register	the formal records kept by a magistrates' court;
to remand	to send a person away when a case is adjourned until another date – the person may be remanded on bail (when he can leave, subject to conditions) or in custody;
reparation order	an order made against a child or young person who has been convicted of an offence, requiring him or her to make specific reparations to the victim or to the community at large;
representation order	an order authorising payment of legal aid for a defendant;
requisition	a document issued under section 29 of the Criminal Justice Act 2003, requiring a person to appear before a magistrates' court to answer a written charge;
respondent	the other party (to the appellant) in a case which is the subject of an appeal;
restraint order	an order prohibiting a person from dealing with any realisable property held by him;
seal	a formal mark which the court puts on a document to indicate that the document has been issued by the court;
security	money deposited to ensure that the defendant attends court;
sending for trial	procedure whereby indictable offences are transferred to the Crown Court without the need for a committal hearing in the magistrates' court;
skeleton argument	a document prepared by a party or their legal representative, setting out the basis of the party's argument, including any arguments based on law – the court may require such documents to be served on the court and on the other party prior to a trial;
special measures	measures which can be put in place to provide protection and/or anonymity to a witness (e.g. a screen separating witness from the accused);
statutory declaration	a declaration made before a Commissioner for Oaths in a prescribed form;
to stay	to halt proceedings, apart from taking any steps allowed by the Rules or the terms of the stay - proceedings may be continued if a stay is lifted;
summons	a document signed by a magistrate after an

Expression	*Meaning*
	information is laid before a him which sets out the basis of the accusation against the accused and the time and place when he must appear;
surety	a person who guarantees that a defendant will attend court;
suspended sentence	sentence which takes effect only if the offender commits another offence punishable with imprisonment within the specified period;
supervision order	an order placing a person who has been given a suspended sentence under the supervision of a local officer;
tainted acquittal	an acquittal affected by interference with a witness or a juror;
taxing authority	a body which assesses costs;
territorial authority	the UK authority which has power to do certain things in connection with co-operation with other countries and international organisations in relation to the collection of or hearing of evidence etc;
transfer direction (mental health)	a direction that a person who is serving a sentence of imprisonment who is suffering from a mental disorder be transferred to a hospital and be detained there for treatment;
warrant of arrest	court order to arrest a person;
warrant of commitment	court order sending someone to prison;
warrant of detention	a court order authorising someone's detention;
wasted costs order	an order that a barrister or solicitor is not to be paid fees that they would normally be paid by the Legal Services Commission;
witness	a person who gives evidence, either by way of a written statement or orally in court;
witness summons	a document served on a witness requiring him or her to attend court to give evidence;
written charge	a document, issued by a public prosecutor under section 29 of the Criminal Justice Act 2003, which institutes criminal proceedings by charging a person with an offence;
youth court	magistrates' courts exercising jurisdiction over offences committed by and other matters related to, children and young persons.

Criminal law crossword



Across

1. The act of illegal entry with the intent to steal

2. An authorization issued by a magistrate or other official allowing a constable or other officer to search or seize property, arrest a person, or perform some other specified act

4. Person who has seen or can give first-hand evidence of some event

6. A person who is under suspicion

7. An agreement between states or international organisations

8. A legislative instrument that is binding on Member States

10. Money to be paid as compensation to a person for injury or loss.

11. A writ issued by a court of justice requiring a person to appear before the court at a specified time

Down

1. A lawyer who has been called to the bar and is qualified to plead in the higher courts

3. A verdict that a criminal defendant is not guilty

5. Any minor offence or transgression

9. A person or thing that suffers harm, death, etc., from another or from some adverse act, circumstance, etc.

WEEKLY LAW REPORTS

Abbreviation	Court
HL(E)	House of Lords - England & Wales
PC	Privy Council
CA Civ	Court of Appeal - Civil Division
CA Crim	Court of Appeal – Criminal Division
QBD	Queen's Bench Division
Ch	Chancery Division
Fam	Family Division
ECJ	European Court of Justice
SC	Supreme Court
TC	Technology Court
WLR D 1	The Weekly Law Reports Daily: the new name for The Daily Law Notes. ICLR's own referencing system to indicate cases that have not gone on to be published as a Weekly Law Report yet.

Neutral Citations

These are references that, since 2001, have been given to Court of Appeal and High Court cases to identify them. They are constructed as follows:[Year] [Court] [Division] [Case No]
example: **R v Jones [2007] EWCA Crim 10**

EW stands for England and Wales

The WLR Daily

SALE OF GOODS — Theft of goods — Measure of damages — Manufacturer and seller of goods losing goods to fraudsters before it could make delivery and earn price— Carrier admitting liability — Whether price recoverable as damages for loss — Whether amount recoverable limited to lower manufacturing cost of replacing goods — Whether for manufacturer and seller to prove inability to make good lost sale to buyer

Sony Computer Entertainment UK Ltd and another v Cinram Logistics UK Ltd [2008] EWCA Civ 955; [2008] WLR (D) 289

CA: Rix, Wilson and Rimer LJJ.: 8 August 2008

A manufacturer and seller of goods who lost them through the fault of another before he could make delivery and earn the price could recover that price as damages for their loss.

The Court of Appeal so stated in a reserved judgment when dismissing the appeal of the defendant, Cinram Logistics UK Europe Ltd, against a decision by Judge Knight QC who, sitting as a judge of the Queen's Bench Division in the Commercial Court on 11 January 2008, had allowed the claim of the claimants, Sony Computer Entertainment UK Ltd and Sony Computer Entertainment Europe Ltd, in contract, bailment and negligence against the defendant.

An order of memory cards for computer games sent by the claimants to the defendant's warehouse for onward delivery to the purchaser had been stolen and diverted into the possession of fraudsters. The defendant admitted liability for the losses and the trial assessed damages. The judge found that on the balance of probabilities the claimants had proved their claimed loss by showing that the sales in question had not been replaced, and that they were entitled to recover the price at which the goods were sold to the purchaser, i e the wholesale value of the lost goods.

RIX LJ said that the issue was: if a manufacturer and seller of goods lost them through the fault of another before he could make delivery and earn the price, could he recover that price as damages for their loss, or was he limited to the lower manufacturing cost of replacing those goods, at any rate, unless he proved that he could not make good the lost sale to his buyer? In his Lordship's judgment, asking what an owner of goods had lost by reason of having his goods lost or converted by a bailee, in breach of contract, there being no problem on the ground of remoteness or lack of knowledge of the profit in question, the answer must be that prima facie the owner was entitled to the value of his goods. If the defendant wished to say that the loss was less because the profit could have been earned in any event by a substitute or replacement sale, at the cost only of the expenditure of a lesser sum for the purpose of manufacturing or buying in further goods, then the defendant bore the burden of proving that case. It was not for the claimant to prove a negative, that he had not recouped the profit by a substitute sale, but for the defendant to prove a positive, that the profit had been recouped and thus the loss of profit had not been suffered at all.

WILSON and RIMER LJJ agreed.

Appearances: *Alexander Hill-Smith* (Brookstreet Des Roches LLP, Abingdon) for the defendant;. *Timothy Marland* (Waltons & Morse LLP) for the claimants.

Reported by: Alison Sylvester, barrister

Case C-105/03
Criminal proceedings against Maria Pupino
(Reference for a preliminary ruling by the judge in charge of preliminary enquiries at the Tribunale di Firenze)
(Police and judicial cooperation in criminal matters – Articles 34 EU and 35 EU – Framework Decision 2001/220/JHA – Standing of victims in criminal proceedings – Protection of vulnerable persons – Hearing of minors as witnesses – Effects of a framework decision)
Opinion of Advocate General Kokott delivered on 11 November 2004
Judgment of the Court (Grand Chamber), 16 June 2005

Summary of the Judgment

1. Preliminary rulings — Reference to the Court of Justice — National court or tribunal for the purposes of Article 35 EU — Definition — Judge in charge of preliminary enquiries — Included (Art. 35 EU)

2. Preliminary rulings — Jurisdiction of the Court of Justice — Police and judicial cooperation in criminal matters — Framework decision for the approximation of laws — Request for interpretation involving the principle of interpretation in conformity with national law — Jurisdiction to provide that interpretation
(Art. 234 EC; Arts 35 EU and 46(b) EU)

3. European Union — Police and judicial cooperation in criminal matters — Member States — Obligations — Duty of loyal cooperation with the institutions

4. European Union — Police and judicial cooperation in criminal matters — Framework decisions for the approximation of national laws — Implementation by Member States — Duty to interpret in conformity with national law — Limits — Compliance with general principles of law — Interpretation of national law *contra legem* — Not permissible
(Art. 249(3) EC; Art. 34(2)(b) EU)

5. European Union — Police and judicial cooperation in criminal matters — Status of victims in criminal proceedings — Framework Decision 2001/220 — Protection of particularly vulnerable victims — Arrangements — Conditions for hearing evidence of young children — Hearing outside the trial and before it takes place — Whether permissible — Limits
(Council Framework Decision 2001/220/JHA, Arts 2, 3 and 8(4))

1. Where a Member State has indicated that it accepts the jurisdiction of the Court of Justice to rule on the validity and interpretation of the acts referred to in Article 35 EU, the Court of Justice has jurisdiction to give a preliminary ruling on a question from a judge in charge of preliminary enquiries. Where acting in criminal proceedings, that judge acts in a judicial capacity, so that he must be regarded as a 'court or tribunal of a Member State' within the meaning of Article 35 EU.

2. Under Article 46(b) EU, the system under Article 234 EC is capable of being applied to Article 35 EU, subject to the conditions laid down by that provision. Like Article 234 EC, Article 35 EU makes reference to the Court of Justice for a preliminary ruling subject to the condition that the national court 'considers that a decision on the question is necessary in order to enable it to give judgment', so that the case-law of the Court of Justice on the admissibility of references under Article 234 EC is, in principle, transposable to references for a preliminary ruling submitted to the Court of Justice under Article 35 EU.

It follows that the presumption of relevance attaching to questions referred by national courts for a preliminary ruling may be rebutted only in exceptional cases, where it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted. Save for such cases, the Court is, in principle, required to give a ruling on questions concerning the interpretation of the acts referred to in Article 35(1) EU.

In that context, irrespective of the degree of integration envisaged by the Treaty of Amsterdam in the process of creating an ever closer union among the peoples of Europe within the meaning of the second paragraph of Article 1 EU, it is perfectly comprehensible that the authors of the Treaty on European Union should have considered it useful to make provision, in the context of Title VI of that treaty, dealing with police and judicial cooperation in criminal matters, for recourse to legal instruments with effects similar to those provided for by the EC Treaty, in order to contribute effectively to the pursuit of the Union's objectives. The jurisdiction of the Court of Justice to give preliminary rulings under Article 35 EU would be deprived of most of its useful effect if individuals were not entitled to invoke framework decisions in order to obtain a conforming interpretation of national law before the courts of the Member States.

3. It would be difficult for the Union to carry out its task effectively if the principle of loyal cooperation, requiring in particular that Member States take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under European Union law, were not also binding in the area of police and judicial cooperation in criminal matters under Title VI of the EU Treaty, which is moreover entirely based on cooperation between the Member States and the institutions.

