How to Do Things with Rules

This popular book is an enjoyable and thought-provoking introduction to some basic human skills in handling rules. It demystifies legal method by combining a wide range of concrete examples with a fundamental account of rules in general, their use as problem-solving devices, the who, what, why and how of interpretation, why doubts about interpretation arise, and reasoning about competing interpretations. It emphasises the continuities between interpretation of non-legal and legal rules and between theory and practice. The central theme is that in both routine and difficult cases interpretation is best approached by an intellectual procedure that clarifies the interpreter's standpoint and context, identifies the factors that may be giving rise to doubts and provides a basis for constructing arguments.

This edition has been substantially revised and updated. The chapters on legislation have been completely rewritten, there is a new chapter on the European dimension, and fresh examples are included. A weblink provides space for additional materials and exercises. This flexible introduction has been widely used in courses on legal method, in access courses, as a starting point for the study of legal theory, and as an introduction to common law ways of thought for lawyers trained in the civil law. *How to Do Things with Rules* is entertaining, provocative and a must for anyone working with rules.

William Twining is Quain Professor of Jurisprudence Emeritus at University College London and a regular Visiting Professor at the University of Miami Law School. His recent works include *General Jurisprudence* and *Analysis of Evidence* (with Anderson and Schum), both of which are closely related to this book.

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The Law in Context Series

Since 1970 the Law in Context Series has been at the forefront of the movement to broaden the study of law. It has been a vehicle for the publication of innovative scholarly books that treat law and legal phenomena critically in their social, political and economic contexts from a variety of perspectives. The series particularly aims to publish scholarly legal writing that brings fresh perspectives to bear on new and existing areas of law taught in universities. A contextual approach involves treating legal subjects broadly, using materials from other social sciences, and from any other discipline that helps to explain the operation in practice of the subject under discussion. It is hoped that this orientation is at once more stimulating and more realistic than the bare exposition of legal rules. The series includes original books that have a different emphasis from traditional legal textbooks, while maintaining the same high standards of scholarship. They are written primarily for undergraduate and graduate students of law and of other disciplines, but most also appeal to a wider readership. In the past, most books in the series have focused on English law, but recent publications include books on European law, globalisation, transnational legal processes and comparative law.

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How to Do Things with Rules

A Primer of Interpretation

Fifth Edition

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To our parents

Neither this book nor any other can say how a page *should* be read – if by that we mean that it can give a recipe for discovering what the page *really* says. All it could do – and that would be much – would be to help us to understand some of the difficulties in the way of such discoveries.

I. A. Richards, *How to Read a Page*

Contents

Resources on the web

The following text can be found on-line at
www.cambridge.org/twiningandmiers

Preface

All of us are confronted with rules every day of our lives. Most of us make, interpret and apply them, as well as rely on, submit to, avoid, evade and grouse about them; parents, umpires, teachers, members of committees, businesspeople, accountants, trade unionists, administrators, logicians and moralists are among those who through experience may develop some proficiency in handling rules. Lawyers and law students are specialists in rule-handling, but they do not have a monopoly of the art. A central theme of this book is that most of the basic skills of rule-handling are of very wide application and are not confined to law. There are certain specific techniques which have traditionally been viewed as 'legal', such as using a law library and handling cases and statutes. But these share the same foundations as rule-handling in general: they are only special in the sense that there are some additional considerations which apply to them and are either not found at all or are given less emphasis in other contexts.

The purpose of this book is to provide a relatively systematic introduction to one aspect of rule-handling: interpretation and application. It is written particularly for students of law and administration, but most of it is directly relevant to problems of rule-handling in non-legal contexts. Within legal education, the focus of attention is orthodox in that it concentrates on certain traditional skills and techniques which have commonly, though misleadingly, been referred to as 'legal method', 'juristic method' or 'thinking like a lawyer'. The approach is mildly unorthodox, in that it questions certain widely held assumptions about the nature of these techniques and about efficient ways of learning to master them. Accordingly, it may be useful to give an indication of some of the juristic and educational assumptions underlying our approach.

