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Why are Newspaper Law Reports so Hard to Understand?

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Abstract Newspaper law reports are an important resource for teachers of legal English because they provide material for the simultaneous practice of legal and linguistic skills. However, the comprehension of law report discourse is shown, in this paper, to be particularly difficult for the non-expert reader. Comparative discourse analysis of the way a particular case is reported in the All England Law Reports and the law report section of The Times and The Independent shows that the discourse structure of the newspaper law report is not adequately signalled by the linguistic conventions in the text. This produces a complex conceptual structure which makes considerable cognitive demands on the non-expert. Pedagogical suggestions are made for dealing with the textual and cognitive difficulties arising from the analysis.

Introduction

This article aims to answer the question of why newspaper law reports are hard for the non-expert reader to understand by analysing the discourse of the newspaper law report and the cognitive problems which are associated with it.

The newspaper law report belongs to a genre of written legal language which has been examined in detail by Bhatia (1983, 1987). According to Bhatia's framework, legal language may be split into "spoken" and "written" types and the "written" type divided into three "settings" (academic, juridical and legislative). Bhatia collocates the categories of "legal judgement" and "legal case" under the "juridical" setting. It is assumed for the purposes of this analysis that by "judgement" is meant the judge's first-hand report and by "case" a second-hand description of a judgement.

Case reports are available in various forms -- as books of cases on particular subjects, as authentic records (e.g. the All England Law Reports) and in newspaper format (e.g. the Law Report section of The Independent). However, even these categories are not wholly independent. For example, the cases reported in books and newspapers are themselves derived from authentic records, and The Times law reports are published as authorities in both book and newspaper form. Figure 1 below illustrates a revised version of the Bhatia framework:

The present analysis will examine the newspaper law report with reference to these other types of case. In the first section, an overview of the newspaper

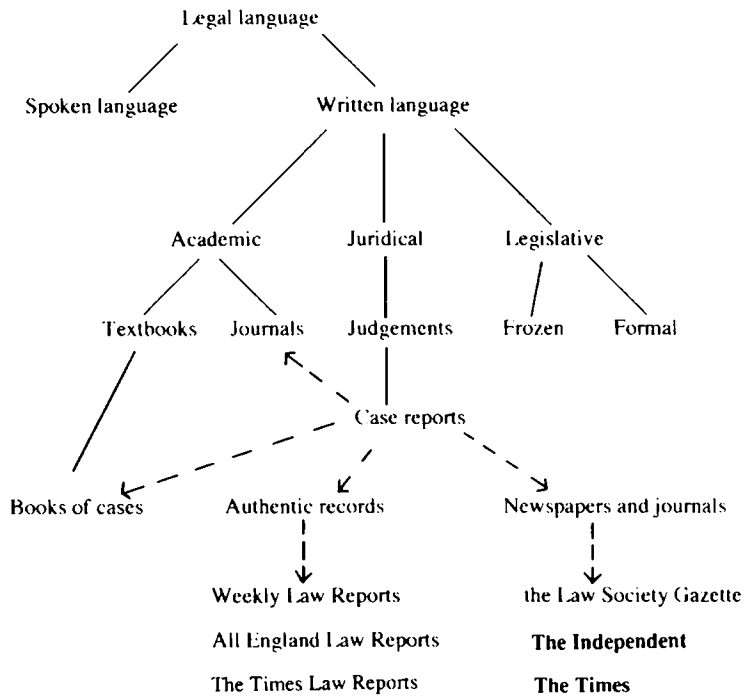


Figure 1.

format is provided by comparing the discourse of the newspaper law report with that of the All England Law Report (AE). This discourse analysis will concentrate on the way in which a particular case (*Barclays Bank vs O'Brien*) is reported in the AE and newspaper formats. It will be supplemented by findings of a survey of the writing processes of 10 law reporters. The second section will analyse the consequences of discourse differences for reading comprehension, arguing that the discourse structure of the newspaper law report is not adequately signalled by the linguistic conventions in the text itself and that this produces a complex conceptual structure which makes considerable cognitive demands on the non-expert reader. The third and final section will make some pedagogical suggestions for dealing with these textual and cognitive difficulties.

1. The Discourse of the Newspaper Law Report

(a) Discourse Community

A questionnaire survey of 10 newspaper law report writers and editors of *The Times* and *The Independent* showed that, as regards the readership of newspaper law reports, readers were mainly perceived to be lawyers. However, lay readers such as teachers, doctors and prisoners were also regarded by

respondents as an important part of the discourse community. Two writers expanded on this assertion, claiming that their perception of the readership was based on the amount of correspondence received by the newspaper concerning particular law reports. Newspaper law reports therefore seem to be written for a readership of experts or for those people with a clear interest in a particular case or legal argument. The Independent editor added that criteria in selecting reports were their significance for "the majority of the public" and cited cases involving sexual or racial equality as "ideal" examples of newspaper law report source material.