4. The binding nature of framework decisions adopted on the basis of Title VI of the Treaty on European Union, dealing with police and judicial cooperation in criminal matters, is formulated in terms identical with those in the third paragraph of Article 249 EC, concerning directives. It involves an obligation on the part of the national authorities to interpret in conformity with national law. Thus, when applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34(2)(b) EU.

The obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law is, however, limited by general principles of law, particularly those of legal certainty and non-retroactivity. In particular, those principles

prevent that obligation from leading to the criminal liability of persons who contravene the provisions of a framework decision from being determined or aggravated on the basis of such a decision alone, independently of an implementing law.

Similarly, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem*. That principle does, however, require that, where necessary, the national court consider the whole of national law in order to assess how far it can be applied in such a way as not to produce a result contrary to that envisaged by the framework decision.

5. Articles 2, 3 and 8(4) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings set out a number of objectives, including ensuring that particularly vulnerable victims receive specific treatment best suited to their circumstances. Those provisions must be interpreted as allowing the competent national court to authorise young children, who claim to have been victims of maltreatment, to give their testimony in accordance with arrangements allowing those children to be guaranteed an appropriate level of protection, for example outside the trial and before it takes place. The arrangements for taking evidence used must not, however, be incompatible with the basic legal principles of the Member State concerned, as Article 8(4) of that framework decision provides. Nor may they deprive the accused person of the right to a fair trial under Article 6 of the European Convention on Human Rights.

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS
Delivering an area of freedom, security and justice for Europe's citizens

Action Plan Implementing the Stockholm Programme

1. Delivering an area of freedom, security and justice for Europe's citizens

The European area of freedom, security and justice is, together with the Europe 2020 strategy, a key element of the EU's response to the global long-term challenges and a contribution to strengthening and developing the European model of social market economy into the 21st century.

In a period of change, as the world only starts to emerge from the economic and financial crisis, the European Union has more than ever the duty to protect and project our values and to defend our interests. Respect for the human person and human dignity, freedom, equality, and solidarity are our everlasting values at a time of unrelenting societal and technological change. These values must therefore be at the heart of our endeavours.

The Stockholm programme adopted by the European Council in December 2009 sets the priorities for developing the European area of freedom, security and justice in the next five years. Its contents reflect the discussions with the European Parliament, the Council, Member States and stakeholders over the recent years. At its core are the ambitions the Commission outlined in its June 2009 Communication which led to the adoption of the Stockholm Programme.

The main thrust of Union's action in this field in the coming years will be 'Advancing people's Europe', ensuring that citizens can exercise their rights and fully benefit from European integration.

It is in the areas of freedom, security and justice that citizens expect most from policy-makers as this is affecting their daily life. Women and men in Europe rightly expect to live in a peaceful and prosperous Union confident that their rights are fully respected and their security provided.

A European area of freedom, security and justice must be an area where all people, including third country nationals, benefit from the effective respect of the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union.

The aim of this action plan is to deliver those priorities, both at European and global level, ensuring that citizens benefit from progress made in the area of freedom, security and justice. It should also allow us to look further ahead bringing a determined and adequate European response to European and global challenges.

The entry into force of the Lisbon Treaty enables the Union to demonstrate greater ambition in responding to the day-to-day concerns and aspirations of people in Europe. Firstly, the increased role of the European Parliament as co-legislator in most areas and the greater involvement of national parliaments will make the EU more accountable for its actions in the interests of the citizen and enhance the democratic legitimacy of the Union. Secondly, the introduction of qualified majority voting in the Council for most policy areas will streamline decision-making. And finally, judicial review will be improved as the European Court of Justice will assume judicial oversight of all aspects of freedom security and justice, while the EU Charter of Fundamental Rights becomes legally binding. The Treaty gives the Union the new objectives of combating social exclusion and discrimination, and reaffirms the objective of promoting equality between women and men.

The Union must therefore be determined in responding to the expectations and concerns of our citizens. The Union must resist tendencies to treat security, justice and fundamental

rights in isolation from one another. They go hand in hand in a coherent approach to meet the challenges of today and the years to come.

2. Ensuring the protection of fundamental rights

The protection of the rights enshrined in the Charter of Fundamental Rights, which should become the compass for all EU law and policies, needs to be given full effect and its rights made tangible and effective. The Commission will apply a "Zero Tolerance Policy" as regards violations of the Charter. The Commission will reinforce its mechanisms to ensure compliance with the Charter and report on it to the European Parliament and Council. In a global society characterised by rapid technological change where information exchange knows no borders, it is particularly important that privacy must be preserved. The Union must ensure that the fundamental right to data protection is consistently applied. We need to strengthen the EU's stance in protecting the personal data of the individual in the context of all EU policies, including law enforcement and crime prevention as well as in our international relations.

All policy instruments available will be deployed to provide a robust European response to violence against women and children, including domestic violence and female genital mutilation, to safeguard children's rights and to fight all forms of discrimination, racism, xenophobia and homophobia. The needs of those in vulnerable situations are of particular concern.

Differences in the guarantees provided to victims of crime and terrorism across the 27 Member States should be analysed and reduced with a view to increasing protection by all means available. European law should guarantee a high standard of rights for the accused, in terms of fairness of the procedures. Detention conditions, including in prisons, should also be addressed.

3. Empowering European citizens

European citizenship needs to further progress from a concept enshrined in the Treaties to become a tangible reality demonstrating in the daily lives of citizens, its added value over and above national citizenship. Citizens need to be able to benefit from their rights stemming from European integration.

Facilitating citizens' mobility is of crucial importance in the European project. Free movement is a core right of EU citizens and their family members. It needs to be rigorously enforced. Mobility should be enhanced by removing the barriers citizens still face when they decide to exercise their rights to move to a Member State other than their own to study or work, to set up a business, to start a family, or to retire. Citizens must be protected wherever they are in the world. Any EU citizen who is in a country where his or her Member State is not represented should receive consular assistance from embassies or consulates of any other Member State, on the same conditions as their nationals.

Facilitating and encouraging citizens' participation in the democratic life of the Union is crucial for bringing the citizen's closer to the European project. Increased turnout at European Parliament elections is a shared ambition. The right of citizens to vote and be elected for local and European elections where they reside should be further promoted and strengthened. The Citizen's Initiative is a powerful boost for European citizens' rights and the democratic legitimacy of the Union.

4. Strengthening confidence in the European judicial area

The European judicial area and the proper functioning of the single market are built on the cornerstone principle of mutual recognition. This can only function effectively on the basis of mutual trust among judges, legal professionals, businesses and citizens. Mutual trust requires minimum standards and a reinforced understanding of the different legal traditions and methods.

Establishing rights is not enough. Rights and obligations will become a reality only if they are readily accessible to those entitled to them. Individuals need to be empowered to invoke these rights wherever in the Union they happen to be.

A well functioning European judicial area benefits all Union policies, supporting their development and successful implementation. In particular, it should be put at the service of citizens and businesses so as to support economic activity in the single market, ensuring a high level of consumer protection. With the entry into force of the Lisbon Treaty, the Union has now the tools to help make people's daily lives and everyday business practices easier, reconciling the needs of citizens and the single market with the diversity of legal traditions among Member States.

Union law can facilitate mobility and empower citizens to exercise their free movement rights. For international couples, it can reduce unnecessary stress when they divorce or separate and can remove the current legal uncertainty for children and their parents in cross-border situations. It can help eliminate barriers to the recognition of legal acts and lead to the mutual recognition of the effects of civil status documents. When citizens drive to another Member State and are unfortunate enough to have an accident, they need legal certainty on the limitation periods of insurance claims.

Union law can make a concrete and powerful contribution to the implementation of the Europe 2020 strategy and mitigating the damage caused by the financial crisis. New EU legislation will be proposed whenever necessary and appropriate to strengthen our single market, helping businesses by removing administrative burdens and reducing transaction costs.

Cutting red tape for business is a clear priority and the cumbersome and costly exequatur process that is required to recognise and enforce a judgment in another jurisdiction should systematically be consigned to history whilst maintaining the necessary safeguards. Ensuring that cross-border debt can be recovered as easily as domestically will help businesses trust our single market and efficient insolvency proceedings can help recovery from the economic crisis. Cross-border transactions can be made easier by increasing the coherence of European contract law. Businesses are not taking sufficient advantage of the internet's potential to boost sales: Union law can help by increasing businesses' need for legal certainty and at the same time guaranteeing the highest level of consumer protection. Consumers need to be aware of their rights and provided with access to redress in cross-border cases. Finally, the increased use of alternative dispute resolution can contribute to the efficient administration of justice.

Criminal law is a relatively novel area of EU action for which the Treaty of Lisbon sets a clear legal framework. A criminal justice strategy, fully respecting subsidiarity and coherence, should guide the EU's policy for the approximation of substantive and procedural criminal law. It should be pursued in close cooperation with European Parliament, national parliaments and the Council and acknowledge that focus will remain primarily on mutual recognition and the harmonisation of offences and sanctions will be pursued for selected cases.

The administration of justice must not be impeded by unjustifiable differences between the Member States' judicial systems: criminals should not be able to avoid prosecution and prison by crossing borders and exploiting differences between national legal systems. A solid common European procedural base is needed. A new and comprehensive system for obtaining evidence in cross-border cases and better exchange of information between Member States' authorities on offences committed are essential tools to developing a functioning area of freedom, security and justice. The Commission will prepare the

establishment of a European Public Prosecutor's Office from Eurojust, with the responsibility to investigate, prosecute and bring to judgement offences against the Union's financial interests. In doing so, the Commission will further reflect on the cooperation with all the actors involved, including the European Anti-Fraud Office (OLAF).

5. Ensuring the security of Europe

Europe is facing growing cross-border criminality. It is our obligation to work hand in hand with Member States, European Parliament, key third countries and the business community where appropriate, and do our utmost to ensure that EU citizens can live in a secure environment.

The Lisbon Treaty provides the Union with better tools to fight terrorism and organised crime.

An Internal Security Strategy, based upon the full respect of fundamental rights and on solidarity between Member States, will be implemented with care and firm resolve to face the growing cross-border challenges. It implies a coordinated approach to police cooperation, border management, criminal justice cooperation and civil protection. We need to address all the common security threats from terrorism and organised crime, to safety concerns related to man-made and natural disasters. Given the increasing use of new technologies, tackling efficiently those threats also requires a complementary policy ensuring the preparedness and resilience of Europe's networks and ICT infrastructure.

To be successful, this strategy needs to build on experience and lessons learnt. The time has come to assess our past approach, when the Union had to react to unexpected and tragic events, often on a case by case basis, and to capitalise on the new institutional set-up offered by the Lisbon treaty with a coherent and multidisciplinary approach.

The establishment of a strategic agenda for the exchange of information requires an overview of existing data collection, processing and data-sharing systems, with a thorough assessment of their usefulness, efficiency, effectiveness, proportionality and their respect of the right to privacy. It should also lay the ground for a coherent development of all existing and future information systems.

As a priority we need to take stock of the counter-terrorism measures put in place in recent years and assess how they can be improved to contribute to protecting our citizens and add value to Member States' action. The new institutional framework offers the Union an unprecedented opportunity to better interlink its different counter terrorism instruments.

