

Chapter 1

LANGUAGE AND LAW

English Legal Contexts, Texts and Terminology

*English in legal contexts in international and national perspectives –
Vocabulary of the law – Introduction to English legal texts – English legal
texts in different legal contexts – Features of English legal
texts and language – Reflections on legal language*

*To succeed in the profession of law, you must seek to cultivate command of
language. Words are the lawyer's tools of trade.*

Lord Denning (1979), English judge and Master of the Rolls, 1899–1999

BEFORE WE BEGIN

Progressive, controversial, loved, criticised: Lord Denning was one of England's most influential judges; as Master of the Rolls, he presided over the Civil Division of the Court of Appeal in London during the twentieth century, and contributed to the modernisation and development of the civil law in the United Kingdom, reflecting the role of judges of the superior courts in *a common law legal system*. In a common law system, *judicial precedent*—the law contained in decided cases—is a *source* of law that must be followed, and judges have power to make law by pronouncing new rules when deciding cases, if Parliament has not passed law on the matter in dispute. This power is recognised as part of the *judicial function* in a common law country.¹

In his book *The Discipline of Law*,² quoted above, Lord Denning is addressing young people as they prepare for a career in the law. He highlights the importance of gaining great skill in the use of language. Words, not other implements, are the lawyer's *tools of trade*. Is this emphasis on language and words applicable to your legal system, too?

¹ See, e.g., EA Farnsworth (2010), *An Introduction to the Legal System of the United States*, 4th edn, S Sheppard (ed), New York: Oxford University Press, pp 58–59, examined in 9.3.4 below, Task 6.

² A Denning (1979), *The Discipline of Law*, London: Butterworths.

4 *English in Legal Contexts in Common Law and International Perspectives*

When you first began to study law, even in your own language, what difficulties did you find in understanding university lectures and in using legal materials? Why was it hard to answer questions and express opinions?

Basic legal knowledge. The first challenge for a law student in any country of the world is to build a foundation of legal knowledge: the basics of the *legal system*; the role and powers of national and international *institutions*; the *sources* recognised by the courts as law (the *sources of law*); the *procedures* involved in resolving disputes and so on.

Technical language. As you gradually build this foundation of legal knowledge, you also familiarise yourself with the technical language of the law, by learning to understand and use *legal terminology*—a fundamental component of legal language and, indeed, of the law itself.

Conceptual thinking. It is essential to develop an ability to think in abstract concepts. *Legal concepts* are expressed in special ways; a concise definition may contain a complex set of rules, expressed in specialised terms. You need to recognise and adopt a lawyer's mode of thinking, basing your opinions on the knowledge and recognition of rules contained in valid sources, which you apply in a logical process to concrete cases, as you develop and present arguments using methods of *reasoning* accepted in your legal system.

As you study legal English, or indeed if you are studying law directly in the English language, you will confront similar difficulties. This book therefore aims to provide a foundation of legal knowledge, technical language and conceptual thinking typical of the common law world. We focus our attention on institutions, terminology and sources relevant in the English-speaking world and in international legal environments where English is used as a legal language. As you become familiar, in the chapters of this book, with aspects of English common law, or of international human rights law or of European Union law, by analysing and practising the specialised language of each legal order in context, you will gain competence and accuracy as your knowledge and awareness grow.

We sincerely hope that whatever your legal background, whether you are a first-year student or a university professor, you will find the process of studying *Common Law Legal English and Grammar* stimulating and rewarding.

Chapter 7

LANGUAGE AND LAW

Common Law Perspectives of Crime and Punishment

Introduction to criminal law and terminology – Criminal prosecution – Crown Prosecution Service – Nelson Mandela’s long walk to freedom – Criminal trial and conviction – Adversarial trial – Actus reus and mens rea – Homicide: murder and manslaughter – Defences – Crime and punishment

Someone must have been spreading lies about Josef K for without having done anything wrong he was arrested one morning. ...

‘No,’ said the man by the window, throwing the book on to a small table and rising to his feet. ‘You are not permitted to leave. You’ve been arrested.’

‘So it seems,’ K said. ‘But why?’ he asked.

‘We are not authorized to tell you. Go to your room and wait. Proceedings have been started and you will be told everything in due course. I’m even exceeding my instructions by talking to you so freely.’ ...

Who on earth were these men? What were they talking about? Of which authorities were they the representatives? After all, K lived in a legally constituted state, there was peace in the land, the rule of law was fully established. Who dared seize him in his own flat? ...