The suggestion of a more "popular" readership for Independent law reports is reflected in a number of differences in the arrangement of Times and Independent discourse. Table 1 shows whether, as regards current reporting policies in The Times and The Independent, the reports are weekly or daily, how many cases are reported per day, where in the newspaper they are placed and how much space is devoted to them.

TABLE 1
Newspaper Presentation

	Weekly:daily	No. of reports	Position in paper	Page space
The Times	Daily	3-4:5	Variable	Half page
The Independent	Weekly	1-2	Variable	Quarter page

The reader's expectation of *daily* Times reports helps to establish them as an *authority* within the genre. Aspects of layout contribute to this authoritative impression. The Independent law report appears within a weekly 3-4 page "legal" section, whereas The Times law report stands on its own. The Times reports also occupy more space on the page, usually the entire width, whereas The Independent reports usually occupy only half a page-width. Unlike The Independent law reports, which have no heading, The Times law report has a heading from left to right across the page showing the court, the date and the division of the court in large bold type. The highlighting of these details and the repetition of the date (the same as the date of the newspaper at the top of the page) is, as the survey also confirmed, for recording purposes and for future reference by legal experts.

Apart from creating an impression of authority, The Times reports are also given an impression of *objectivity*. The fact that the authors of The Times law reports are deliberately not named is significant because the depersonalized nature of the writing invites the reader to perceive the Times law report as neutral. Newspaper policy on headlining also plays a part. The Times uses a headline for each of its reports whereas, if two cases are reported, The Independent only headlines one. This policy suggests to the reader that The Times law reports are "of equal importance".

The headline is also a significant indicator of a slightly different communicative purpose. Table 2 shows variations in the headline content of the corpus of 3 Independent and 3 Times law reports, i.e. whether the headlines of the

TABLE 2
Headlines

		Party	Topic	Result	Reason
The Times					
T1	"Pleading rights of a third party"	No	Yes	No	No
T2	"Temporary planning permission removes reason for existing certificate"	No	Yes	No	Yes
T3	"Defence in use of suspect's photograph"	No	Yes	No	No
The Independent					
I1	"Prison officers must obey orders to admit prisoners"	Yes	Yes	Yes	No
I2	"Child's racial origins are relevant when hearing contact application"	No	Yes	No	Yes
I3	"Candidate's description was valid"	Yes	Yes	No	No

respective newspapers identify the parties involved in the case (Parties), what the case is about (Topic), the result of the case (Result) and the reason for the judgement (Reason).

The table shows that the order of importance in The Times headlines is Topic Reason Party/Result, whereas in The Independent it is Topic/Party - Result/Reason. Although both papers rely on topics, The Times makes greater use of the judgement (Reason) in the headline, whereas The Independent relies more on Party and Result. It would therefore seem that The Times uses its headlining strategy as a mode of differentiation by which lawyers, particularly barristers who all work in specialist fields, can move directly to whichever of the reports on the page interests them. The Independent, on the other hand, appears to adopt a more personalized headlining strategy and to concentrate it on a single report in an attempt to catch the eye of the general public as well as the specialist in a particular field.

The Independent report's expectation of a less specialist readership is confirmed by the fact that bold type is used to set apart the Summary (see Table 5 below). This not only indicates that The Independent expects this section to be the one their readers are most interested in but also that they do not expect readers to be necessarily aware of the Summary - Decision sequence (see (b) below). The Times makes no concessions of this type and the lack of any marker presupposes that its readers are frequent readers of law reports and therefore familiar with the convention.

(b) Discourse Structure

Written communications received from both newspaper editors suggest that, in terms of discourse structure, writers were invited to follow "standard reporting procedures". Although this constraint suggests that writers were following newspaper-imposed policy, it does not necessarily imply a conscious attempt, either by editors to spell out a particular format, or by writers to follow one.

Conclusions regarding the discourse structure are therefore based on text analysis of the AE and newspaper reports of the *Barclays Bank vs O'Brien* case only.

(i) *AE vs Newspaper Law Reports*. Analysis of the way in which the discourse of the AE law report and the two newspaper law reports of *Barclays Bank vs O'Brien* is structured is shown in Table 3 below:

TABLE 3
Discourse Structure — AE Reports vs Newspaper Law Reports

All England law reports	Newspaper law reports
heading (x vs y) description of court	headline description of court
1. Keywords	1. Summary (of the case)
2. Description (of the facts) list of cases cited opinions of concurring judges	2. Decision (of court) + (Description of the facts)
3. Judgement (argument of judge and principle of law) + opinions of concurring judges	3. Judgement (argument of judge and principle of law) + (Description of the facts)
4. Decision (of court)	

The above discourse structures confirm the conventional Description (of the facts) Argument (of the judge) sequence described by Bhatia (1979, 1983) as belonging to law reports in general. However, the table also shows several specific differences between AE and newspaper formats in the reporting of *Barclays Bank vs O'Brien* — the newspaper law report's addition of a Summary, its placing of the Decision after the Summary rather than at the end and its omission of a separate section for a description of the facts. In the newspaper law report such a description is generally reported within the Decision or Judgement sections. These changes in discourse structure can be interpreted as reflecting the different communicative purposes of the respective types of report. According to this kind of interpretation, there would be no Summary in the AE report because whoever looks up a particular case in the AE may already have an inbuilt motivation to read the case and will probably know in advance what kind of information it contains. This "reference-based" interpretation would be confirmed by the AE's use of Keywords, which provide an initial checklist of the subject matter to be dealt with in the report.