Future measures on organised crime need to use the new institutional framework to the fullest extent possible. Trafficking in human beings, child pornography, cyber crime, financial crime, counterfeiting of means of payment and drugs trafficking, should be tackled in a comprehensive way. More effective prosecution and conviction are as important as attending to the needs of the victims of these crimes and reducing the demand for services from potential victims. Pooling Member State's law enforcement capabilities on specific drugs and routes will be a first concrete operational answer.

We also need to remove all the obstacles in the way of effective law enforcement cooperation between Member States. EU agencies and bodies such as FRONTEX, Europol and Eurojust, as well as OLAF, have a crucial role to play. They must cooperate better and be given the powers and resources necessary to achieve their goals within clearly defined roles.

The Union will pursue an integrated approach to the control of access to its territory in an enlarged Schengen area, to further facilitate mobility and ensure a high level of internal security. Visa liberalisation will be pursued in particular with neighbouring countries in order to facilitate people-to-people contacts based on clearly defined conditions.

Smart use of modern technologies in border management to complement existing tools as a

part of a risk management process can also make Europe more accessible to bona fide travellers and stimulate innovation among EU industries, thus contributing to Europe's prosperity and growth, and ensure the feeling of security of Union's citizens. The coming into operation of the SIS II and VIS systems will continue to be a high priority.

Protecting citizens from the risks posed by international trade in counterfeited, prohibited and dangerous goods also requires a coordinated approach, building on the strength of customs authorities. Protection against harmful and dangerous goods must be ensured in an effective and structured manner through a control-based risk management of goods, of the supply chain and of any type of goods flows.

Our efforts to protect people will include the EU's role in crisis and disaster prevention, preparedness and response. Further assessment and necessary action at EU-level in crisis management will be an immediate priority. The EU Civil Protection Mechanism will be strengthened to improve the availability, interoperability and coordination of Member States' assistance. Prevention also needs to be enhanced. The Union will implement the solidarity clause.

6. Putting solidarity and responsibility at the heart of our response

Robust defence of migrants' fundamental rights out of respect for our values of human dignity and solidarity will enable them to contribute fully to the European economy and society. Immigration has a valuable role to play in addressing the Union's demographic challenge and in securing the EU's strong economic performance over the longer term. It has great potential to contribute to the Europe 2020 strategy, by providing an additional source of dynamic growth.

During the next few years focus will be on consolidating a genuine common immigration and asylum policy. The current economic crisis should not prevent us from doing so with ambition and resolve. On the contrary, it is more necessary than ever to develop these policies, within a long-term vision of respect for fundamental rights and human dignity and to strengthen solidarity, particularly between Member States as they collectively shoulder the burden of a humane and efficient system. Once these policies consolidated, progress made should be assessed against our ambitious objectives. Further measures will be proposed as appropriate.

The Union will develop a genuine common migration policy consisting of new and flexible frameworks for the admission of legal immigrants. This enables the Union to adapt to increasing mobility and to the needs of national labour markets, while respecting Member State competences in this area.

The EU must strive for a uniform level of rights and obligations for legal immigrants comparable with that of European citizens. These rights, consolidated in an immigration code, and common rules to effectively manage family reunification are essential to maximise the positive effects of legal immigration for the benefit of all stakeholders and will strengthen the Union's competitiveness. The integration of migrants will be further pursued, safeguarding their rights whilst also underlining their own responsibilities to integrate into the societies in which they live.

The prevention and reduction of irregular immigration in line with the Charter of Fundamental Rights is equally important for the credibility and success of EU polices in this area. The situation of unaccompanied children will be given special attention.

Our response to this global challenge requires genuine partnership with third countries of origin and transit and the incorporation of all migration issues in a comprehensive policy framework. The global approach to migration will thus be further pursued and implemented.

We must honour our obligation to respect the fundamental right to asylum, including the

principle of "non refoulement". The establishment of the common European asylum system and the European asylum support office should ensure uniform status, high common standards of protection in the EU and a common asylum procedure, with mutual recognition as the long term goal. Solidarity will be at the heart of our asylum and resettlement policy, both between Member States and with those facing persecution around the world.

7. Contributing to a global Europe

The political objectives outlined above cannot be achieved without effective engagement with our partners in non EU countries and international organisations. A strong external dimension, consistent with the Union's general external action, will help us anticipate challenges and reach our objectives, including the promotion of our values and the fulfilment of our international human rights obligations.

Internal and external policies in the area of freedom, security and justice are inextricably linked. Continuity and consistency between internal and external policies are essential to produce results, as is coherence and complementarity between the Union and Member States' action.

The Lisbon Treaty offers new possibilities for the European Union to act more efficiently in external relations. Under this Treaty, the Commission has a key role to play in delivering the EU's external dimension of Justice and Home Affairs. Under this Treaty, the High Representative/Vice President of the Commission and the Commission will ensure coherence between external relations and the other aspects of the EU external action, including in working with the European External Action Service.

8. From political priorities to actions and results

Progress in the area of freedom, security and justice requires successful implementation of these political priorities. To equip itself to match the ambitions set out by the Lisbon treaty, the Commission has, for the first time, allocated responsibilities on Justice and Home Affairs to two Commissioners, one of them a Vice-President of the Commission.

Our compass will be the Charter of Fundamental Rights and our methodology will be five-fold: better integration with the other policies of the Union; improving the quality of European legislation; better implementation at national level; improving the use made of evaluation tools; and matching our political priorities with adequate financial resources, within the multiannual financial framework.

Essential to making real progress will be mutual trust. This requires the establishment of minimum standards (e.g. on procedural rights) as well as understanding of the different legal traditions and methods. A common European culture in this field, through training and Erasmus-style exchange programmes, as well as an European Law Institute, building upon existing structures and networks, can make a valuable contribution and will be actively encouraged.

Delivering legal instruments is often not enough. Ambitions should be widely discussed and results must be fully explained. It is often far from clear whether Europe's citizens are fully aware of their rights and responsibilities. They are therefore insufficiently empowered to exercise them. Better communication will help citizens benefit from progress made at EU level and close the gap between the reality of European integration and people's perceptions.

The attached table is a guide for the Union's action in the area of freedom, security and justice in the next five years. It aims at delivering all the political objectives set out by the European Council in the Stockholm Programme, to respond to European Parliament priorities in these areas and to meet the challenges ahead of us. It includes concrete actions with a clear timetable for adoption and implementation. The Commission regards these

actions as inter-linked, indispensable and consistent with the scale of ambition the Union needs to demonstrate.

Initiatives to deliver our common political priorities should be developed and implemented with the aim of reaching the most ambitious outcome possible, in line with citizens' expectations. It is time to ensure that citizens fully benefit from progress made at European level. Successful implementation of this Action Plan depends on the political commitment of all actors concerned: the Commission as its driving force, the European Parliament and the Council when debating and enacting proposals, national parliaments in their scrutiny of subsidiarity and proportionality. The same level of commitment must guide Member States in transposing and fully implementing Union legislation, the Commission in monitoring it, and the Union Courts and the national courts in ensuring its correct application. Last but not least, the active, informed citizen for whom all this is being done is a key driver and actor in the whole process.

This Action Plan should not be seen as an agenda that is fixed once and for all. The Union must be able to react to unexpected events, swift in seizing opportunities and in anticipating and adapting to future trends. The Commission will therefore use its right of initiative whenever necessary to ensure this. The Commission will also submit a mid-term review of the implementation of the Stockholm Programme in 2012, in order to ensure that the programme remains in line with European and global developments.

The Commission invites the European Parliament and Council to endorse this Action Plan for delivering the Stockholm Programme and to actively engage in its implementation.

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Communication on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between Member States

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Communication on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between Member States

1. INTRODUCTION

1. The mutual recognition (MR) principle was presented at the Tampere European Council in 1999 as the "cornerstone" of the European judicial area and confirmed in the draft Constitution, and its vital importance is recognised in the Hague Programme, which links its development to enhanced mutual trust between the Member States.

2. Nearly five years after the Council and the Commission adopted the MR programme to give effect to the conclusions of the Tampere European Council, this communication sets out to present the Commission's thinking on further work to give effect to the MR principle in the light of initial experience to date and on possible items for inclusion in a programme of action to enhance mutual trust between Member States.

3. This communication is part of the Commission's general process of drawing up a plan of action to give effect to the Hague Programme. It maps the general prospects for the five years ahead (cf . SEC(2005) 641), though it specifically stresses the initial implementation period (2005-07), given that there will have to be a mid-term review when the Constitution comes into force. And as the Hague Programme emphasised the importance of evaluating the implementation of policies, the results of the evaluation undertaken here will have to be taken into account and may even inspire changes to the agreed priorities.

2. CONTINUING THE IMPLEMENTATION OF THE MUTUAL RECOGNITION PRINCIPLE

4. For some years now the implementation of the MR principle has been one of the main areas of European Union activity regarding criminal justice, and is probably one of the most promising. After more than four years of operation of the programme adopted in December 2000, about half the planned measures have been converted into legislative instruments, either adopted already or in the pipeline. Of these, the Framework Decision on the European arrest warrant and surrender procedures[1] is the only one for which the time allowed for transposal into national legislation is up.

5. This communication focuses on aspects of the MR programme not yet implemented so as to lay down priorities for the years ahead in the light of the Hague Programme and the analysis of initial achievements.

2.1. Mutual recognition at the pre-trial stages

2.1.1. The MR principle and gathering evidence[2]

6. The Hague Programme calls on the Council to adopt the proposal on the European evidence warrant by the end of 2005. After the adoption of the Framework Decision on the freezing of assets[3], this is a major step forwards in the application of the MR principle at the pre-trial evidence-gathering stage. But the evidence warrant will not be a universal instrument. Investigation measures such as questioning suspects, witnesses and experts or bank account surveillance or telephone-tapping orders will also have to be covered by MR instruments. The ultimate objective is to adopt a single legislative instrument to facilitate the gathering of evidence of all kinds in criminal cases throughout the Union. In the Commission's view, the effect of applying the MR principle here should be to leave the investigations to be run by the issuing State, as the decision to seek this or that piece of evidence cannot be reopened in the executing Member State. That is one of the reasons why the Commission wants the double criminality principle to be dropped in all matters related to gathering evidence. As regards the rules governing the manner in which evidence is gathered, the national rules applicable in each Member State for the relevant type of investigation should be respected, subject to the application of certain formalities or procedures specified by the issuing State in the executing Member State, already provided for by Article 4(1) of the Convention of 29 May 2000. And the adoption of minimum harmonisation rules on the gathering of evidence (cf. infra 3.1.1.2.) should help to ensure that evidence lawfully gathered in one Member State can be used in the courts of another.

7. Extending the MR principle to the entire range of matters relating to the gathering of evidence will raise questions as to the future of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union[4] and the Protocol of 2001[5], which, incidentally, are not yet in force as the right number of ratifications has not been reached. In addition to establishing a general MR instrument on evidence, the remaining provisions of the two instruments will have to be reformatted as a European Law or European Framework Law after the Constitution comes into force.

8. One of the difficulties that have been identified is that there are differences between the respective powers of the judicial authorities and the police in the Member States. The limits to each of these types of cooperation are thus blurred, for although they complement each other they are subject to different rules. The Commission will make proposals in connection with the implementation of the principle that information in criminal matters must be made available.