The juristic assumptions can be stated in simplified form as follows: specialists in law are characterised as much by their supposed mastery of certain kinds of skills as by their knowledge of what the law says. This is the core of the notion that law is essentially a practical art. Those who participate in legal processes and transactions, whether or not they are professionally qualified to practise law, are called upon to perform a variety of tasks. Legal practice encompasses such diverse activities as advising on the procedure of a particular course of action, collecting evidence, negotiating, advocacy, other kinds of persuasion, drafting statutes,

regulations, contracts and other documents, predicting decisions of various types of courts, tribunals and officials, determining questions of fact, making and justifying decisions on questions of law, communicating information about legal rules or devising improvements in the law. To perform these activities intelligently and efficiently requires a wide range of techniques, insights and abilities. Phrases like 'thinking like a lawyer' or 'legal method' or 'legal reasoning' are misleading insofar as they equate proficiency in handling legal rules and the raw materials of such rules with being a good lawyer. Rule-handling is only one aspect of the crafts of law. Furthermore, interpretation is only one aspect of rule-handling. But it is basic – first, because most rule-handling activities involve or presuppose it, and, second, because a clear understanding of what is involved in interpretation inevitably throws light on a number of other matters as well.[1]

Our approach is also based on a number of educational assumptions. First, we think that it is more economical and more efficient to study certain aspects of rule-handling directly than to leave the techniques to be picked up during the course of studying something else. This challenges the view, held by many teachers of law, that case-law techniques are best learned in the context of studying such subjects as contract and tort and that skill in handling statutory materials can incidentally be acquired in the course of studying such fields as administrative, revenue or commercial law. Outside legal contexts, the analogous view is that skill in rule-handling can only be acquired by experience. Such views are sometimes based on confusion between laying a foundation for developing a skill and reinforcing that foundation through practice. This book proceeds from the premise that a direct approach is both a more economical and a more efficient way of starting off. Reinforcement through practice and experience is essential, but that should come later.

A second assumption is that the art of interpretation is best learned by a combination of theory and practice. Competent interpreters need to understand the nature of the raw material they are dealing with, in what contexts and under what conditions problems of interpretation arise, how interpretation relates to other activities and what is involved in arguing about competing interpretations; it is also useful for them to have a set of concepts for analysing and discussing these problems, and they need to be aware of some common fallacies and pitfalls to be avoided. Accordingly this book is a combination of text and exercises. Working through it involves active participation on the part of the reader. In this respect the book follows the sound pedagogical principle that underlies much of contemporary legal education: the value of learning by doing. If it achieves its objectives, we hope that it will help to undermine two other fallacies – that emphasis on 'skills' is inevitably associated with philistine

[1] Because the *focus* of the book is on rules, we are sometimes misperceived as conceiving law as a system of rules ('a school rules view'). Our general conception of law is wider than that as it includes institutions, processes, structures, personnel and ways of thought linked together by the idea of institutionalised social practices. See further, William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (2009) (hereafter *GJP*), ch. 4.

vocationalism and is necessarily illiberal, and that rigorous analysis is incompatible with a contextual approach.[2]

Third, in this book we use 'legal method' to refer to some basic intellectual skills in reading and using materials of law study, rather than professional competence. The basic skills of the law student and the skills and techniques of practising lawyers should not be conflated. The object of a law student is to learn: in this context the primary learning objective is to master certain skills of reading, analysis and reasoning. Such skills are not mechanical, for they involve understanding of some basic theory. In order to master the relevant skills a student needs to grasp the what, why and how of reading and using different materials for a wide variety of purposes. In order to read a reported case or a juristic text or a Community directive intelligently the student needs to know something about the nature of the material involved – how it is constructed, by whom, and for what purposes. The same material may be studied by one person for quite different purposes: for example, a law student may read a group of cases on negligence or mistake in contract or bigamy in order to learn the substantive law or to prepare for a moot or to write an essay about the development of the subject or to consider the underlying policy critically, or, as in this book, as a vehicle for 'legal method' – that is, to learn how to read and use precedents with different lenses for different purposes. Further, a student may be asked to read cases for some less orthodox purpose, such as comparing the styles of judicial opinions or digging out political biases, or setting a leading case in its historical context.[3] In these readings the nature of the material (the what) may remain constant, but the appropriate skills and methods (the how) will vary according to the purpose of the reading (the why).

In this book, we focus mainly on materials involving rules: conventional sources of law (notably cases, legislation and international legal materials), texts embodying non-legal rules, and examples of rules which are unwritten, unspoken or otherwise not in fixed verbal form. 'The Reading Law Cookbook'[4] extends this approach briefly to other materials of law study. What is common to the general approach is that the essence of the method is asking questions in an orderly manner as a matter of routine. Reading law involves putting texts to the question; interpreting rules also involves disciplined questioning.