In the newspaper law report, on the other hand, the placing of the Summary at the start of the report invites the reader to decide whether he or she is interested enough in the newspaper report to continue reading. In this sense the Summary of the newspaper law report might be regarded as having the same function as the Abstract of the research article (see Swales 1990: 179ff., for a discussion of this question).

The placing of the Decision at the end of the AE report may follow a similar communicative principle. AE reports are consulted for legal purposes, i.e.

because a lawyer wishes to find out how a particular principle and judgement fit a particular description and whether this "fit" is applicable to his or her particular case. It is therefore likely that the AE report will be read in some detail. The placing of the Decision in an unimportant position at the end of the AE report is logical because, having read the report intensively, it is likely that the expert reader will already have deduced the result. The Decision would thus be a confirmation of what has already been understood rather than a crucial element in the case itself. The placing of the Decision after the Summary in the newspaper law report, on the other hand, follows a standard principle of newsworthiness (van Dijk 1986) in which the outcome of a particular event (e.g. the result of a football match or a crime) is described first and the circumstances leading up to it (e.g. how the game evolved to produce the result or what happened prior to the crime) second. The newspaper law report follows this structure describing the judge's decision first (the Decision section) and then explaining how the judge's argument evolved to produce this decision (the Judgement section). Viewed as a whole, the different discourse structures of the two types of report appear to be determined by the way they are used. The AE report is a legal document consulted for legal reasons, in which analysis of the Judgement is the key objective. The report is therefore structured to focus on the legal argument. The newspaper law report, however, is for public as well as legal consumption. It is therefore structured with this popular/legal audience in mind rather than specifically on the details of the argument.

(ii) *Times vs Independent*. The right hand column of Table 3 above has described what the discourse structures of the Times and Independent reports of the *Barclays Bank vs O'Brien* case have in common. However, analysis of the corpus of 6 newspaper law reports shows that within this overall picture there may be optional variations in discourse between newspapers. These are shown in Table 4 below.

The table shows three potential variations between the two newspapers. The first is that whenever the events leading up to the present trial need to be reported, in The Independent they are always described before the judgement, whereas in The Times they may, as in corpus text T2, be described in the

TABLE 4
Discourse Structure — Times vs Independent

The Times	The Independent
1. Summary	1. Summary
2. Decision (description of facts) (description of law)	2. Decision (description of facts) (description of plaintiff-defendant arguments)
3. Judgement (description of facts) (description of plaintiff-defendant arguments)	3. Judgement

Brackets are used for those aspects of discourse structure which are optional, i.e. they will not appear in all law reports

Judgement section. The second difference is that the arguments of plaintiff/defendant or prosecution/defendant may, as in corpus texts I1 and T3, be included in different sections of the two newspapers. The implications of these two shifts will be discussed under “point of view” below.

The third difference in structure is that The Times occasionally inserts a paragraph describing what a particular law says between the Decision and the Judgement. This insertion is clearly made when the writer considers an explanation of what the current law says to be necessary for an understanding of the legal argument of the judge. The Independent does not use such insertions, because, as the survey confirmed, those cases which hinge upon a point of law to the extent that the law needs to be quoted are unlikely to be suitable for the Independent’s readership. This difference between The Times and The Independent confirms the more specialist-oriented nature of The Times report.

(c) Discourse and Point of View

(i) *AE vs Newspapers*. One of the most striking differences between AE and newspaper reports is in the extent to which the speech reports are writer-controlled.

Initially, i.e. in the Keywords and Description (of the facts) sections, the AE report is strongly controlled by the report writer. After the Description, judge’s opinions are introduced by the report writer in a similarly writer-controlled way:

21 October 1993. The following opinions were delivered.

However, subsequent presentation of these “following opinions” — in the form of dramatic monologue and written in the first person — is less controlled by the writer:

LORD TEMPLEMAN. My Lords, for reasons to be given by my noble and learned friend Lord Browne-Wilkinson I would dismiss the appeal.

This “third opinion”, which continues in the first person, is what constitutes the Judgement of the court. Although its presentation as dramatic monologue is modified by a series of subheadings (e.g. *the facts*), which indicate a reassertion of the law report writer’s “control”, the “third opinion” is still written in the first person and is interpreted as coming “from the judge”. The discourse of newspaper reports on the other hand reflects the point of view of the report writer to a much greater extent. As Table 6 shows, their Judgement sections are introduced by “Lord Browne Wilkinson said that ...” and presented in the third person in the form of a narrative.