2.1.2. Mutual recognition of non-custodial pre-trial supervision measures

9. In August 2004 the Commission published a Green Paper on mutual recognition of non-custodial pre-trial supervision measures[6]. The Green Paper observes that excessive use of pre-trial detention is one of the causes of prison overcrowding and that the alternatives available in national law are often impossible to use where the person resides in another Member State, and suggests a number of solutions. In 2005, once the consultations are over, the Commission will make legislative proposals.

2.2. Mutual recognition of final judgments

10. The effect of the MR principle is that, where there is a final judgment in one Member State, it must have a series of consequences in the others. Apart from the European Arrest Warrant, two specific aspects of the question have been covered by proposals for Framework Decisions on the application of the MR principle to financial penalties[7] and to confiscation orders[8]. But a number of fundamental aspects remain to be considered.

2.2.1. Mutual information on convictions

11. Mutual recognition of convictions depends on information on convictions being able to circulate freely between Member States. Taking up an idea already formulated in the conclusions of the European Council of 25 and 26 March 2004, the Hague Programme calls on the Commission to "present its proposals on enhancing the exchange of information from national records of convictions and disqualifications, in particular of sex offenders, with a view to its adoption by the Council by the end of 2005". In January 2005 the Commission presented a White Paper analysing the main difficulties in exchanging information on convictions and making proposals for a computerised information exchange system. Proposals will be presented in 2005 following initial discussion in Council on the subject.

2.2.2. The ne bis in idem principle

12. Article 50 of the Charter of Fundamental Rights of the European Union provides: "No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law". The Charter broadens the territorial scope of the ne bis in idem principle to cover the entire Union, which is progress compared with Protocol 7 to the European Human Rights Convention (ECHR), which provided for it to apply only in each contracting State's territory.

13. This principle underlies two major judgments given by the European Court of Justice[9], specifying its scope in terms of the Schengen Implementing Convention, Articles 54 to 58 of which affirm and adapt the ne bis in idem principle. Initial work on the application of the ne bis in idem principle began on the basis of an initiative from Greece[10]. It was suspended on account of the close link with the problem of conflicts of jurisdiction (cf. infra). There will be a Commission Green Paper on the two issues in 2005, followed by a legislative proposal in 2006.

2.2.3. Taking account of convictions in the Member States in the course of criminal proceedings

14. In most Member States, the existence of previous convictions can have effects at the time of fresh criminal proceedings: repeat offending, for instance, can influence the procedural rules that apply, the type of offence charged or, more often, the nature and quantum of the sentence. The Commission recently presented a proposal for a Framework Decision on taking account of convictions in the Member States of the European Union, which establishes a general principle whereby each Member State is to attach the same effects to convictions handed down in the other Member States as to national convictions and sets out a series of rules for the application of the principle. A principle of recognition of repeat offending along these lines was in the Framework Decision of 6 December 2001 on the protection of the Euro[11]. The new instrument will be a major contribution to the MR of final judgments.

2.2.4. The enforcement of criminal penalties

15. It must be possible for a sentence handed down in a Member State to be enforced anywhere in the Union. In April 2004 the Commission launched a consultation on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union on the basis of a Green Paper[12]. Austria, Sweden and Finland have presented an initiative to permit enforcement in the Member State of nationality or residence of a prison sentence ordered in another Member State. This instrument should also make it easier to apply certain provisions on the European arrest warrant that allow a surrender request to be refused where the sentence is executed in the executing State.

16. But it is silent on the question of the enforcement of non-custodial measures, on suspended sentences and the conditions for it to be overridden by a penalty ordered in another Member State. The Commission will present legislative proposals on these topics in 2007.

2.2.5. The mutual recognition of disqualifications

17. Convicted offenders are often subject to disqualifications (from working with children, tendering for public contracts, driving or whatever), and depending on the Member State these disqualifications may flow from statutory provisions, court decisions or administrative instruments. This is a particularly delicate question both because such disqualifications vary widely in nature and because there are difficulties in the exchange of information about them. Major initial progress will be achievable once information on convictions can be exchanged via the computerised system. Generally speaking the Commission recommends a sector-by-sector approach here, taking each type of sentence in turn, and will present a communication in 2005. In November 2004 Belgium presented an initiative relating to the MR of disqualifications from working with children following convictions for child pornography offences. Sector-by-sector work will continue in 2006 with a proposal for the MR of driving disqualifications.

3. REINFORCING MUTUAL TRUST

18. Reinforcing mutual trust is the key to making MR operate smoothly. This is one of the important messages in the Hague Programme and involves both legislative action to ensure a high degree of

protection for personal rights in the EU and a series of practical measures to give legal practitioners a stronger sense of belonging to a common judicial culture.

3.1. Reinforcing mutual trust by legislative measures

19. The first endeavours to apply the MR principle, in particular with the European arrest warrant, revealed a series of difficulties which could to some extent be resolved if the Union were to adopt harmonisation legislation. This can revolve around two axes: ensuring that mutually recognised judgments meet high standards in terms of securing personal rights and also ensuring that the courts giving the judgments really were the best placed to do so. Taking MR a stage further might imply giving further consideration to certain measures to approximate legislation on substantive criminal law.

3.1.1. Harmonising the law of criminal procedure

3.1.1.1. Improving guarantees in criminal proceedings

20. In April 2004, the Commission presented a proposal for a Framework Decision on certain procedural rights in criminal proceedings throughout the European Union[13]. It seeks to ensure that suspects and defendants in criminal proceedings enjoy the minimum rights secured in all the Union Member States as regards access to lawyers, interpreters and translators, the right to communicate with consular and other authorities, information on one's rights and the protection of vulnerable categories. The European Council has asked that this Decision be adopted by the end of 2005.

21. But this is only a first stage. Work must continue in the years ahead to provide permanent back-up for MR. There are three areas in particular where work needs doing: the presumption of innocence, gathering evidence in criminal cases and decisions in absentia [14] . In each of them there will have to be extensive analysis and consultation with the 25 Member States and criminal-law practitioners to identify the difficulties and potential solutions in the light of each Member State's legal traditions.

3.1.1.2. Reinforcing the presumption of innocence.

22. The presumption of innocence is one of the foremost foundations of the criminal law. It is asserted by Article 6 of the ECHR and taken over in Article 48 of the Charter of Fundamental Rights of the European Union; it exists in all the Member States but the concept is not universally co-extensive. In 2005 the Commission will issue a Green Paper to spell out the scope of the concept, consider ways of reinforcing it and determine the limits to it, if any .

3.1.1.3. Minimum standards on the gathering of evidence

23. Cross-border court actions entail the possibility for evidence gathered in one Member State to be used in another. But respect for defence rights entails certain minimum rules on the gathering of evidence being observed throughout the Union. The Commission will issue a Green Paper in 2006 on

the basis of a study[15], proposing a minimum harmonisation exercise regarding standards for the gathering and disclosure of evidence, admissibility criteria and possible exceptions.

24. Following in-depth consultation on the basis of these two Green Papers, the Commission will present a proposal for a Framework Decision on the presumption of innocence and minimum standards on the gathering of evidence.

3.1.1.4. Judgments in absentia

25. The question of judgments in absentia has often been raised in the EU and regularly re-appears in instruments that have been adopted. In practice the matter has been much discussed, and both experience and the decisions of the European Court of Human Rights have clearly shown that there are difficulties. In 2006 the Commission will issue a Green Paper, possibly to be followed by legislative proposals to resolve the difficulties and bring about greater certainty as to the law.

3.1.1.5. Transparency in the choice of court

26. In criminal matters, where the courts of several Member States have jurisdiction over the same case, investigations and prosecutions may be commenced simultaneously in both. Such multiple proceedings can be seriously detrimental both to personal rights and to procedural efficiency. A procedure to determine the most appropriate place for conducting a prosecution is more and more necessary and will be a major factor in facilitating the application of the mutual recognition principle. It should make it easier to gather evidence at the pre-trial stage (once the Member States have agreed on where the trial is to take place, on which the applicable law is predicated) and to enforce the final judgment (once the Member States have acknowledged in advance that the case has been tried at the most appropriate place). It should also help to avoid cases in which the ne bis in idem principle applies.

27. In 2005 the Commission will present a Green Paper on conflicts of jurisdiction and the ne bis in idem principle, which, without interfering with the national machinery for determining jurisdiction, will propose solutions to settle conflicts of jurisdiction in the European Union on the basis of, among other things, the role of Eurojust under Article III-273 of the Constitution and the calls made in the Hague Programme.

3.1.2. Further approximation of substantive criminal law

28. Considerable approximation work has been done here in recent years. It must be continued, with consideration being given to the value of promoting more diversified forms of punishment in the Union and not focusing simply on prison sentences. The accent should be on evaluating the implementation of such instruments as have been adopted, initial results being disappointing, and on the operation of the mechanism of the positive list of offences for which there is no check as to double criminality in MR instruments so that the difficulties that have been identified can be remedied wherever possible.

29. Initial reflections on the need for a Union-wide definition of concepts such as the liability of bodies corporate or the approximation of fines were set out in the Green Paper on penalties. The Commission will make a proposal for a Framework Decision in 2007 following a Green Paper.

3.2. Reinforcing mutual trust by practical flanking measures

3.2.1. Reinforcing evaluation mechanisms

30. The European Council stated that "Evaluation of the implementation as well as of the effects of all measures is ... essential to the effectiveness of Union action". Future developments in the MR principle in criminal matters will have to be accompanied by evaluation mechanisms. These must be capable of meeting two methodological objectives that are separate from the job of verifying whether Union instruments have been correctly transposed into national law within the time allowed:

- Evaluating the practical needs of the justice system, and particularly identifying potential barriers before new instruments are adopted; and

- Evaluating the specific practical conditions for implementing Union instruments, in particular best practices and how they can meet the needs identified at the first stage.

These two objectives will have to be applied in relation to all instruments. They are predicated on stronger tools for analysing judicial practice being available to the Commission.

31. A third objective, of undertaking a more general evaluation of the conditions in which judgments are produced in order to ensure that they meet high quality standards enabling mutual trust between judicial systems to be reinforced, without which MR will not be able to work, depends on broader-based and longer-term action. The Hague Programme states as a matter of principle that "mutual confidence [must] be based on the certainty that all European citizens have access to a judicial system meeting high standards of quality" and calls for "a system providing for objective and impartial evaluation of the implementation of EU policies in the field of justice, while fully respecting the independence of the judiciary" to be established. In the context of boosting mutual trust by the certainty that judicial systems producing judgments that are eligible for Union-wide enforcement meet high quality standards, this evaluation must provide a fully comprehensive view of national systems. The credibility and efficiency of a judicial system need to be assessed in overall terms, covering both institutional mechanisms and procedural aspects. This will be tricky, and the subsidiarity and proportionality principles and the independence of the judiciary must be respected. The object of the exercise is to produce regular rapports based strictly on criteria of independence and transparency, highlighting best practices.

32. In February 2005 the European Parliament adopted a recommendation[16], and in 2006, after close consultations with judicial organisations and institutions, the Commission will produce a communication on evaluation of the quality of justice .