‘How on earth can I be under arrest? And especially like this?’

‘Now you’re at it again,’ said the warder, dipping his slice of bread and butter into the honey-pot. ‘We don’t answer questions like that.’

‘You’ll have to answer them,’ K told him. ‘Here are my identity papers. Now show me yours, and first of all show me the warrant for my arrest.’

‘Good God!’ said the warder. ‘Why can’t you accept what’s happened instead of trying to provoke us pointlessly? Especially as we are now probably the closest friends you’ve got in the world!’

From *The Trial* by Franz Kafka (1883–1924)

SECTION ONE

7.2 CRIMINAL PROSECUTION

Prosecution or *prosecuting* means *taking criminal action* (also called *criminal proceedings*) against a person accused of committing a crime: the *defendant* or the *accused*.

In a criminal case, the person who conducts the prosecution is the *prosecutor* or *public prosecutor*; he or she is often referred to directly as *the prosecution*. The defendant, as represented by his or her *defence lawyer*, may be referred to in the context of a criminal proceeding as *the defence* (US *defense*).

The lawyers *acting for* the prosecution and the defence are generally referred to in the context of the trial as *counsel for the prosecution* or *counsel for the defence*, or simply *counsel*.

Prosecutions in the English legal system are generally in the name of *the Crown*, as the monarch personifies and represents the State.⁵

Cases are *cited* (referred to) by name, or name + full *citation* in the law reports, as used in this book; case names are written in *italics*.

We write: *R v Straw* (*R* = *Regina* or *Rex*, Latin for Queen or King, *v* = *versus*); we say: ‘the Crown against Straw’. In academic literature, just ‘*Straw*’ may be used. Cf in the US: *People v Straw*, reflecting the role of the American people in the US Constitution.⁶ At state level: *State [e.g. California] v McDonough*.

Cf in civil cases, we write *Smith v Jones*; we say ‘Smith and Jones’ or ‘Smith against Jones’.

7.2.1 The Crown Prosecution Service

In England and Wales, the *Crown Prosecution Service* (CPS) is the independent, public body that is responsible for prosecuting criminal cases investigated by the police. The CPS was introduced by statute in 1985⁷ to separate the roles of *investigation of crime*—the task of the police—and its prosecution in criminal action.

The CPS *reviews* cases submitted by the police, and decides the *charges* (the specific criminal accusations), except in minor cases, where charges will be decided by the police. The CPS also prepares cases for court and *pursues* court proceedings (it *prosecutes*).

The *Code for Crown Prosecutors*, examined in Task 2 below, is ‘a key document for the CPS’, which provides guidance to prosecutors on the *general principles* they should apply when making decisions about prosecutions.⁸ It is issued by the

⁵ For discussion on the constitutional monarchy, see 3.2 above; occasionally, private prosecutions may be brought, as in the prosecution of the hunters examined in 3.4.2.

⁶ Introduced in 1.3, Text 7 (text and comment).

⁷ Prosecution of Offences Act 1985.

⁸ From the official CPS website: <<http://www.cps.gov.uk>>.

Director of Public Prosecutions (DPP), head of the CPS, while the Attorney-General (AG), the principal law officer of the Crown, is responsible to Parliament for the Service.

In deciding whether to prosecute, Crown Prosecutors must evaluate two critical questions:

- Is there enough evidence against the suspect? *and*
- Is it in the public interest for the CPS to bring the case to court?

Task 2 Consulting a public document: the Code for Crown Prosecutors

Examine extracts from the Code below to learn about the work of the CPS. Focus on both meaning and language as you complete this task:

1. Identify and distinguish between the different people mentioned in sections 1.4 and 2.2 of the Code.
2. Select three important duties that prosecutors have under section 2.2 and 2.4 of the Code.
3. Consider the obligation on prosecutors in 2.6. To refresh your memory, you may refer to our work on the Human Rights Act 1998 in 5.4.4.
4. What is ‘the evidential stage’ and what must prosecutors do?
5. How are prosecutors to approach ‘*the public interest stage*’?

The Code for Crown Prosecutors⁹

Introduction

1.4 In this Code, the term ‘suspect’ is used to describe a person who is not yet the subject of formal criminal proceedings; the term ‘defendant’ is used to describe a person who has been charged or summonsed; and the term ‘offender’ is used to describe a person who has admitted his or her guilt to a police officer or other investigator or prosecutor, or who has been found guilty in a court of law.