Although the Times and Independent writers sometimes attempt to incorporate the judge’s point of view [see (ii) below], the dramatic monologue presentation in the AE report clearly brings the reader much closer to the judge’s original words.

(ii) *Times vs Independent*. Within the writer-controlled framework for the newspapers reports of *Barclays Bank vs O’Brien*, analysis of the 6 corpus texts brings to light some subtle differences in the way in which point of view is determined in The Times and The Independent. Generally speaking, the fact

that The Times, in adapting source material, makes greater use of a verbatim strategy than The Independent (see “Adaptation of sources” below) means that in its representation of point of view is closer to that of the judge. For example, the corpus shows that there may be differences in the way in which arguments for plaintiffs/defendants (civil) or prosecution/defence (criminal) are reported. The Times often reports these arguments in the Judgement, presenting them through the mouths of the lawyers, for example (corpus text T1) “Mr Ellis had submitted that ...” or “Mr Tager, submitting ...” (corpus text T2). In The Independent, on the other hand, arguments may be reported prior to the judgement and introduced through the defendants’ profession, as in a clause such as “the prison officers at Preston argued that ...” (corpus text I1) or through their legal role, as in a clause such as “the petitioner argued that ...” (corpus text I3). Short (1994) has pointed out that, in Parliamentary reporting, direct speech such as “my right honourable friend the member for Lancaster” would be changed by the Hansard reporter to “Elaine Kellett-Bowman, the MP for Lancaster” so that readers will “understand the reference” (p.189). In The Times reports there appears to be less consideration for the reader’s ability to comprehend reference of this type. Individual naming of the lawyers, directly transcribed from the direct speech of the AE report, reflects the writer’s intention that the judge’s point of view be more faithfully reproduced.

2. Discourse Features of the Newspaper Law Report — Grammar and Lexis

(a) Adaptation of Source Material

Although the survey confirmed that all law report writers had a background in law, none had had specific training in law report writing. Respondents all assumed that law report writing was a skill to be acquired through practice alone. They stated that they used different forms of “case” as the starting point for their reports — a typed judgement supplied by a court, the judge’s notes, the Weekly Law Reports or AE reports. These cases would then be transformed using a series of strategies — direct quotation of source material, direct quotation with omissions or rewriting — depending on the amount of space available in the report. The different lexico-grammatical discourse features of the newspaper law report are therefore likely to depend on the different ways in which authors choose to adapt the source text.

Let us examine how these strategies are used and what kind of lexico-grammatical features are produced in the reporting of *Barclays Bank vs O’Brien* in the respective AE, Times and Independent formats. Since, for *Barclays Bank vs O’Brien*, the text of the authentic records (i.e. AE reports and Weekly Law Reports) is identical, analysis of the newspaper versions hinges on how much of these “original” texts is included in or left out of the newspaper version and how much is the newspaper reporter’s own summary. Verbatim reporting from the AE report is shown in the underlined sections of Table 5 below (the Summary, Decision and Description sections of the newspaper reports).

TABLE 5
Summary, Decision and Description of Facts (Prior Events) in Newspapers

The Independent	The Times
<p>(1) When a security given by a wife to support her husband's debt <u>was procured by the husband's undue influence or misrepresentation</u>, the creditor will be unable to enforce the surety if <u>the creditor failed to take reasonable steps to satisfy himself that the wife entered into the obligation freely and in knowledge of the true facts</u>.</p>	<p>(1) If a wife was induced by <u>the undue influence, misrepresentation or other legal wrong</u> of her husband to stand surety for the husband's debt, the creditor would, in circumstances which should have put him on enquiry, <u>be fixed with constructive notice of the wife's right to set aside the transaction</u>, unless the creditor had warned the wife, <u>at a meeting not attended by the husband, of the risks involved and had advised the wife to take independent legal advice</u>. The same principles would apply to a case where there was an emotional relationship between cohabitants.</p>
<p>(2) The House of Lords unanimously <i>dismissed</i> the bank's appeal against the Court of Appeal's decision (1993) QB109 that Mrs O'Brien was <u>entitled to set aside the legal charge on the matrimonial home securing her husband's liability to the bank</u>.</p>	<p>(2) The House of Lords so <i>stated</i> dismissing an appeal by the creditor, Barclays Bank plc, from the decision of the Court of Appeal (The Times June 3, 1992; (1992) TLR 270; (1993) QB 109) allowing an appeal by the surety, Mrs Bridget Mary O'Brien.</p>
<p>(3) Mr O'Brien <i>wished</i> to increase the overdraft facility available to a company in which he had an interest to £135,000 and offered the matrimonial home, which was in his and his wife's joint names, as security. Mr and Mrs O'Brien <i>executed</i> the legal charge on the house at the bank.</p>	<p>(3) Mrs O'Brien and her husband <i>had agreed</i> to execute a legal charge over the jointly owned matrimonial home as security for overdraft facilities extended by the bank to a company in which the husband, but not the wife, had an interest.</p>

Underlining = text common to AE report

The underlining in the texts shows that very little of the AE report is reproduced verbatim. The Summary in both newspapers appears to be the product of the writers' paraphrasing of the Summary section of the Judgement of the AE report. The Decision section on the other hand is entirely reconstructed by The Times writer and partially reconstructed by The Independent writer. The Description of prior events is an individual reconstruction by both writers.