3.2.2. Promoting networking among practitioners of justice and developing judicial training

33. The Hague Programme emphasises the importance of improving mutual understanding between judicial authorities and legal systems. It calls for the development of networks of judicial organisations and institutions, such as the Network of Councils for the Judiciary, the European Network of Supreme Courts and the European Judicial Training Network, with which the Commission wishes to develop close relations. By bringing professionals together more often and promoting reflection on the implementation of Union instruments and on matters of horizontal interest such as the quality of justice, such networks, which should include advocates, should play a key role in gradually building up a common judicial culture.

34. Second, the Hague Programme emphasises the importance of training as a means of promoting mutual trust. Since 2004, at the European Parliament's request the Commission has been operating a judicial exchanges scheme as a pilot project alongside the AGIS programme. This is to continue in 2005 and will be evaluated in 2006 before final proposals are made.

35. The effect of developing the MR principle is to give judgments an impact that extends well beyond national borders. Consequently, the European dimension of the judicial function must be fully integrated into syllabuses at all stages of the careers of judges and prosecutors. The training of judicial authorities is based on national entities responsible for organising it and determining the content. Training is now grouped in a network currently operating on an association basis. The Hague Programme emphasises the importance of boosting the network to make it into an effective structure for meetings and cooperation between judicial authorities. At the end of 2005, after consultations, the Commission will present a communication on judicial training in the European Union.

3.2.3. Support for the development of quality justice

36. In the new financial perspective 2007-12, the Commission presented three proposals for action programmes including a specific criminal justice programme. This programme will increase the support that the Union can give for judicial cooperation, the development of MR and the reinforcement of mutual trust between Member States. Its objectives are in particular to promote contacts and exchanges between practitioners, strengthen judicial training and improve access to justice.

[1] OJ L 190, 18.7.2002, p. 1.

[2] See Commission Green Paper on criminal law protection of the financial interests of the Community and the establishment of a European Prosecutor: COM (2001) 715 final, 11.12.2001.

[3] OJ L 196, 2.3.2003, p 45; deadline for transposal 2 August 2005.

[4] OJ C 197, 12.7.2000.

[5] OJ C 326, 21.11.2001.

[6] COM(2004) 562 final.

[7] OJ L76, 22.3.2005 p.16.

[8] OJ C 184, 2.8.2002.

[9] Cases C-187/01 and C-385/01 Gozütok and Brugge (judgment given on 11 February 2003) and Case C-469/03 Miraglia (judgement given on 10 March 2005).

[10] OJ C 100, 26.4.2003, p. 24.

[11] OJ L 329, 14.12.2001, p.3.

[12] COM (2004) 334 final.

[13] COM (2004) 328 final.

[14] See Commission Green Paper on criminal law protection of the financial interests of the Community and the establishment of a European Prosecutor: COM (2001) 715 final, 11.12.2001.

[15] Study of the laws of evidence in criminal proceedings throughout the EU, October 2004.

[16] Recommendation from the European Parliament to the Council on the quality of criminal justice and the harmonisation of criminal law in the Member States: A6-0036/2005.

guardian.co.uk

Cameras in court: trial by boredom?

TV should be allowed to show trials. But broadcasters, and viewers, will only be interested in the high-profile cases

Thursday 2 June 2011
David Banks

The OJ Simpson trial had television audiences rapt worldwide. But TV companies in the UK will find most domestic trials too dull to make appealing to viewers. Photograph: Sam Mircovich/AP

The director of public prosecution's call to allow cameras into the courtroom is to be welcomed if it will have the effect of re-engaging the public in the judicial process.

Open justice should not mean that the media are allowed into court but have one hand tied behind their backs, able to report words, but not images.

And as Gavin Millar pointed out earlier this week, it is odd that we can see on TV our MPs debating court cases, but we can see no footage of the cases themselves.

However, those rushing to welcome Keir Starmer's words – and Sky has been very vocal in pushing the case for greater openness – should just pause to contemplate the challenge they face if this is allowed.

While the OJ Simpson trial has been cited as an example of the over-dramatisation of TV court coverage, one can find much less drama closer to home.

The experiment in Scotland of allowing cameras into court amply demonstrated the judicial system's capacity for extreme dullness.

Any court reporter who has sat on the press bench waiting for a trial to go ahead will tell you that court reporting can often be long periods of boredom, interspersed with periods of high excitement. The court reporter distills out the boredom and presents just the drama. For TV to do the same will require editing of heroic speed and proportion.

There is little doubt that there is a need for better and more comprehensive coverage of the courts. The regional media, for whom it was once one of the three Cs that filled their pages – court, crime and council – have pulled out of the courts, leaving a vacuum in coverage. They often cite changes in reader demands, but one suspects it has more to do with cuts in staff and expenditure that regional news groups have been making in recent years, than a genuine lack of public interest in court proceedings.

While Starmer says that most solicitors are in favour of the move, I wonder if so many in the court system itself will be so enthusiastic.

When a couple of years ago I was one of the very few journalists at a debate on opening up the family courts (Joshua Rozenberg, Bob Satchwell of the Society of Editors and Radio 4's Sanchia Berg were the only others) the lawyers, social workers and judges were queuing up to accuse the media of sensationalism. We were, they said, not interested in the day-to-day, we would only be there for the high-profile cases.

The fact is they were probably right.

The broadcasters will not provide the level of coverage that the regional newspapers once did. They simply do not have the resources to staff and then edit footage from all the crown courts and magistrates courts in the country, never mind the civil courts.

They will not cover the 90%-plus of criminal business dealt with by magistrates courts; the legions of petty acquisitive criminals motivated by a need to buy drugs.

They will cherry-pick the big cases, just as they always have done.

This is not an argument not to allow the cameras in. It is not claimed that local newspapers produced perfect comprehensive coverage of the courts – but some of them got close. Some regional papers gave, and still give, a very good idea of just what goes on in the judicial system.

Allowing in TV cameras will no doubt make some of the higher courts more open in some of the most newsworthy cases. Whether it gives viewers an accurate view of the judicial system in action is another matter entirely.

The DPP on cameras in court:

0:15:25 – 0:22:30

http://www.bbc.co.uk/iplayer/console/b011jv83

Press release

Lord Chief Justice pays tribute to Lord Bingham Including his interview on the Today Programme on Radio 4

16/09/2010

Lord Judge said in a statement:

"On behalf of the judiciary of England and Wales, I would like to express my sorrow at the death of Tom Bingham, the most respected, distinguished and admired Judge of our times. His contributions to our understanding of the significance of the rule of law, and the principled development of the common law, have been unequalled in our generation. Judges throughout the world will recognise Tom Bingham as one of the great jurists of this generation and one of the great common law judges."

The Lord Chief Justice, Lord Judge, was invited by the Today Programme on Radio 4 to examine the legacy of Lord Bingham, who died at the weekend.

Lord Bingham the first judge to hold all three top legal posts in this country: Master of the Rolls, Lord Chief Justice and Senior Law Lord.

Lord Judge said: " We've lost the man that I believe was the most universally respected and admired judge of his generation. And the admiration and respect was not confined to this country; the reputation that he enjoyed was international. He was a master of the common law.

His entire judicial career was dedicated to the practical application of the rule of law in the individual case, particularly when the citizen was taking on, or being taken on by the organs of the state. That's very broad and very general, but the application of the rule of law in each individual case was what seems to me to have motivated all his thinking. You will then have to consider the way he wrote his judgements.

He always explained why he was rejecting the arguments of one side that he was rejecting. He did it in language which was always clear. The reasons for his decisions stand up to analysis and reanalysis and further analysis. He was always seeking the relevant legal principle. You will never find a single incoherent word in any of his judgements. You'll never find him using three words where one word would do, and he never uses language which obscures his meaning. From the point of view of the public, we've lost a great judge.

But I want to add this, and I want to emphasise it: the greatest judge of our generation was an utterly modest and unassuming man. He had no side to him at all, and he would be surprised to hear me saying these things about him. He did not for one moment appreciate how very special he was."

The Lord Chief Justice pays tribute to Lord Bingham:
http://news.bbc.co.uk/today/hi/today/newsid_8992000/8992981.stm

International Cooperation in Criminal Matters

1. Do the following listening exercise:

Gerard Batten, MP (UK), European Parliament.

The Enrico Mariotti case.

http://www.youtube.com/watch?v=oEn7XEEQU7k&feature=results_main&playnext=1&list=PL492174CFFEA96B62

Fill in the missing words from the transcript of the video:

Thank you Mr. President.

The dangers posed by the European Arrest Warrant are clearly illustrated by the case of Enrico Mariotti. Mr. Mariotti was granted _____ in England in 1998 after being accused of crimes _____ committed in Italy more than 30 years previously. The _____ evidence presented against him would never have been _____ in an English court and, let alone, resulted in a _____ and a prison sentence. Despite the support of many people in sections of the British media he was recently _____ to Italy by means of a European Arrest Warrant. He now languishes in a remote prison facing a 26-year prison _____. Mr. Mariotti is an Italian, but the same rules apply for British citizens. The European Arrest Warrant means that our traditional _____ against arbitrary arrest and extradition have been _____. People can now be transported to foreign courts with as much ceremony as posting a parcel.

2. Do the following listening exercise:

Gerard Batten, MP (UK), European Parliament.
European Arrest Warrant. Procedural rights in criminal proceedings.
http://www.youtube.com/watch?v=_Ar3T2QfR_A&feature=related

Fill in the missing words from the transcript of the video:

President: Mr. Batten. One and a half minutes.

Mr. Batten:
The Committee calls for the Council to continue work in introducing common European _____ rights in criminal matters. An existing common procedure in the form of a European Arrest Warrant has removed the centuries-old safeguards against _____ arrest and _____ imprisonment that the English used to enjoy. This isn't an academic argument. The _____ is destroying innocent people's lives. My constituent, Andrew Symeou, is just one of a growing number of people _____ without an English court having the power to consider the _____ evidence against them and to prevent unjust extradition. Extradition has now been reduced to a _____ formality.

Give a definition of the following in your words, trying to use legal terms:

1. mutual assistance:
2. legal classification of an offence
3. enforcement:
4. supervision measures:
5. execution of requests:
6. covert investigation:
7. surveillance:
8. dual criminality:
9. acknowledgment of service:
10. judicial records:
11. statement of consent:
12. alias:
13. bail:
14. bars to extradition:
15. freezing order:
16. custodial sentence:
17. venue of a hearing:

The Guardian

Fugitive who fled court recaptured in Spain

Andrew Moran, who vaulted from the dock during his trial for armed robbery in 2009, arrested during raid on luxury villa

Maev Kennedy

The Guardian, Sunday 12 May 2013

A British man who vaulted from the dock and escaped during his trial for armed robbery of a Royal Mail van four years ago has been arrested in a raid on a luxury villa in Spain.

He was first tracked down to Spain in November, but escaped by ramming two police vehicles in his 4x4 vehicle.

This time, Andrew Moran, 31, from Salford, was by the swimming pool of a villa in Calpe, near Alicante, with his girlfriend, when a team of armed officers swooped. A search of the villa uncovered two handguns, 60 rounds of ammunition and a machete. His girlfriend has not been charged.

Moran has been on the most wanted list of Soca, the Serious Organised Crime Agency, since he absconded in 2009 during a trial at Burnley crown court over a £25,000 robbery in Colne, Lancashire, when two men on a motorbike threatened Royal Mail workers with a handgun, machete and baseball bat, injuring one security guard.