There is, of course, a close link between the intellectual skills that law students are expected to master and the practical skills and techniques of barristers, solicitors, judges and other participants in legal processes and transactions. This is because, even in those aspects of legal education that are avowedly non-vocational, law is a participant-oriented discipline.[5] What this means in the present context is that studying law regularly, indeed inevitably, involves adopting the standpoints of notional participants in different legal contexts and operations. This goes far beyond simulated role-plays, such as

[2] William Twining, *Law in Context: Enlarging a Discipline* (1997), ch. 9 (hereafter *LIC*).
[3] See Appendix IV ('The Reading Law Cookbook'). [4] Ibid. [5] See *LIC*, pp. 126–8.

moots, mock trials and interviewing or negotiation exercises. Rather, almost all legal discourse assumes one or more participant perspectives: law students regularly talk *as if* they are legislators, policy makers, appellate judges, barristers, solicitors, defendants, and so on. This is so imbricated in our legal culture that much of the time it is done unconsciously. One result is that it is easy to switch standpoints without realising it. In legal education perhaps the commonest form of stupidity is forgetting who one is pretending to be. This is one reason why, throughout this book, we emphasise the importance of consciously clarifying one's standpoint as a preliminary to reading, interpreting and analysing texts and to constructing arguments.[6]

A simplified protocol for clarifying standpoint involves asking three questions: who am I? At what stage in what process am I? What am I trying to do? There is a fundamental difference between the standpoints of law students and actual participants in practical legal activities, for the primary purpose of a law student is to *learn*. Thus a beginning law student on reading Chapter 1 of this book might clarify her standpoint as follows: who am I? A law student.[7] At what stage of what process am I? At an early stage of my general legal education. What am I trying to do? Learn. Learn what? How to read and use standard materials of law study for a variety of purposes. What purposes? Reading and using these materials from the standpoint of a law student *pretending to be* one or other of a range of standard participants in legal processes: social problem solver, rule-maker; official as implementer, good citizen, bad man, counsellor, advocate, judge, outside observer of various kinds.

The link is the pretence, but the purpose is to learn. And the learning objectives with which we are concerned relate to understanding as much as skill. For example, in Chapter 9 we suggest that it is easier to understand the problems surrounding the *ratio decidendi* of a case if one adopts the standpoint of an advocate rather than that of a judge.[8] The student is advised to adopt this standpoint not in order to learn 'advocacy skills', but because from this point of view it is easier to differentiate puzzlements about role from puzzlements about precedent.

Changes in this edition

The first edition of this book was published in 1976 and the text was substantially revised and extended in 1982, 1991 and 1999. The central ideas have remained stable, but in each edition we have taken account of changes in both the legal and intellectual environment and developments in the literature and we have introduced exercises and examples that were of contemporary interest.

[6] See below, Chapter 1, section 5 and *passim*.
[7] One of either gender. In the text we variously refer to readers, users and interpreters of rules as he or she, unless the context specifically requires that it should be one or the other.
[8] Chapter 9, section 6.

For example, earlier editions had to address critical legal theory, Ronald Dworkin's *Law's Empire* (1986), the law and literature movement, postmodernism and the 'New Evidence Scholarship',[9] as well as a greater emphasis on intellectual skills within legal education and the implications of new technology. The fourth edition gave a more prominent place to Community law and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and introduced the Human Rights Act 1998 and themes about globalisation and legal pluralism. In this edition, we have taken account of the need for a cosmopolitan perspective as the processes of globalisation and regionalisation change the significance of national boundaries and increase the importance both of supranational, transnational and non-state law, and of normative pluralism – that is, the phenomenon of multiple normative orders, both legal and non-legal, coexisting and overlapping in shared historical spaces. Today no law student, or citizen concerned with law, can confine their attention to the domestic law of a single jurisdiction. Knowledge too is being globalised: as the law student can now reach electronically beyond the physical confines of the paper law library, there is a greater need for disciplined intellectual procedures for reading and interpreting the mass of different kinds of material that is available. This edition gives increased attention to these topics and provides links to recent debates and developments about interpretation and reasoning.