However, in the Judgement section of newspaper law reports, these strategies change.

In general terms, Tables 6, 7(a) and (b) confirm that the Judgement section of The Times law report is a more direct representation of the first person narrative of the AE report than The Independent. The major difference in the newspapers' respective accounts occurs at the beginning of the Judgement. The absence of bold type shows that The Times and The Independent report this section of the Judgement in a completely different way. The AE account is reported verbatim with selected omissions in The Times (shown by the underlined text in the

TABLE 6
Judgements (pt 1) in AE, Times and Independent Reports of
***Barclays Bank vs O'Brien* (pt 1)**

All England	The Times
Conclusions	
<p>(a) Wives My starting point is to clarify the basis of the law. Should <u>wives (and perhaps others) be accorded special rights in relation to surety transactions by the recognition of a special equity applicable only to such persons engaged in such transactions? Or should they enjoy only the same protection as they would enjoy in relation to their other dealings?</u> In my judgement, the special equity theory should be rejected. First, I can find no basis in principle for affording special protection to a limited class in relation to one type of transaction only. Second, to require the creditor to prove knowledge and understanding by the wife in all cases is to reintroduce by the back door either a presumption of undue influence of class 2A (which has been decisively rejected) or the Romilly heresy (which has long been treated as bad law). Third, although Scott LJ found that there were two lines of cases one of which supported the special equity theory, on analysis although many decisions are not inconsistent with that theory the only two cases which support it are <i>Yerkey v Jones</i> and the decision of the Court of Appeal in the present case. Finally, it is not necessary to have recourse to a special equity theory for the proper protection of the legitimate interest of wives as I will seek to show.</p> <p><u>In my judgement, if the doctrine of notice is properly applied, there is no need for the introduction of a special equity in these types of cases. A wife who has been induced to stand as a surety for her husband's debts by his undue influence, misrepresentation or some other legal wrong has an equity as against him to set aside that transaction. Under the ordinary principles of equity, her right to set aside that transaction will be enforceable against third parties (e.g. against a creditor) if either the husband was acting as the third party's agent or the third party had actual or constructive notice of the facts giving rise to her equity.</u> Although there may be cases where, without artificiality, it can properly be held that the husband was acting as the agent of the creditor in procuring the wife to stand as surety, such cases will be of very rare occurrence. <i>The key to the problem is to identify the circumstances in which the creditor will be taken to have had notice of the wife's equity to set aside the transaction.</i></p>	<p>Lord Browne-Wilkinson said that the question was whether <u>wives, and perhaps others, should be accorded special rights in relation to surety transactions by the recognition of a special equity applicable only to such persons engaged in such transactions. Or should they enjoy only the same protection as they would enjoy in relation to other dealings?</u> In his Lordship's judgement, if the doctrine of notice was properly applied there was no need for the introduction of a special equity in those types of cases. A wife who had been induced to stand as surety for her husband's debt by his <u>undue influence, misrepresentation or some other legal wrong had an equity as against him to set aside that transaction. Under the ordinary principles of equity, her right to set aside that transaction would be enforceable against third parties, for example, a creditor, if either the husband was acting as the third party's agent or the third party had actual or constructive notice of the facts giving rise to her equity.</u></p>
	<p>The Independent Lord Browne-Wilkinson said that the law in surety cases where the wife wished to set aside the transaction, not against the wrongdoing husband but against the creditor bank, had developed in an artificial way and should be restated in a form which was principled. There was no basis in principle for affording special protection to a limited class in relation to one type of transaction. <i>The key was to identify the circumstances in which the creditor would be taken to have had notice of the wife's equity to set aside the transaction.</i></p>

Underlining = text common to AE and Times

Italics = text common to AE and Independent

Bold type = text common to Times and Independent but different from AE

TABLE 7(a)
Judgement (pt 2) in AE Law Report of *Barclays Bank vs O'Brien*

All England

.....
The doctrine of notice lies at the heart of equity. Given that there are two innocent parties, each enjoying rights, the earlier right prevails against the later right if the acquirer of the late right knew of the earlier right (actual notice) or would have discovered it had he taken proper steps (constructive notice). In particular, if the party asserting that he takes free of the earlier rights of another knows of certain facts which put him on enquiry as to the possible existence of the rights of that other and he fails to make such enquiry or take reasonable steps to verify whether such earlier right does or does not exist, he will have constructive notice of the earlier right and take subject to it. Therefore, where a wife has agreed to stand surety for her husband's debts as a result of undue influence or misrepresentation, the creditor will take subject to the wife's equity to set aside the transaction if the circumstances are such as to put the creditor on enquiry as to the circumstances in which she agreed to stand surety.