As he was being remanded into custody while the jury deliberated at the close of the six-week trial, Moran attacked security guards, jumped from the dock, and escaped the court building. The jury returned a guilty verdict in his absence, but he has not been sentenced.

Extradition proceedings have begun and he is due to appear in court in Madrid on Monday.

The arrest in Spain followed a joint operation between the Spanish police, Soca, and the north-west regional organised crime unit, Titan.

The man originally accused with Moran, Stephen Devalda, also went on the run after jumping bail in 2006, but was captured in a hotel in Marbella in 2011. He was sentenced at Preston crown court to nine years and eight months for conspiracy to commit armed robbery, and seven months for breaching bail.

Matt Burton, the head of investigations at Soca, said: "Moran thought he could evade capture fleeing to Spain, frequently changing his appearance and using false identities.

"Like his partner in crime, Devalda and the other armed robbers on the hit-list discovered, though, there's no hiding place. Soca and its partners have the capability to pursue criminals relentlessly, track them down, and put them behind bars."

Images released by Soca show Moran in various locations over the years with glasses, a moustache, or hair dyed blonde. In several of the photographs he is posing with guns. The search had intensified since November, when he was tracked down in the Murcia area of Spain, but escaped from local police by ramming their cars in his 4X4, and driving off at speed the wrong way down a motorway.

When the police searched the house he was living in, they found a handgun, ammunition, 5kg of cannabis, and vacuum packing equipment.

Detective Chief Inspector Janet Hudson, from Titan, said: "My officers have worked tirelessly alongside Soca colleagues and the Spanish authorities to track down this dangerous man. Extradition proceedings are now under way.

"It just goes to show that we will stop at nothing to capture criminals wherever they are in the world. No matter how hard they try to evade justice they will not succeed."

Moran was also on the most wanted list for the Crimestoppers' Operation Captura campaign, founded and chaired by Lord Ashcroft, who boasted that it has amassed 50 arrests from 65 appeals since 2006.

Theresa May faces Tory backlash over retaining European arrest warrant

Deal with Liberal Democrats over controversial measure would incur wrath of Eurosceptic right

Daniel Boffey, policy editor

The Observer, Saturday 11 May 2013

Theresa May, the home secretary, is set to feel the wrath of Tory backbenchers over a tentative agreement struck with the Liberal Democrats to retain the controversial European arrest warrant.

The coalition has been in tense negotiations over the future of the measure, which requires a member state to transfer its citizens without trial where there is suspicion that a crime has been committed elsewhere in the EU.

The Tory Eurosceptic right has been campaigning for the warrant's abolition and May has publicly criticised it while refusing to confirm that the UK will continue to enforce it next year.

In 2014 the UK will exercise its right to opt out of around 130 EU security and justice measures, including the warrant, only to opt into a smaller number, the identity of which has been hotly contested within the government.

The Conservative leadership wants to opt back into just 30 measures, while the Lib Dems are seeking at least double that number, a Whitehall source told the Observer. A sticking point has been the European arrest warrant (EAW). Deputy prime minister Nick Clegg is known to be a keen supporter.

It is understood that after months of talks the coalition has now reached a compromise on how to keep the EAW measure in place, as requested by the Association of Chief Police Officers, among other organisations.

Oliver Letwin, the cabinet office minister, negotiating with the Lib Dems, has agreed the government will opt back into the measure if the law can be changed to include a proportionality test, whereby the seriousness of an alleged crime is taken into account when transfers under the EAW are requested by other member states.

The Liberal Democrats, who are convinced of the continued importance of the EAW in fighting crime, are understood to be satisfied that this could be a way forward over the issue.

The German courts have for several years operated such a test before devoting time and energy to extradition cases.

While the agreement may satisfy the leadership of the two coalition parties, it is likely to cause major ructions on the Tory backbenches.

The fast-track extradition that comes with the EAW is said by opponents, including the Tory MP Dominic Raab, to be based on the mistaken assumption that "standards of justice are adequate across Europe".

The Tories' capitulation will inevitably cause tensions between May, who is said to harbour leadership ambitions, and her support base on the right of the party.

Thais Portilho-Shrimpton, director of campaign group Justice Across Borders, said: "Saving the European arrest warrant is a U-turn by Theresa May and a victory for all those who have campaigned to protect vital crime-fighting measures.

"The fight carries on to ensure the government doesn't abandon other crucial measures that keep British citizens safe and stop the UK turning into a safe haven for foreign criminals."

The European commission recently warned that the Conservative plans to opt out of EU police and justice co-operation are nonsensical and risk leaving the UK sidelined on security issues. The House of Lords European Union committee has also claimed that Britain will be at "significant" risk from terrorists and criminals.

Under the 2007 Lisbon treaty, the government has until June 2014 to exercise an opt-out from a package of 133 EU crime and justice measures.

Home Office documents leaked to the Observer show that the coalition has so far agreed to opt back into 34 measures. Around 44 measures are either defunct or the deputy prime minister Nick Clegg has signalled that he is willing for the UK to drop its involvement.

There are 36 measures where agreement has yet to be reached between the coalition partners, including the exchange of speeding fines between countries, the exchange of intelligence on criminals and the setting of minimum standards on criminalising corruption in the private sector.

A Home Office spokesperson said: "As the home secretary said, the government's current thinking is to opt out of all measures and then negotiate to opt back into those individual measures which it is in our national interest to rejoin. We have made a commitment to a vote in both houses of parliament before the final decision. That vote will take place in good time before May 2014.

"Discussions about which measures we may seek to opt back into are ongoing."

THE JULIAN ASSANGE CASE

Read the texts below.

Julian Assange arrest: How the extradition process works

WikiLeaks founder could face detention upon his return to Sweden after activation of European Arrest Warrant

Julian Assanges's arrest by police this morning will kickstart the fast-tracked extradition process, using the European Arrest Warrant system, to attempt to return him to Sweden, where he is wanted for questioning regarding a rape charge.

Swedish criminal law experts said this morning that little was known about the allegations Assange is facing in the country, in line with legal requirements to protect anonymity and preserve confidentiality for sex crimes.

The activation of a European Arrest Warrant (EAW) by UK police suggests Assange has been formally charged by Swedish prosecutors and could face a period of detention upon his return.

Assange's legal team is determined to fight his extradition on grounds including the failure of authorities to provide details of the warrant issued by Sweden. They will also claim human rights reasons, including the arguments that the WikiLeaks founder may be unfairly deprived of his liberty in Sweden and that he risks not facing a fair trial.

.....

If extradited to Sweden under the EAW – a process that could be concluded quickly under the fast-track procedure – Assange will be vulnerable to other extradition requests from countries including the US.

The US has an extradition treaty with Sweden since the 1960s. [...] Extradition under the treaty is likely to face a number of obstacles, not least the fact that the likely charges facing Assange in the US – under the Espionage Act or other legislation protecting national security – are not included in the exhaustive list of offences set out in the law.

.....

Even if Assange's case falls outside the remit of Sweden's treaty with the US, there is scope for the country to agree to his extradition to the US.

Swedish law permits extradition more generally to countries outside Europe, although the process is subject to safeguards, including a ban on extradition for "political offences" or where the suspect has reasons to fear persecution on account of their membership of a social group or political beliefs.

Any extradition from Sweden to other countries could take place only after the current rape proceedings have been concluded. With Assange's lawyers confirming their intention to dispute those proceedings on all grounds, it seems the prospect of any extradition to the US remains some way away.

(from *The Guardian*, 7 December 2010)

The Julian Assange case: a mockery of extradition?

The European Arrest Warrant is being used to have thousands of people flown out to face charges that wouldn't stick in the UK

There may be many unintended consequences of the race to prosecute Julian Assange, the WikiLeaks founder. But as he faces extradition to Sweden, where he is accused of rape, one of the more eccentric side effects has already become clear: the rise to prominence of the European Arrest Warrant.

This legal instrument has been controversial since it was introduced in 2003, creating everyday injustices; but rarely has anyone outside the small group of lawyers that handles cases really cared. Now followers of the WikiLeaks story wonder how Assange could be extradited with so few questions asked. Why, for example, can our prisons detain someone (Assange is currently on remand in Wandsworth prison) for an offence under Swedish law that does not exist in British law? And how can a judge agree to an extradition without having seen enough evidence to make out a prima facie case?

The 2003 Extradition Act originated in an EU decision agreed just one week after 9/11. It was sold to voters as a way of ensuring cross-border cohesion in prosecuting suspects wanted across Europe for terrorism and serious crime. The level of cohesion in criminal justice systems across Europe, the argument went, and their common obligations under the European Convention on Human Rights, provided a sufficient basis of trust that an arrest warrant by an EU country could be agreed by the UK with little scrutiny.

It's been downhill from there. Around three people per day are now extradited from the UK, and there is little to suggest that the majority are terrorists or serious criminals. In fact those involved in the process agree that many of the cases are "trivial".

This month I watched proceedings in Westminster magistrates' court as Jacek Jaskolski, a disabled 58-year-old science teacher, fought an EAW issued against him by his native Poland. Jaskolski – also the primary carer for his disabled wife – has been in the UK since 2004. His crime? Ten years ago, when he still lived in Poland, Jaskolski went over his bank overdraft limit.

There are instances when unauthorized bank borrowing can have criminal elements, but this is not one of them. The bank recovered the money, and there is no allegation of dishonesty. A similar case in Britain would be a civil, not a criminal, matter.

But it is a criminal offence in Poland, where every criminal offence has to be investigated and prosecuted, no matter how trivial. As a result Poland requested 5,000 extraditions last year alone, accounting for 40% of all those dealt with by Britain. By contrast the UK made just 220 requests.

In 2008 a Polish man was extradited for theft of a dessert from a restaurant, using a European Arrest Warrant containing a list of the ingredients. People are being flown to Poland in specially chartered planes to answer charges that would not be thought worthy of an arrest in the UK, while we pick up the tab for police, court, experts' and lawyers' time to process a thousand cases a year. This whole costly system is based on the assumption that the criminal justice systems of countries such as Poland are reasonable enough that it is worth complying with

all their requests.

The level of frustration with the failure of this assumption is now beyond question. Even David Blunkett, who as home secretary presided over the introduction of the system, has regrets. "There is room for improvement with the EAW", Blunkett told the Commons home affairs committee this month. "When we agreed to the system we believed that people would act rationally." The government is now conducting a review into extraditions, with a panel led by a former court of appeal judge and senior extradition barristers.

But the EAW is not a stand-alone measure – it was intended as part of a much more ambitious agenda for the harmonization of criminal justice systems across the EU. In January the European evidence warrant is meant to come into effect. Like the EAW, this would require Britain to give automatic recognition to search warrants issued by member states.

By next December the UK is supposed to have adopted mutual recognition of other states' decisions on probation, bail, the transfer of prisoners, and the suspending of individuals' finances. The Lisbon treaty, should the UK opt in, would take things even further. Opting out would still mean implementing the measures already agreed, and prevent negotiation of measures being applied in the rest of Europe.