During the past decade the theoretical literature has continued to grow, but we have decided that on the whole this does not require substantial changes to the theoretical foundations of an introductory work.[10] We have accordingly resisted the temptation to complicate the text by extensive reference to quite specialised debates, some of which we have discussed in other contexts.[11] Rather, we have chosen to develop a position which might be called 'moderate pluralism' in the tradition of Llewellyn, MacCormick and Raz, whose ideas are discussed at appropriate places. This steers a path between strong scepticism (e.g. 'radical indeterminacy') and strong idealism (e.g. universalist ethics, one

[9] T. Anderson, D. Schum, and W. Twining, *Analysis of Evidence* (2nd edn, 2005) (hereafter *Analysis*) can be viewed as a sister work, dealing with the construction, reconstruction and criticism of arguments about questions of fact, using a similar approach. Indeed, the subtitle of the first edition was *How to Do Things with Facts*. In our view, fact analysis and argumentation are as important a part of 'legal method' as interpretation and argumentation about questions of law (see William Twining, *Rethinking Evidence* (2005) (hereafter *RE*)), chs. 2 and 14).

[10] We have, however, taken account of important relevant books, esp. Larry Alexander and Emily Sherwin, *Demystifying Legal Reasoning* (2008), Neil Duxbury, *The Nature and Authority of Precedent* (2008), Denis Galligan, *Law in Modern Society* (2007), Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation* (2007), Joseph Raz, *Between Authority and Interpretation* (2010), Lloyd Weinreb, *Legal Reason* (2005), F. Schauer (ed.), *Karl Llewellyn's The Theory of Rules* (2009) and the late Neil MacCormick's important quartet *Law, State and Practical Reason*, as well as new editions of standard textbooks and reference works.

[11] See in particular: *RE*; *Blackstone's Tower: the English Law School* (1994) (hereafter *BT*); *LIC*; William Twining, *The Great Juristic Bazaar* (2002) (hereafter *GJB*); *GJP*; David Miers, *Regulating Commercial Gambling* (2004) (hereafter *RCG*), 'The Style of Legislation: Narrative Norms and Constraining Norms', in J. Bridge *et al.* (eds.), *United Kingdom Law in the Mid-1990s* (1994) and *State Compensation for Criminal Injuries* (1998).

right answer). Instead of surveying a wide range of other perspectives, as is done in introductory books on jurisprudence, we provide links to the literature via footnotes and Appendix X and we have included a brief section (B1) in Appendix VI on other perspectives on interpretation and reasoning. In preparing this edition we have kept in mind the primary objective of providing an introduction to some fundamentals of rule-handling for a variety of audiences. In order to make this a flexible tool, we have made some structural and substantive changes to Chapter 1 and we have put some longer and new materials and exercises on the linked website.[12] A new Part IV contains a selected list of questions and additional exercises to be used immediately after reading Chapters 2–11 to test understanding and apply the lessons to be drawn from the text. All the Appendices in the fourth edition are now available, in revised form, on the website. We have taken the opportunity to introduce two new case studies of the events surrounding MPs' expenses scandal in 2009 and the enactment and interpretation of the Hunting Act 2004 (Appendices VIII and IX respectively).

To further these objectives, we have updated the illustrative material where it seems appropriate, but in some instances we have kept older examples where we consider them to be particularly good illustrations of general points, even if the context or the details of the law have changed. For example, much has happened in the field of domestic violence since the Domestic Violence and Matrimonial Proceedings Act 1976 and its interpretation by the courts in 1976 to 1980. However, the case study still brings together a wide range of themes and points that are an integral part of the book and we have retained it in Appendix VII. Similarly, we have kept the old bigamy case of *R* v. *Allen* in Chapter 1 because it is a well-tried example that illustrates several basic points of legal method.[13]

Only minor changes have been made to Chapters 2–5, which comprise Part II of the book. In the fourth edition of this book we emphasised the distinction between routine reading of materials of law study and problems of diagnosing conditions of doubt and constructing arguments about competing interpretations in disputed cases. In this edition we have reinforced this by strengthening Chapter 6, which in many ways we regard as the fulcrum of the book. It makes explicit why we consider that most orthodox accounts radically oversimplify the sources of problems of interpretation, and why we think that standpoint is so important in determining whether or not there is a doubt about interpretation. The main message in this chapter is that the diagnostic model of conditions of doubt in interpretation can be routinely *used* as an analytical tool. Both Chapter 6 (on conditions of doubt) and Chapters 7, 8 and 9 (which

[12] Appendix I (available at: www.cambridge.org/twiningandmiers).