General Principles

2.2 It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Casework decisions taken fairly, impartially and with integrity help to secure justice for victims, witnesses, defendants and the public. Prosecutors must ensure that the law is properly applied; that relevant evidence is put before the court; and that obligations of disclosure are complied with.

⁹ Extracts from the Code for Crown Prosecutors, 7th edn, January 2013, available electronically on the website <<http://www.cps.gov.uk>>.

- 2.4 Prosecutors must be fair, independent and objective. They must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness influence their decisions. Neither must prosecutors be affected by improper or undue pressure from any source. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 2.6 Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. ...

...

The Evidential Stage

- 4.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

...

- 4.6 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:
Can the evidence be used in court?

...

Is the evidence reliable?

...

Is the evidence credible?

...

The Public Interest Stage

- 4.7 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.8 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public

interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.

- 4.9 When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.12 a) to g) so as to determine the relevant public interest factors tending for and against prosecution. ...

...

- 4.12 Prosecutors should consider each of the following questions:

a) How serious is the offence committed? The more serious the offence, the more likely it is that a prosecution is required.

...

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Key and commentary to Task 2 Consulting a public document: the Code for Crown Prosecutors

1. The Code mentions many different figures involved in various ways in a criminal case. In section 1.4: the *suspect*, who may become the *defendant*, and if found guilty becomes the *offender*; a *police officer* (or other *investigator*), a *prosecutor*. A person who has been ‘*summonsed*’ has received a *summons*: that is, a court order to appear at a magistrates’ court at a particular time and place. In addition, section 2.2 mentions *victims* of crime, *witnesses* and *the public*.
2. Many duties of prosecutors are set out in sections 2.2 and 2.4. Three very important ones are: the duty ‘*to bring offenders to justice*’ (prosecuting ‘the right person’ for ‘the right offence’); the duty ‘*to ensure that the law is properly applied*’; the duty always to ‘*act in the interests of justice*’—the aim of the prosecutor cannot be merely to obtain a conviction. Your selection may be different, e.g. prosecutors must operate without discrimination.
3. As a public authority, the CPS is under a duty to *act compatibly with the Convention rights of a suspect/defendant*, as provided by section 6 of the Human Rights Act 1998 (examined in 5.4.4 above). If prosecutors fail to respect such rights (for example, the right to liberty and security in Article 5 ECHR; the right to a fair trial in Article 6 ECHR), this will be *unlawful* under section 6 of the 1998 Act and a victim of such a violation will have the right to a *judicial remedy*, as provided by sections 7 and 8 of the Act.

4. The *evidential stage* is the first of two stages in the decision to prosecute. Even if the case is very serious or sensitive, prosecutors should prosecute only if there is ‘*sufficient evidence to provide a realistic prospect of conviction*’, a test they must apply to each suspect (if more than one) and in relation to each charge (where a person is suspected of more than one offence) (section 4.4). The Code gives further explanation of what this means in section 4.5 (text not reproduced above): there is a *realistic prospect of conviction* where ‘*an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone ... is more likely than not to convict the defendant of the charge alleged*’. The questions in section 4.6 are to help prosecutors reach this decision by assessing the *evidence*, which must be *admissible* in court, ‘*reliable*’ and ‘*credible*’.
5. Prosecutors must consider the *public interest stage* only if the evidential test has been satisfied (section 4.7). Even then, prosecution is not automatic: the prosecutor must *balance*, or weigh, the *public interest factors* tending in favour of prosecution with those tending against prosecution (section 4.8). A list of questions is provided (sections 4.9, 4.12) to enable prosecutors to identify the relevant public interest factors they need to take into consideration, e.g. section 4.12, para a), the seriousness of the offence. These two stages together (evidential and public interest) are known as the *Full Code Test*.

Comment

Before the introduction of the CPS, the police were responsible for both the investigation and prosecution of crime in England and Wales, while in the modern system the CPS operates independently of the police, although they work in close cooperation. Prosecutors cannot direct the police or other investigators.¹⁰ On the other hand, it is the CPS that has final responsibility for the decision whether or not to prosecute in a case.¹¹ *The judiciary* are not involved in the investigation of crime or in the decision to prosecute; once a case goes to trial, the judge enters the scene as an impartial arbiter in the adversarial system, while the case is prepared and presented by the respective parties, generally represented by their lawyers, who present argument and produce evidence with the aim of convincing the court in the oral proceedings. The adversarial system, operating in both criminal and civil proceedings, is examined in 7.3.1 below.