In both the Assange and Jaskloski cases the EAW is set on a collision course where the labyrinthine world of EU mutual recognition meets the reality of defendants' rights. And suddenly the mutual confidence that the public are meant to have in the criminal justice systems of other EU states – in Sweden's immunity from pursuing a politically motivated rape claim, or Poland's ability to be reasonable – does not seem to exist after all.

(The Guardian, December 10th, 2010)

1. Decide whether the following statements are true or false.

a. Julian Assange has been charged with rape by the Swedish prosecutors.

b. Assange's lawyers do not intend to fight his extradition.

c. Sweden does not have an extradition treaty with the US.

d. Sweden may agree to Assange's extradition to the US.

e. Assange's extradition to the US is imminent.

f. The author of the two texts is a supporter of the European Arrest Warrant.

g. The European Arrest Warrant was intended for prosecuting "trivial" offences.

h. The EAW was aimed at enhancing the harmonization of criminal justice systems across the EU.

i. Lots of people were extradited by the UK for offences that do not exist in British law.

j. The EAW was intended and designed as a means of violating defendants' rights.

2. Fill in the blanks with synonyms of the words in brackets.

a. The British authorities ..... (try) to return Assange to Sweden, using the EAW

system.

b. The ..... (probable) charges facing Assange in the US are not included in the exhaustive list of offences set out in the law.

c. Swedish law ..... (allows) extradition more generally to countries outside Europe.

d. One of the important safeguards is the ..... (prohibition) on extradition for "political offences".

e. Assange's lawyers confirmed their intention to ..... (challenge) the proceedings on all grounds.

f. Assange faces extradition to Sweden, where he is ..... (charged with) rape.

g. Many of the offences for which extradition is requested are ..... (minor).

h. Member States are meant to have mutual ..... (trust) in the criminal justice systems of other EU States.

i. Assange wants to challenge the ..... (accusations) against him.

3. Fill in the gaps with **little, a little, few, a few, much, many**.

a. Swedish criminal law experts said that ..... was known about the allegations Assange is facing in the country.

b. There are ..... core principles that the States must respect.

c. The UK made ..... extradition requests.

d. There is ..... to suggest that the majority of the extradited persons are terrorists or serious criminals.

e. The Commission encourages Member States to take ..... more measures in order to enhance procedural safeguards.

f. ..... people have requested legal aid so far.

g. Poland requested ..... extraditions last year.

h. The Swedish judicial authorities don't say ..... about the Assange case.

i. ..... people challenged the extradition decisions against them.

j. In the field of procedural rights there is still ..... to be done.

k. The ..... knowledge he has and the ..... things he knows about the extradition process are quite enough for him to be able to defend his rights.

l. Authorities should pay ..... more attention to defendants' rights.

4. Complete the sentences below.

a. Julian Assange was charged with .....

b. Sweden requested Assange's .....

c. Assange's lawyers are determined to .....

d. Swedish law permits .....

e. The extradition process is subject to safeguards, including a ban on extradition for .....

f. The EAW was intended .....

5. a. Find arguments in the texts against the EAW.

b. Comment upon the author's position regarding the EAW.

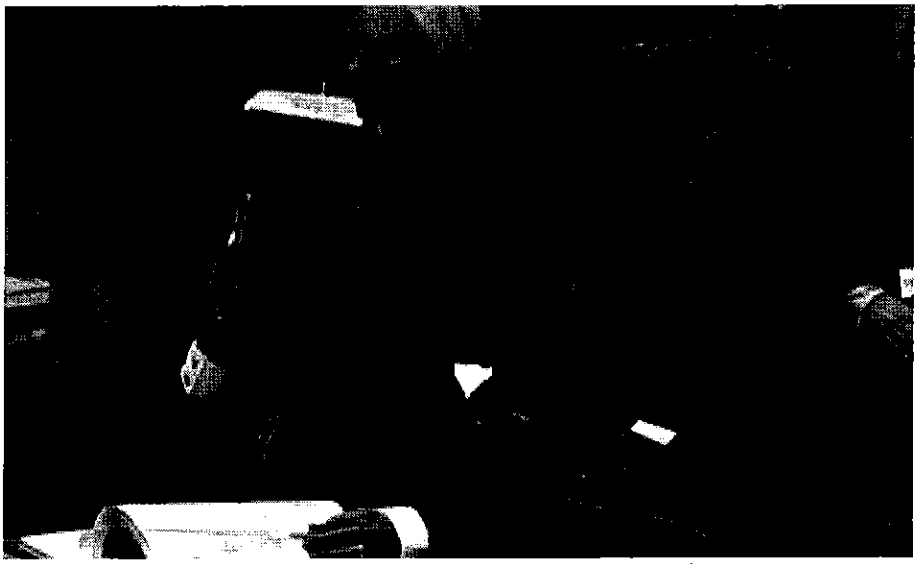
c. Can the EAW affect defendants' rights? Bring arguments in favour of your answer.

Sweden followed normal procedure over Julian Assange arrest, court told

UK supreme court hears it is normal in Europe for prosecutors, rather than judges, to issue arrest warrants

Robert Booth

guardian.co.uk, Thursday 2 February 2012



Julian Assange and Sweden's QC, Clare Montgomery, at the supreme court on 2 February 2012. Photograph: Sky News

Sweden was right to allow its public prosecutor to demand the arrest of Julian Assange, the Wikileaks founder wanted in connection with allegations including rape, the UK's supreme court has been told.

The court heard that it was normal in Europe for prosecutors, rather than judges, to issue European arrest warrants.

The claim came on the second day of Assange's two-day appeal to the highest court in the UK against being sent to Sweden to face allegations relating to sexual encounters he had with two women in Stockholm in August 2010.

Clare Montgomery QC, appearing for the Swedish Judicial Authority, told the panel of seven senior judges that there was no obligation of impartiality on the authority that requests extradition.

She told them this had never been the case and that Sweden was acting within European law. She told the judges that to rule otherwise "would be a remarkable departure as a matter of history from all that had gone before".

The day began with Dinah Rose QC, acting for Assange, concluding her case by saying that the warrant was invalid because it breached "natural justice".

She argued that the Swedish prosecutor was a party in the Assange case and therefore not independent and impartial, breaching the principle that "no one should be judge in their own cause".

Montgomery said public prosecutors were allowed to request extradition through European arrest warrants as a "judicial authority". She mounted a detailed examination of the drafting of the European extradition law and its requirement of an "authorité judiciaire" to issue arrest warrants.

"It is quite clear that included in the natural, continental meaning [of authorité judiciaire is] public prosecutor," she said.

Montgomery attacked "all this rhetoric" by Assange's legal team "that suggests our construction makes the issuing of an arrest warrant a judge-free zone because in each case there will be an underlying court decision".

She said 11 European states had decreed that prosecutors would issue arrest warrants and that nine had said they would only use prosecutors to do so. She argued that prosecutors were more likely than a court to take into account whether a European arrest warrant was proportional.

Montgomery said it was clear that different countries defined authorities capable of requesting arrest warrants differently. In Finland it included the ministry of justice, in Denmark "public prosecution authorities", in Germany "competent judicial authorities" and in Sweden the "prosecutor general or any other prosecutor".

Montgomery commented that the Europe-wide agreement was "done at great speed, coming as it did on the heels of 9/11".

The judges asked what human rights protections flowed from her interpretation. "Arrest normally starts with a partial decision," Montgomery said.

"The English arrest warrant issued by a court is very much the exception. The protection [of human rights] lies in the requirement thereafter to provide him with an impartial tribunal. There is nothing to suggest a human rights construct requires you to impose impartiality on anybody seeking arrest."

Montgomery insisted that the term judicial authority "has a wide meaning". "It requires that because it serves the international purpose of being capable of allowing a system that does not have harmonious practices and procedures."

Rose was given just over an hour to make a final response. She said that far from each country seeing the concept of judicial authority differently, it was a "core term" in Europe that had been defined in the convention on human rights and had been tested in the courts.

It had to mean "independent of the executive" and independent of parties to the case, she said.

The conclusion of submissions represented the end of a series of legal hearings since Assange was arrested in December 2010 and could be the last time his case is heard in a British court.

The supreme court judges retired to consider their judgment, which will be reserved for what is expected to be several weeks. If they decide to uphold the high court ruling, Assange could be sent to Sweden for questioning within days.

What is plain English?

Plain English is presenting information so that in a single reading, the intended audience can read, understand and act upon it. Plain English means writing with the audience in mind and presenting information clearly and accurately.

How do courts interpret laws?

Courts originally used a literal approach, meaning that the words in a law were interpreted exactly as they appeared, however ridiculous the effect. The legal system now more commonly uses a purposive approach, meaning the intended purpose of the law is taken into account. The legal rule 'noscitur a sociis' (literally, a thing is known by its associates) means that laws should be interpreted in their intended context.

What does this mean for drafting in plain English?

The experience of courts shows that attempts to make Acts of Parliament totally comprehensive with no room for different interpretations have failed. Trying to cover every eventuality does not work, and is not necessary when courts use their discretion. The argument that clarity should be sacrificed for a document to be comprehensive does not stand up.

Why are laws written in legalese?

- Laws were originally written in Latin or French, and many of the common terms are still being used.
- Drafters were once paid by the word, rather than by the job.
- Drafters prefer to use tried and tested clauses rather than risk using alternative language.
- Many laws were originally written by humble court clerks rather than skilled lawyers.

What are the main features of legalese and why do they cause problems?

Long sentences, often trying to cover several points

This may be because of a tradition of making each part of a bill or legal document only one sentence long. Experience shows that shorter sentences, each dealing with only one main point, are more effective. This does not have to mean using an over-simplified writing style, rather making a conscious effort to make each sentence serve one precise purpose.

Verbiage (using more words than are necessary)

As well as obscuring the message, this can be risky. Courts will usually assume that every word in an act is there for a reason, and unnecessary words may be interpreted in a way that the writer had not intended.

Too many double negatives

If double negatives are used, the reader has to perform mental gymnastics to understand the meaning of a sentence.

Being overly formal

This often includes using unfamiliar words where common ones would do just as well, although there is a minority of legal expressions, called 'terms of art', that have a precise meaning which cannot be achieved in plain English. A reader confronted with an overly formal, unfamiliar term will usually try to work out the difference between that term and the everyday alternative. When there is no difference, the reader will be on a fruitless task, which will harm their understanding of the text. If you have to use such expressions, it is best to provide the reader with a glossary explaining these terms at the beginning of the document.

What do other countries say?

United States

The National Conference of Commissioners on Uniform State Laws says: 'The essentials of good bill drafting are accuracy, brevity, clarity and simplicity. Choose words that are plain and commonly understood. Use language that conveys the intended meaning to every reader. Omit unnecessary words.'

Canada

The Uniform Law Conference's drafting conventions say: 'An Act should be written simply, clearly and concisely, with the required degree of precision, and as much as possible in ordinary language'.

European Union

EU guidelines say that 'the wording of (an) Act should be clear, simple, concise and unambiguous; unnecessary abbreviations, "community jargon" and excessively long sentences should be avoided'.

What are the arguments against plain English drafting, and are they valid?

'Plain English is simple, restrictive language, and takes away the skills of the drafter.'

Drafting a document in plain English takes a lot of skill. Communicating your points clearly so that the reader can accurately interpret your meaning is the most important task in writing. The draftsman's job is to communicate precise ideas, not produce a work of literature.