It is at this stage that, in my view, that the 'invalidating tendency' of the law's tender treatment of married women becomes relevant. As I have said above in dealing with undue influence, this tenderness of the law towards married women is due to the fact that, even today, many wives repose confidence and trust in their husbands in relation to their financial affairs. This tenderness of the law is reflected by the fact that voluntary dispositions by the wife in favour of the husband are more likely to be set aside than other dispositions by her: a wife is more likely to establish presumed undue influence of class 2B by her husband than by others because, in practice, many wives do repose in their husbands trust and confidence in relation to their financial affairs. Moreover, the informality of business dealings between spouses raises a substantial risk that the husband has not accurately stated to the wife the nature of the liability she is undertaking, ie he has misrepresented the position, albeit negligently.

Therefore, in my judgement, a creditor is put on enquiry when a wife offers to stand surety for her husband's debts by the combination of two factors: (a) the transaction is on its face not to the financial advantage of the wife; and (b) there is a substantial risk in those transactions that, in procuring the wife to act as surety, the husband has committed a legal or equitable wrong that entitled the wife to set aside the transaction.

It follows that unless the creditor who is put on enquiry took reasonable steps to satisfy himself that the wife's agreement to stand surety had been properly obtained, the creditor will have constructive notice of the wife's rights.

Underlining = text common to AE and Times

Italics = text common to AE and Independent

AE and Times reports) but completely paraphrased in The Independent (i.e. no italics). Only the final sentence of the second paragraph of The Independent report ("The key was to ...") is verbatim.

Subsequently, as a comparison of Tables 7(a) and (b) shows, both newspapers adopt a "verbatim with omissions" strategy. However, with more space available, The Times follows the AE text more closely whereas The Independent is forced into brief summaries. This produces an interesting contrast in reporting techniques, confirmed by the writers questioned in the survey. The Times reports the initial sentences of the AE paragraphs [compare the underlined passages in the AE report in Table 7(a) with underlined passages in The Times report in table 7(b)], whereas The Independent reports its concluding sentences only [compare the sections in italics in Tables 7(a) and (b)].

TABLE 7(b)
Judgements (pt 2) in The Times and The Independent Reports of
Barclays Bank vs O'Brien

The Times

The Independent

The doctrine of equity lay at the heart of equity. Given that there were two innocent parties, each enjoying rights, the earlier right prevailed against the later right if the acquirer of the late right knew of the earlier right (actual notice) or would have discovered it had he taken proper steps (constructive notice).

In particular, if the party asserting that he took free of the earlier rights of another knew of certain facts which put him on enquiry as to the possible existence of the rights of that other and he failed to make such enquiry or take reasonable steps to verify whether such earlier right existed, he would have constructive notice of the earlier right and take subject to it.

Therefore, where a wife had agreed to stand surety for her husband's debts as a result of undue influence or misrepresentation, the creditor would take subject to the wife's equity to set aside the transaction if the circumstances were such as to put the creditor on enquiry as to the circumstances in which she agreed to stand surety.

In dealing with undue influence, the law's tender treatment of married women was due to the fact that, even today, many wives reposed confidence and trust in their husbands in relation to the financial affairs. That tenderness of the law was reflected by the fact that voluntary dispositions by the wife in favour of the husband were more likely to be set aside than other dispositions by her: a wife was more likely to establish presumed undue influence by her husband than by others. Moreover, the informality of business dealings between spouses raised a substantial risk that the husband had not accurately stated to the wife the nature of the liability she was undertaking, that is, he had misrepresented the position, albeit negligently.

Therefore, a creditor was put on enquiry when a wife offered to stand surety for her husband's debts by the combination of two factors: (a) the transaction was on its face not to the financial advantage of the wife; and (b) there was a substantial risk in those transactions that, in procuring the wife to act as surety, the husband had committed a legal or equitable wrong that entitled the wife to set aside the transaction. It followed that unless the creditor who was put on enquiry took reasonable steps to satisfy himself that the wife's agreement to stand surety had been properly obtained, the creditor would have constructive notice of the wife's rights.

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Unless the creditor who was put on enquiry took reasonable steps to satisfy himself that the wife's agreement to stand surety had been properly obtained, the creditor would have constructive notice of the wife's rights.

(b) Lexico-grammatical Choices

These different reporting strategies produce different lexical/grammatical choices. As Table 7(b) clearly shows, the consequence of The Independent reporter's decision to report concluding sentences only is that the *connectors* used to structure the argument in the AE and Times reports [e.g. Therefore (l.) ... Therefore (l.) in Table 7(a) repeated in The Times report in 7(b)] cannot be used in the Independent. As a result, the Judgement section of the Independent report tends to read as a "bald" sequence of unconnected, single-sentence paragraphs.