Compare and Discuss

- *Who is responsible for investigating and prosecuting crime in your country?*
- *What are the roles of the police, the judiciary and other State bodies involved in the criminal justice system?*

¹⁰ Code for Crown Prosecutors, s 3.2.

¹¹ Code for Crown Prosecutors, s 3.6.

- Are prosecutors under an obligation to prosecute when they have notice of a crime? Or do they exercise discretion according to rules, like the CPS?
- Compare and discuss the organisation of criminal prosecution in England and Wales, and in your country, evaluating the merits of each system.

7.2.2 Nelson Mandela's Long Walk to Freedom

A statesman of world standing, former South African President Nelson Mandela has been described as 'one of the most courageous and best-loved men of all time'.¹² On 11 February 1990, after spending 27 years in prison for his political opinions and leadership in the fight against apartheid, Mandela was released at the age of 71 by President De Klerk. The two men were jointly awarded the Nobel Peace Prize in 1993, 'for their work for the peaceful termination of the apartheid regime, and for laying the foundations for a new democratic South Africa'.¹³ After democratic elections, a new Constitution was established and Mandela became the first President.

Nelson Mandela began writing his autobiography *Long Walk to Freedom*¹⁴ clandestinely in jail in 1974, resuming work on it after his release. Near the end of this long, inspiring story he describes what it felt like to vote for the very first time and to live in a free country:

I voted on 27 April [1994] ... I chose to vote in Natal to show the people in that divided province that there was no danger in going to the polling stations. ... The images of South Africans going to the polls that day are burned in my memory. Great lines of patient people snaking through the dirt roads and streets of towns and cities; old women who had waited half a century to cast their first votes saying that they felt like human beings for the first time in their lives; white men and women saying they were proud to live in a free country at last.¹⁵

In Task 3 below, we read extracts relating to events of more than 30 years earlier: the Treason Trial. In a long, complex criminal proceeding, Nelson Mandela and other African National Congress (ANC) leaders were prosecuted: *treason* is the most serious crime of betraying one's country by attempting through actions to *overthrow the government*. On 29 March 1961, the day of the court's verdict had arrived.

¹² By British Prime Minister Gordon Brown on the occasion of the unveiling of a statue of Mandela opposite the Houses of Parliament in London, September 2007.

¹³ 'The Nobel Peace Prize 1993—Presentation Speech', Nobelprize.org. Nobel Media AB 2013. Web. 23 Feb 2014, <http://www.nobelprize.org/nobel_prizes/peace/laureates/1993/presentation-speech.html>

¹⁴ Published in 1994 by Little, Brown and Company, London. This extract: N Mandela (1994), *Long Walk to Freedom*, 1995 Abacus edn, London: Little, Brown and Company, pp 307–09.

¹⁵ *Ibid*, pp 742–43.

Chapter 10

LEGAL GRAMMAR

Word Formation

*Root words and roots – Affixes: prefixes and suffixes – Word groups –
Word maps – Collocation*

‘When I use a word,’ Humpty Dumpty said in rather a scornful tone, ‘it means just what I choose it to mean—neither more nor less.’

Lewis Carroll, English writer (1832–98)
From *Through the Looking-Glass*

Identifying the morphology of a given language—the form and structure of its words—enables us to distinguish how meanings are constructed from the simplest minimal lexical units of language to the more complex. This chapter will thus concentrate on the formation of words, challenging readers to draw on their linguistic knowledge of Latin or Greek through comprehension of the root of a word, or to just recall common meanings from root words encountered in Standard English. Understanding the roots of words is the starting point for constructing new meanings when affixes are attached at the beginning or at the end of a word. Usage can then be further transformed by a word’s syntactical relationship with other words in a sentence. The chapter progresses in this way, building on minimal meanings to more complex usage of the form of a legal word in legal contexts.

The last part of the chapter is dedicated to introducing strategies for the organisation of legal terminology, stressing that thumbing through a dictionary for single meanings is counterproductive. It is suggested that collecting clusters or chunks of words and placing them into semantic categories within a specific legal context could be a more efficient approach to learning, referencing and expanding on legal terminology.