[13] Appendix I, section E includes more material on bigamy. Only the most obtuse students can think that the object is to study the law of bigamy, though some do get distracted by the inherent interest of the subject. The increased visibility of religious minorities in the UK, and in Europe more generally, has resulted in issues concerning marriage and family relations rising to the surface. We have included some material on this in Appendix I, but the purpose is to illustrate general themes about pluralism and rules, rather than to provide an introduction to family law.

concern respectively reading, using and interpreting legislation and cases) emphasise the importance of establishing clear reading routines as a sound basis for both the inexperienced and the experienced reader of legal material. From this starting point, problematic readings can be clarified and arguable interpretive strategies formulated.

Chapters 7 and 8 have been rewritten to give an up-to-date account of major changes in the legislative process and the practices of drafting and judicial interpretation of legislation. Legislation still tends be a relatively neglected topic in English legal education and it is hoped that these two chapters will provide a substantial starting point and way into the literature. Chapter 7 has been substantially revised against the background of the profound changes that have been made to the United Kingdom's unwritten constitution over the past decade. These include devolution, the enactment of the Constitutional Reform Act 2005 and the introduction of new parliamentary procedures to improve the scrutiny of legislation. More 'user-friendly' drafting techniques and the widespread use of information technology have transformed the interpreter's tasks of accessing and achieving an understanding of new and amending legislation.

A new Chapter 10 entitled 'The European dimension' links our approach to European Union law, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Human Rights Act 1998, without purporting to be substantial introductions to these important aspects of the modern law of the United Kingdom. The implementation of the Human Rights Act 1998 (which had been enacted but was not fully in force when the fourth edition was published) has transformed the legislative, judicial and political landscape of the United Kingdom. Parliament, the judiciary and the executive are now required to observe the obligations imposed by the ECHR. This has, for example, required the courts to adapt their traditional interpretive practices, which have themselves demonstrated over the past decade a clear reliance on an Act's purpose as both an explanation of and a justification for interpretation in both routine and problematic cases.

There has been less activity concerning the matters discussed in Chapter 9, though there have been some important cases on the doctrine and practice of precedent. As yet untested, of particular note is the commencement of the work of the Supreme Court of the United Kingdom on 1 October 2009. The discussion of lawyers' reasonings that is the central focus of Chapter 11 leads into a final section that both restates the main themes of the book and addresses some of the central theoretical issues concerning the relationship between reasoning and interpretation.

Online resources

As noted, we have introduced a new Part IV (Questions and Exercises on Chapters 2–11) and have greatly expanded the Appendices, now available on the website (www.cambridge.org/twiningandmiers). Appendices I, II, V and VI

contain additional supplementary material and exercises linked to particular chapters. These, with Appendices VII, VIII and IX are designed to give teachers a flexible choice of material in dealing with particular topics. Appendix III contains a note on visual presentation of rules and related materials. Appendix IV contains the 'Reading Law Cookbook', an introduction to a simple method for reading any legal material for differing educational purposes. It comprises an extension of the approach adopted in this book, particularly as advocated in Chapter 6. It might have been called 'How to do Things with Texts'. We hope that it will reinforce some of the central messages of the book and encourage teachers and students in pre-law and first-year courses to take the direct study of legal method seriously. Suggestions for further reading are contained in Appendix X.

How to use the book

This book combines a general introduction to fundamental issues about interpretation with specific guidance on intellectual procedures and techniques of analysis supported by exercises designed to develop basic skills. It rejects sharp divisions between 'theory' and 'practice'. It has been designed to cater for the needs of several classes of reader, including various kinds of 'pre-law' students, those studying legal method in the first year of a law degree, those about to embark on the study of jurisprudence in their second or third year, and anyone concerned with practical problems of rule-handling who is interested in the underlying theory or the basics of the art of interpreting rules. Accordingly, it may be useful to provide some guidance on different ways of approaching it.

A general introduction to the study of law

The non-lawyer and the beginning law student may find it useful to begin by doing the Newspaper Exercise in Chapter 1, section 2 and then to read the book as a general introduction to law and legal ways of thought. For this purpose it is sufficient to skim Chapter 1, pausing long enough to become familiar with the range of illustrative material and, in particular, *The Case of the Legalistic Child* (section 4.4(d)), the materials on standpoint and role (section 5), and the cases of *R* v. *Allen* (section 10) and *Buckoke* v. *Greater London Council* (section 11) as these are used as examples throughout the text. From time to time you may wish to refer back to the appropriate point in Chapter 1 and the Appendices (indicated by a link), to refresh your memory about details or to clarify an allusion, but it is not necessary to study all the materials or to try to answer all the questions in this chapter in order to understand the thrust of the analysis in the text. Depending on your background and your interests, some of Chapters 3, 7, 8 and 9 may also be read lightly, if you find them too complicated or too detailed to start with.