As well as using more connectors, The Times also uses a significantly greater number of *reporting clauses* in the Judgement section. Although the example analysed here only contains one reporting clause -- "In his Lordship's judgement..." (l.), analysis of other reports shows that The Times systematically uses a considerable number of reporting clauses in each report, as for example "His Lordship entertained no doubt that ...", "In His Lordship's view" etc.. The Independent does not use reporting clauses, even in very long Judgement sections.

Analysis of the way other parts of the AE report are adapted shows important differences in the temporal structure of AE reports and newspaper reports. The AE reports follow the chronological order (*ordo naturalis*) of events, i.e. the facts of the case, then the first trial, then the second trial and then the present trial. In newspaper reports, on the other hand the reporting of past events is infinitely more complex. The present trial is reported first (in the Summary and Decision sections), prior events second (in the Decision or Judgement sections) and the present trial, once again, third (in the Judgement section). Moreover, prior events are generally described in the Decision section in reverse chronological order. Interpretation of the time sequence of the newspaper law report therefore needs to be facilitated by *tense markers*, particularly in law reports from the House of Lords or Court of Appeal in which the events of 1 or 2 previous hearings and events prior to previous hearings (the facts of the case) have to be narrated. Since the past tense is used in para. 2 of both newspapers to report the events of the Court of Appeal, one would have expected the past perfect tense to be used in para. 3 to separate out prior events. The verbs in Table 5 above (in italics) show that in The Independent law reports this is not the case. Independent reports systematically use the past tense only for all events and fail to mark out different time frames (present trial ... previous trial(s) ... prior events).

As well as the problem of representing temporal sequences, the writer is also faced with the problem of how to refer to the parties involved. The discourse of AE and newspaper law reports makes different use of *definite and indefinite expressions* to establish such reference. In AE reports, the parties involved are identified by their name in the heading (*Barclays Bank plc vs O'Brien and another*) and their role in the Keywords ("husband and wife" ... "bank"). As a consequence, the AE writer is subsequently licensed to refer to them using definite expressions "the husband", "the wife" and "the bank" in the

Description of the facts and “the plaintiff, Barclays Bank plc”, “the first defendant, Nicholas Edward O’Brien”, “the second defendant, Bridget Mary O’Brien” in the Description of the previous trial. These connections between name, relationship and legal role are then reiterated at the start of the AE Judgement “Mr and Mrs O’Brien were husband and wife”.

In newspaper reports, on the other hand, the reference of definite and indefinite expressions is more difficult to disentangle. In the Summary, which states a legal principle, indefinite terms are used (“a wife ...” rather than “the wife” or “Mrs O’Brien”). In the Description section, however, names (“Mrs O’Brien” rather than “the wife” or “a wife”) are used to establish narrative. The logical sequence “name relationship legal role”, which is continually supported by reminders in the AE report, is interrupted by newspapers’ more complex discourse structure.

The Times also adopts a number of *formal* conventions, such as the use of “Before ...” to describe the court, as in “Before Lord Templeman ...”, the expression “...so stated ...”, as in “The House of Lords so stated” (l.) to introduce the decision and the use of “His Lordship” to refer to the judge of the reported proceedings, as in “His Lordship had hitherto only dealt with ...” (l.). The systematic use of these devices in The Times’ reporting style shifts the point of view away from the reporter and closer to the proceedings themselves. The preposition “before” reminds the reader that the case was heard physically in front of the judge and brings the reader into the courtroom itself. The expression “His Lordship” is a reported form of “your Lordship” an “honorific” term (Levinson 1983:91) used to refer to a High Court judge inside the courtroom. In reported speech, use of the term “His Lordship” will thus encode information between writer and setting. Its use in the newspaper law report is both a powerful reminder to the reader of the courtroom setting and reinforces the idea of the reporter as part of that setting. In this way the reader is brought closer to the writer’s reporting situation.

3. Conceptual Structure and Reading Difficulty

What are the consequences of the lexical/grammatical choices described above for comprehension of the text? The analysis in the previous section suggests that difficulty in understanding law reports is less likely to be caused by linguistic factors such as unfamiliar words or complex syntax than by the way in which features of the discourse create a complex conceptual structure (Brown 1994: 15ff.).

(a) Understanding Discourse Structure

The fact that the discourse structure of newspaper law reports is less chronological and less logical than that of the AE report means that their use of *connectors* explaining the links between different sections of the discourse is particularly important. However, as shown in Table 7(b), there are very few connectors in either newspaper which perform this function. Without prior

knowledge of the discourse structure of newspaper law reports, the Summary is difficult to understand on first reading. Unlike an Abstract, which is generally titled "Abstract", there is no indication that the Summary of the newspaper law report is in fact a summary. The bold type used to highlight the summary in The Independent merely invites the reader to read it without saying what it should be read *as*. As regards the link between the Summary and Decision, The Times conventionally uses "so", as in "Mr House of Lords so stated" (l.), whereas the Independent has no link, making the connection harder to interpret.