10.1 ROOT WORDS AND ROOTS

A *root word* (often called the base word) has a meaning when standing alone. We say it is freestanding because it can be understood without adding other word

parts. New words and meanings may be created by adding lexical item(s) either at the beginning of the root word (*prefix*) or at the end (*suffix*), e.g.:

valid (root word) *invalid* (an adjective prefix)

judge (root word) *judgment* (a noun suffix)

A *root* can be distinguished from a root word in that it indicates the origin of the word (etymology), yet it does not typically stand alone. Familiarising yourself with Latin and Greek roots of words could prove useful when you are trying to understand the meaning of words, e.g.:

Latin: *iūs/iūre* – essentially means law, right, duty¹ – *justice, jurisprudence*²

Latin: *vōx/vōcis* – meaning voice; call – *vocalise, advocate*

Greek: *phobos/phobia* – meaning fear – *xenophobic, claustrophobic*

Greek: *onuma/onym* – meaning name – *synonym, antonym*

Sometimes there are two or more root words attached but they have a single identity or meaning. These are called compound words. Some are written as separate words (*global warming*), while others are hyphenated (*mother-in-law*) or a single word (*copyright*). Usage varies over time. For example, a word usually enters the language as two words (*micro credit*). As it becomes more familiar, a hyphen is placed between the two words (*micro-credit*), while when it becomes quite common, the hyphen is dropped (*microcredit*). Check the newest version in a recent dictionary for its present acceptable form (sometimes the English and American versions may vary). Although the individual meanings of the separate words may help you understand the meaning of the compound word, it is not always the case. Can you work out the meanings of the following compound words from their component parts?

cross-examination	manslaughter	head-hunter
milestone	self-defence	watchdog

Task 1 Root words and affixes

Recognising the root word and the meaning of the prefixes or suffixes can aid comprehension. Circle the root words below. Underline the compound words. What do the prefixes or suffixes mean?

irregularity	distributorship	liability	mistrial
manslaughter	mediation	paralegal	taskforce
unconstitutional	whistleblower	streetwalker	refugee

¹ See *Oxford Latin Dictionary* (1982 reprinted 2002), PGW Glare (ed), Oxford: Oxford University Press: 'that which is sanctioned or ordained, law'; 'what one is entitled to (esp by law); one's right, due, prerogative, etc'. See also *iūre* which means 'according to the law, with legal sanction', p 984.

² In Latin, the 'i' (as in *iūs/ iūre*) is often substituted with a 'j'; J Morwood (1998), *A Dictionary of Latin Words and Phrases*, Oxford: Oxford University Press, p 99.

10.5 COLLOCATION

A collocation is the habitual co-occurrence of words. By collecting groups of words that collocate, it is easier to enlarge your legal terminology instead of keeping lengthy single word lists. Notice that the core word remains the same:

—	consideration	<i>without consideration, remove consideration, no longer require consideration, valuable consideration</i>
—	binding	<i>binding precedent, binding force, binding case, to be binding on, to be bound by</i>
—	code	<i>criminal code, code of honour, United States Code, administrative code</i>
—	copyright	<i>copyright licence, copyright registration, copyright infringement</i>
—	trial	<i>trial by jury, trial lawyer, criminal trial, adversarial trial, fair trial, civil trial</i>
—	contract	<i>commercial contract, breach of contract, discharge of contract, party to a contract</i>
—	person	<i>natural person, juristic person, legal person, artificial person</i>
—	judgment	<i>previous judgment, final judgment, pronouncing judgment, Strasbourg judgment</i>

Task 5 Word formation practice in sentences (a) and in context (b)

In the sentences in (a) below, fill in the empty space with the appropriate form of the word. The base word is in brackets []. You will need to observe carefully *the position* of the words in the following sentences to determine which part of speech is needed (noun concept, noun person, adjective, verb or adverb).⁹ Does it describe a noun? Is it the subject of the sentence? Does it add more information about the verb? The first sentence has been done for you.

⁹ The difference between an adverb and an adjective: **Adverbs** provide more information about the verb phrase that they modify and can tell us *how* or *how often* (manner), *where* (place) or *when* (time) something was done, eg: The amendment was ratified *yesterday*. (time – When was it ratified?); The international convention was signed *at the Hague*. (Where was it signed?); The defendant frequently refused to answer the prosecutor's question. (manner – How often did he refuse to answer?); Sam called the police *immediately* after he was robbed. (time – When did Sam call the police?). **Adjectives** are words that describe or modify another person or thing in the sentence, eg: 'Save the Children' is an *international* organization; The *crucial* question in the case was whether acts of torture were committed.