An introduction to jurisprudence

Now that interpretation occupies such a central place in contemporary debates, a primer of interpretation is a particularly good vehicle for getting to grips for the first time with the basic ideas of some mainstream legal theorists. Because many of the issues and some of the examples will already be familiar to second-year or third-year students, this should ease the transition from the study of particular fields of law to general theory. It should reinforce the message that jurisprudence is not and should not be seen as an abstract subject only remotely connected with the study of substantive law. We subscribe to the view that interpretation and reasoning are central to all legal studies and legal practice.

Conversion and professional courses

Graduates in other disciplines who are about to embark on a 'conversion' course, leading to the Graduate Diploma in Law or equivalent qualification, may wish to treat this as a general introduction to the subject which may point to some links with their earlier studies in, for example, philosophy, political or social science, literature or theology. They may also wish to use the book to lay a foundation for legal method, either as a preliminary to or at the start of their legal studies, in which case they should approach it in the same way as other beginning law students and treat it as a practical introduction to the art of interpretation. It can also be used by students pursuing vocational courses leading to professional qualifications in law.

An introduction to the common law method

Lawyers and law students with a background in the civil law or some other legal tradition may wish to read the text as an introduction to the supposedly peculiar ways of thought of common lawyers.[14] One of the main themes of the book emphasises the continuities between problems of interpretation of legal and non-legal rules. There are, we believe, similar continuities between legal traditions. This is not to deny that there are distinctive characteristics of common law modes of thinking and reasoning. Rather, we suggest that such matters as the doctrine of precedent, English approaches to statutory interpretation and the common law emphasis on reasoning by example are secondary rather than fundamental features of common law method. Moreover, disagreements about the importance of precedent, 'literal' and 'free' interpretation and reasoning by example are not unique to Anglo-American law. For civilians, Chapters 6–11 may be of special interest, but we suggest that earlier chapters should be skimmed first in order to clarify the general perspective underlying the

[14] For those who can read French, Pierre Legrand and Geoffrey Samuel's, *Introduction au common law* (Editions La Découverte, 2008) is particularly recommended.

approach adopted in those later chapters and to get a taste of one product of Anglo-American legal culture.

A practical introduction to legal method

Our main purpose has been to aid the development of certain intellectual skills and habits of mind. Viewed thus this is a how-to-do-it book concerned with an important part of what is sometimes referred to as 'legal method', which is most commonly studied at the start of a law degree. While the text provides a general theoretical framework, reading it is no substitute for developing skills by doing exercises, answering questions and thinking critically about problems. For this purpose the recommended order is to do some of the exercises in Chapter 1 before moving on; to do some of the exercises in Part IV immediately after reading the relevant chapter and finally to reread the text as a whole. Then follow up at least some of the suggestions for further reading in Appendix X. As noted, there are additional materials and exercises in Appendix I. The book has been used (with additional introductory material) on some access courses which focus on legal method. We have kept their needs in mind, but in our experience the book works best if it is used in the latter part of an access course after a gradual build-up which emphasises basic general skills of study and analysis that are taken for granted here.[15]

For those who are looking for practical guidance for dealing with problems of rule-handling in their work, Chapters 2–6 and Appendix I are best treated as the core of the book. What is presented there is a fairly straightforward problem-solving approach to diagnosing and arguing about practical problems of interpreting rules of any kind. For this purpose the examples in Chapter 1, sections 4–9, the diagnostic model in Chapter 6 and the short introduction to algorithms (Appendix III) may be sufficient to provide the necessary basic tools, without having to wander too far into the technicalities of the law and the mysteries of legal theory.

The subject is a complex one, involving many different levels of understanding: what we have tried to do is to provide a flexible starting point for developing some basic skills and for exploring a rich, but scattered, literature in a number of disciplines. The exercises range from some quite elementary questions (some of which even have answers!) to problems which even advanced law students, using a law library, should find demanding.