'There is no need to make legislation easy to read. It's not meant to be the same as a newspaper. People who want to read laws should educate themselves.'

Using plain English does not mean writing everything in the style of a tabloid newspaper. It means writing documents in a way that is appropriate for the audience. If a law affects people (for example, an employment law affecting small business), those people should have a fighting chance of understanding it. The language used in a law should depend on who the

law affects, taking account of how familiar they are with the subject. Saying it is impossible to produce laws that everybody understands is no reason not to make it understandable to as many people as possible. Plain English is not dumbing down.

'Plain English is not legally accurate or precise.'

This myth has been steadily and repeatedly shattered. In the United States, 44 of the 50 states have some form of requirement for insurance contracts to be written in plain English. Contrary to lawyers' expectations, there has never been a case where a contract has been declared less legally valid though being written in plain English.

Attempts to make text legally accurate through excessive (and impenetrable) detail are often flawed. For example, trying to define an organisation's powers through a comprehensive list will inevitably lead to problems. Eventually a situation that the drafter had not foreseen will arise. A perfect example is when new technology arises, such as when courts have to decide if a law applying to a posted letter also applies to an e-mail. Courts can use their discretion to settle such disputes, taking account of the law's intended purpose as well as its exact content.

In any case, this argument is based on the idea that existing legalese is perfectly accurate. If this were true, there would be far less need for lawyers to debate conflicting interpretations of a law or document. Drafters should aim for clarity and precision rather than choosing between the two.

'Plain-English drafting is too expensive and time-consuming.'

Our experience shows that rewriting legalese into plain English can take time, but this can be avoided by using clearer drafting in the first place. Even if the drafting takes longer, the new law or document will take less time to understand, and there will be less need for its meaning to be debated and explained. Studies in the Australian state of Victoria, which uses plain-English drafting, show that lawyers can understand and use a plain-English version of an act in between a half and a third of the time it takes with the traditional version.

What use would a purpose clause serve?

Given that English courts take into account the intention behind an Act, the purpose clause would be an extremely useful way for the drafter to give guidance for future disputes. The purpose clause would give a clear explanation of what a law should achieve, overriding any interpretation of its contents that appeared to contradict this aim. The purpose clause would also help the drafter, as a writer who starts with a clear outline of his message is far more likely to write that message clearly.

Is plain English drafting really possible?

Realistically, the idea of producing legal documents that everyone can understand on a single reading is unlikely, but not impossible. The law is the most important example of how words affect people's lives. If we cannot understand our rights, we have no rights.

BIBLIOGRAPHY, LINKS AND RELATED SOURCES

Recommended books to learn legal English

Haigh, Rupert (2004/2009), *Legal English*. Routledge.

Krois-Lindner, A. (2006), *International Legal English*. Cambridge University Press.

McKay, W.R. & Charlton, H.E. (2005), *Legal English. How to Understand and Master the Language of the Law*. Pearson Education.

Riley, Alison (2005), *English for Law*. Longman Pearson Education.

Wojcik, M.E. (2001/2009), *Introduction to Legal English: An Introduction to Legal Terminology, Reasoning and Writing in Plain English*. BNI Publications (Book Network International).

Bibliography –Legal English (UK)

ALCARAZ, E. (1994/2007), *El inglés jurídico*, 6th ed. Barcelona: Ariel.

---- (2000a), *El inglés profesional y académico*. Madrid: Alianza Editorial.

---- (2000b), *El jurista como traductor y el traductor como jurista*. Barcelona: Universidad Pompeu Fabra.

ALCARAZ, E., CAMPOS, M.A. y MIGUÉLEZ, C. (2001/2006, 3th ed.), *El inglés jurídico norteamericano*, 3ª ed. Barcelona: Ariel.

ALCARAZ, E. y HUGHES, B. (1993/2003), *Diccionario de términos jurídicos, Inglés-Español, Spanish-English*, 7ª ed. Barcelona: Ariel.

---- (1996/2004), *Diccionario de términos económicos, financieros y comerciales, Inglés-Español, Spanish-English*, 4ª ed. Barcelona: Ariel.

---- (2002a), *Legal Translation Explained*. Manchester: St. Jerome.

AULET BARROS, J. L. (1998), *Jueces, política y justicia en Inglaterra y España*. Barcelona.

BERLINS, M y DYER, C. (2000), *The Law Machine*. London: Penguin.

BLACK. (2004), *Black's Law Dictionary* (8o edición). St. Paul, Minn.: West Publishing Co.

BORJA ALBí; A. (2000), *El texto jurídico inglés y su traducción al español*. Barcelona: Ariel.

---- (2007), *Estrategias, materiales y recursos para la traducción jurídica inglés-español*. Edelsa-Universitat Jaume I. Castellón de la Plana.

BRODY, S.L. et al. (2003), *Legal Drafting*. Boston: Little, Brown & Co.

CALLEROS, Ch.R. (2006), *Legal Method and Writing*. London: Little, Brown & Co.

CHARMAN, M. et al. (2006), *As Law*. Willan Publishing.

CHEYNE, A. (2005), *The Legal Secretary's Guide*. London: Blackstone.

ELLIOTT, C. & F. QUINN (2010), *English Legal System*. Pearson.

FREEDMAN, M.K. (1990), *Legalese. The Words Lawyers Use and What They Mean*. New York: Dell.

GARCÍA MORENO, J.M. (2005), "El jurado popular en Inglaterra y Gales". *Revista de Derecho Procesal*.

GARNER, B. (1987), *A Dictionary of Modern Legal Usage and Style*. Oxford: O.U.P.

---- (1991), *The Elements of Legal Style*. Oxford: O.U.P.

---- (2001), *Legal Writing in Plain English*. University of Chicago Press.

GILLESPIE, A. (2011), *The English Legal System*. Oxford University Press.

GUBBY, H. (2004), *English Legal Terminology*. Den Haag.

HAIGH, Rupert (2004), *Legal English*. Cavendish Publishing.

HANSON, S. (2003), *Legal Method and Reasoning*. Cavendish Publishing.

MARTIN, J. (2010), *Key Facts: The English Legal System*. Hodder Education.

MCKAY, W. et al. (2011), *How to Understand and Master the Language of the Law*. Pearson Education.

MCMENAMIN, G. (2002), *Forensic Linguistics. Advances on Forensic Linguistics*. CRC Press.

OAKLAND, J. (2001), *Contemporary Britain: A Survey with Texts*. London: Routledge.

---- (2002), *British Civilization: An Introduction*. London: Routledge.

PARTINGTON, M. (2011), *An Introduction to the English Legal System*. Oxford University Press.

PHILLIPS, A.I. (2003), *Lawyers' Language*. Routledge.

RILEY, A. (1995), *English for Law*. London & Basingstoke: Macmillan Professional English.

ROSSINI, C. (1998), *English as a Legal Language*. Kluwer Law International.

RUSSELL, F. y C. LOCKE (1995), *English Law and Language. An Introduction for Students of English*. Hemel Hempstead: Phoenix ELT.

SEARL, D. (2006), *You & the Law in Spain. The Complete and Readable Guide to Spanish Law for Foreigners*. Málaga: Santana Books.

SHEARS, P. y G. STEPHENSON (2006), *James' Introduction to English Law*. USA: Oxford University Press.

SLAPPER, D y G. KELLY (2010), *The English Legal System 2009-2010*. London: Cavendish.

SOLAN, L. M. (1993), *The Language of Judges*. Chicago: The University of Chicago Press.

SOLAN, M.L y P.M. TIERSMA (2005), *Speaking of Crime: The Language of Criminal Justice*. Chicago: University of Chicago Press.

STYGALL, G. (1994), *Trial Language*, Amsterdam: John Benjamins Publishing Co.

TIERSMA, P. (1999), *Legal Language*. University of Chicago Press.

WARD, R. y A. WRAGG (2005, 9th ed.), *Walker & Walker's English Legal System*. Oxford: Oxford University Press.

WOJCIK, M.E. (2001, 2nd ed.), *Introduction to Legal English: An Introduction to Legal Terminology, Reasoning and Writing in Plain English*. BNI Publications (Book Network International).

ZANDER, M. (2007), *Cases and Materials on the English Legal System*. Cambridge University Press.

Plain Language

- Introducing Plain Language: www.web.ca/~plain/PlainTrain/Digest.html)
- Plain Language Association International: www.plainlanguagenetwork.org
- Plain English Campaign: http://www.plainenglish.co.uk/
- Plain Language Action Network: www.plainlanguage.gov
- Clarity: www.clarity-international.net
- Law & Justice Foundation. Writing in plain language: http://www.lawfoundation.net.au/information/pll/index.html
- LegalWriting.net by Wayne Schiess: http://www.legalwriting.net
- The Legal Writing Institute: http://www.lwionline.org/
- The Association of Legal Writing Directors: www.alwd.org - ALWD (pronounced all-wid)
- A Plain English Handbook: http://www.sec.gov/news/extra/handbook.htm

ONLINE DICTIONARIES & GLOSSARIES

Law.com Dictionary: http://dictionary.law.com/default2.asp

Sweet & Maxwell's Legal Taxonomy: http://2.sweetandmaxwell.co.uk/online/taxonomy/sign_up.jsp

Nolo's Plain-English Law Dictionary: http://www.nolo.com/dictionary/

Law Dictionary by John Bouvier: http://www.constitution.org/bouv/bouvier.htm

Nolo's Legal Glossary: http://www.nolo.com/glossary.cfm

Findlaw legal dictionary: http://dictionary.findlaw.com/

Legal Dictionary By Duhaime law firm: http://www.duhaime.org/LegalDictionary.aspx

Center for Constitutional Rights, legal glossary: http://ccrjustice.org/legal-glossary

International Bar Association, Glossary: http://www.ibanet.org/About_this_site/Glossary_A.aspx

The Centre for Justice and Accountability (Human Rights): http://cja.org/article.php?list=type&type=249

Extradition Glossary: http://www.cps.gov.uk/legal/d_to_g/extradition/annex_f_glossary/

UN Glossary: http://www.un.org/children/conflict/english/glossary.html

BBC World Service (Procedural Law): http://www.communicatingjustice.org/en/glossary

Human Rights Education Association (Crimes of War): http://www.hrea.org/index.php?base_id=121

Red Cross: http://ehl.redcross.org/resources/downloads/glossary.pdf

Domestic Violence: http://www.wunrn.com/reference/pdf/glossary_vaw.pdf

International Law Glossary: http://www.insidejustice.com/resources/glossary.php

Glossary of legal terms (Justice): http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/glossary-of-terms---legal/

Glossary (The Judiciary): http://www.judiciary.gov.uk/glossary

Immigration.com: http://www.immigration.com/glossary/acronyms.html

Glossasrist (Terrorism): http://www.glossarist.com/glossaries/government-politics-military/terrorism.asp

Findlaw dictionary: http://dictionary.lp.findlaw.com/

Latinisms in Legal English (Justice): http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/glossary-of-terms/

http://www.dl.ket.org/latin3/mores/legallatin/legal04.htm

Latin & French in Legal English: http://publib.upol.cz/~obd/fulltext/Anglica-2/Anglica-2_07.pdf