(a) *Single sentences*

0. All the judges in the legal system are known collectively as the
judiciary. [judge]
1. The British monarch continues to perform an important
..... role today. [constitution]
2. The is the party accused of a crime or civil
wrong. [defend]
3. legislation is enacted by bodies using power
conferred by Parliament. [delegate]
4. crime is the duty of the police in the UK.
[investigate]
5. An who pleads guilty will generally receive
a lighter sentence. [offend]
6. The Supreme Court cannot laws that are
incompatible with Convention rights. [valid]
7. The accused was found not guilty and
discharged. [accord]
8. The Parliament has its seat in Edinburgh.
[Scotland]
9. Under section 4 of the Human Rights Act 1998 the superior courts may
make a declaration of [not compatible]
10. The CPS is responsible for criminal in
England and Wales. [prosecute]

(b) *Context*

Are you familiar with the controversial rulings in different jurisdictions concerning patent¹⁰ violations (both for design and utility) in the smart-phone industry? Here are two excerpts from judgments in the USA (*Apple Inc v Samsung*) and the UK (*Samsung v Apple Inc*). Fill in the numbered empty spaces with the appropriate form of the word. The base word is in brackets [].

¹⁰ A patent protects the intellectual property rights of the inventor of a product or process capable of industrial application.

¹¹ *Apple Inc v Samsung Electronics Co Ltd*, Selected Case Documents (C 11-1846 LHK), Docket No 2197 [2012], Order Denying Motion for Permanent Injunction, United States District Court, Northern District of California, San Jose Division, p 2 at para 10-22.

¹² Apple's motion for a permanent injunction against Samsung was denied. For further details consult the judgment.

1. The US judgment – *Apple Inc v Samsung Electronics Co Ltd Inc*¹¹

The Patent Act provides that in cases of patent
 1 [infringe] a court ‘may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems2
 [reason].’ 35 USC § 283. Though injunctions were once issued in patent cases as a matter of course, the Supreme Court ruled in 2006 that ‘broad classifications’ and ‘..... 3 [category] rule[s]’ were 4 [not appropriate] in analysing whether to grant a permanent injunction. *eBay v MercExchange, LLC*, 547 US 388, 393 (2006). Instead, a 5 [patent] seeking a permanent injunction must make a four-part showing:

- (1) That it has suffered an irreparable injury; (2) that remedies available at law, such as..... 6 [money] damages, are...
7 [not adequate] to compensate for that injury;
- (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be 8 [not served] by a permanent injunction.

Id. at 391. In considering Apple’s motion, the Court will consider each of these four factors in turn, and will then consider whether, on balance, the principles of equity support the 9 [issue] of a permanent injunction in this case.¹²

2. The UK judgment – *Samsung Electronics (UK) Limited v Apple Inc*¹³

189. This case illustrates the importance of
 10 [proper] taking into account the informed user’s knowledge and experience of the design corpus. When I first saw the Samsung products in this case I was struck by how similar they look to the Apple design when they are resting on a table. They look similar because they both have the same front screen. It stands out. However to the informed user (which at that stage I was not) these screens do not stand out to anything like the same extent. The front view of the Apple design takes its place amongst its kindred prior art. There is a clear family 11 [resemble] between the front of the Apple design and other members of that family

¹³ *Samsung Electronics (UK) Limited v Apple Inc* [2012] EWHC 1882 (Pat), Case No: HC 11 C 03050.

(Flatron, Bloomberg 1 and 2, Ozolins, Showbox, Wacom). They are not12 [identify] to each other but they form a family. There are differences all over these products but the biggest differences between these various family members are at the back and sides. The user who is particularly13 [observe] and is informed about the design corpus reacts to the Apple design by recognising the front view as one of a familiar type. From the front both the Apple design and the Samsung tablets look like members of the same, pre-existing family. As a result, the significance of that14 [similar] overall is much reduced and the informed user's attention to the differences at the back and sides will be enhanced15 [consider].

190. The informed user's overall impression of each of the Samsung Galaxy Tablets is the following. From the front they belong to the family which includes the Apple design; but the Samsung products are very thin, almost 16 [not substantial] members of that family with17 [not usual] details on the back. They do not have the same understated and extreme18 [simple] which is possessed by the Apple design. They are not as cool. The overall impression produced is different.

191. The Samsung tablets do not infringe Apple's registered design No. 000181607-0001.¹⁴

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Source: BAILII

¹⁴ Apple appealed against this judgment, yet the previous ruling was maintained, ie Apple was required to publish a disclaimer on the Apple website and in the media stating that Samsung did not copy the iPad. Consult judgment for further details.