We hope that law students will first be exposed to the book before they are swamped with masses of detailed information. We have taken our median audience to be beginning law students, but we have tried to make it a flexible

[15] E.g. Sharon Hanson's, *Legal Method, Skills and Reasoning* (3rd edn, 2010) developed out of access courses organised by the Extra-Mural Department at Birkbeck College, London, and uses a quite similar approach to the present book and can be usefully treated as complementing it, especially through its imaginative use of charts and other visual presentations.

tool which is accessible to those at the pre-law stage as well as to advanced students and experienced practitioners. We have used it in undergraduate, postgraduate, access and extra-mural courses in England, Wales, the United States and elsewhere. For obvious reasons different aspects have been emphasised depending on context. But nothing in our experiences suggests that the basic lessons are beyond the reach of the ordinary beginning law student or of interested readers of comparable intelligence, provided that they are willing to struggle with the detailed analysis. Anyone who is not prepared to do this cannot expect to become a competent interpreter.

W.L.T.
D.R.M.
Iffley and Cardiff, September 2009

Online appendices

At www.cambridge.org/twiningandmiers, you will find

- Supplementary materials and exercises
- Case studies, including:
  - Domestic Violence
  - MPs expenses 2009
  - The Hunting Act 2004.
- Different ways of understanding the law and legal method:
  - Visual Presentation of Rules
  - Reading Law Cookbook.
- A guide to further reading.

The table below is a summary of the resources available and the chapters they will help you with:

This resource	… in this appendix	… will help you with this / these chapter(s)
Supplementary Materials and Exercises	I	Chapter 1
	V	Chapters 7, 8, 10
	VI	Chapters 9, 11
Case Studies	II	Chapter 1, Section 3
	VII	Chapters 2, 6, 8, 11
	VIII	Chapters 2, 3, 4, 5, 7, 8
	IX	Chapters 2, 7, 8 and 11
Legal Method	III	Chapter 1, Section 9; Chapter 7, Section 2.6(c); Chapter 8, Section 3
	IV	Chapter 6
Further Reading	X	All

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H. Lawrence Ross, *Settled out of Court: The Social Process of Insurance Claims Adjustment* (2nd edn, 1980), pp. 6–8

Her Majesty's Court Service, *Hierarchy of Courts' Structure in England and Wales*; www.hmcourts-service.gov.uk

HMSO, *The Increasing Use of Logical Trees in the Civil Service*, by W. Ryan *et al.* (1970), CAS Occasional Paper No. 13, pp. 4–5

Oxford University Press, *Environment and Enforcement*, by Keith Hawkins (1987), pp. 1, 126–8

Oxford University Press, *Moral Thinking* (1981), by R. M. Hare, p. 155

Penguin Books Ltd, *Asylums* (1968), by E. Goffman, pp. 51–3

Routledge, *Social Control in an African Society* (1963), by P. Gulliver, pp. 240–2, 252–3

F. Simonstein, 'Ethical Considerations for Tissue Typing in Order to Detect Human Leukocyte Antigen (HLA)', *Eubois Journal of Asian and International Bioethics* 13 (2003), 219–21

W. L. Twining, 'Torture and Philosophy', *Proceedings of the Aristotelian Society*, 52 (1978), pp. 151–2, reprinted by courtesy of the Editor of the *Aristotelian Society*, © 1978 the Aristotelian Society

West Publishing Company, *II Jurisprudence*, by R. Pound (1959), pp. 129–32

Abbreviations

Some of the topics and thinkers introduced in this book are discussed at greater length in earlier works by the authors. These works are referred to by the following abbreviations:

Analysis	Terence Anderson, David Schum and William Twining, *Analysis of Evidence* (2005)
GJB	William Twining, *The Great Juristic Bazaar: Jurists' Texts and Lawyers' Stories* (2002)
GJP	William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (2009)
GLT	William Twining, *Globalisation and Legal Theory* (2000 and 2001)
KLRM	William Twining, *Karl Llewellyn and the Realist Movement* (1973; repr. 1985)
LIC	William Twining, *Law in Context: Enlarging a Discipline* (1997)
LTCL	William Twining (ed.), *Legal Theory and Common Law* (1986)
RE	William Twining, *Rethinking Evidence* (2nd edn, 2005)
RCG	David Miers, *Regulating Commercial Gambling* (2004)

Table of statutes and legislative instruments

Page numbers in **bold** type indicate that the statutory material is set out in full or in part.

International

European

Conventions and Treaties

Decisions

Directives

United Kingdom