(b) Understanding Narrative Structure

The narrative of law reports is usually a self-contained paragraph within their Decision (Independent or Times) or Judgement (Times) sections. Returning to the Decision sections in the reporting of *Barclays Bank vs O'Brien* [paras (2) and (3) in Table 5 above] it is clear that the main problem in the understanding of this kind of narrative is *identifiability*. The reader needs to be able to identify both a temporal structure and how the various agents in the text (i.e. people institutions etc.) relate to this structure.

As regards temporal structure, Table 5 shows that, unlike the AE report, which narrates previous events over several pages in chronological order, the newspaper law report is characteristically forced to compress its narrative of previous events [para (3) in each sentence] into a single sentence. In order to achieve this compression the writer starts the description with the House of Lords case and works backwards. However, since it is only easier to understand a sequence of events when they are narrated in the order in which they happened, this "working backwards" through the narrative of the newspaper law report produces a cognitive difficulty for the reader. This difficulty is exacerbated by the use of tense noted above. In The Independent, the reader is faced with the problem of connecting paras 2 and 3. Without advance knowledge of the discourse structure of law reports (i.e. that a description of prior legal events is followed by a description of the non-legal events that led up to these legal events) the reader might easily assume from the use of the past tense only in paragraphs (2) (*dismissed*) and (3) (*wished*) that the prior non-legal events ("Mr O'Brien wished") are in fact a continuation of events *after* the hearing in the House of Lords. In other words, since there are no tense markers to differentiate the temporal structure, he might read the two paragraphs as a straightforward narrative. Clearly, semantic factors will eventually bring readers to reconsider their mistaken interpretations of temporal structure. However, the inconsistent use of tense in The Independent means that unnecessary demands are made on the readers' non-grammatical interpretative powers.

In The Times, this kind of misinterpretation does not arise. When The Times reports prior events before the Judgement, as in the above example, the past perfect tense is used to describe them. Moreover, when it reports prior events after the Judgement, as in the AE report, the narrative is placed first thereby

TABLE 8
Definite/indefinite Expressions and Inference in Decision and Description Sections of The Times and The Independent

1. Individual entity	2. Previous reference	3. Inference required for understanding	4. What does this inference depend on?
The Independent			
1. <i>The House of Lords</i>	None	That the House of Lords is a court representing the last stage of the legal process	Background legal knowledge
2. <i>The bank</i>	Heading: Barclays Bank v O'Brien	That 'the bank' refers to 'Barclays Bank plc'	World knowledge
3. <i>The bank's appeal</i>	None	That the bank had lost a previous case against Mrs O'Brien	Background legal knowledge
4. <i>The Court of Appeal</i>	None	That the Court of Appeal is a court representing the penultimate stage of the legal process	Background legal knowledge
5. <i>The Court of Appeal's decision</i>	None	That courts come to decisions	Legal world knowledge
6. <i>Mrs O'Brien</i>	Heading: ... v. O'Brien	That Mrs O'Brien, not Mr O'Brien is the O'Brien in the heading	Subsequent semantic information
7. <i>The legal charge</i>	None	That the charge refers to a monetary claim made by the bank	Background legal knowledge; subsequent semantic information
8. <i>The matrimonial home</i>	None	That Mr and Mrs O'Brien had shared a house	'securing her husband's liability to the bank'
9. <i>Her</i>	Mrs O'Brien		World knowledge
10. <i>Her husband</i>	None	That Mrs O'Brien was married to Mr O'Brien	Textual reference
11. <i>Her husband's liability</i>	None	That Mr O'Brien was liable	World knowledge Background legal knowledge; semantic information from 'legal charge ... securing ...'

The Times				
1. <i>The House of Lords</i>	None	That the House of Lords is a court representing the last stage of the legal process	Background legal knowledge	
2. <i>An appeal</i>	Indefinite			
3. <i>The creditor, Barclay Bank plc</i>	None	That 'the creditor' is a legal role	Background legal knowledge	
4. <i>The decision</i>	None	That courts come to decisions	World legal knowledge	
5. <i>The Court of Appeal</i>	None	That the Court of Appeal is a court representing the penultimate stage of the legal process	Background legal knowledge	
6. <i>An appeal</i>	Indefinite			
7. <i>The surety, Mrs Bridget Mary O'Brien</i>	None	That 'the surety' is a legal role	Background legal knowledge	
8. <i>Mrs O'Brien</i>	'Mrs Bridget Mary O'Brien'		Textual reference	
9. <i>Her</i>	'Mrs O'Brien'			
10. <i>Her husband</i>	None	That Mrs O'Brien was married	Textual reference	
11. <i>A legal charge</i>	Indefinite		World knowledge	
12. <i>The jointly owned matrimonial home</i>	None	That Mr and Mrs O'Brien had shared a house	World knowledge	
13. <i>Security</i>	Indefinite			
14. <i>Overdraft facilities</i>	Indefinite			
15. <i>The bank</i>	'Barclays bank plc'		Textual reference	
16. <i>A company</i>	Indefinite			
17. <i>The husband</i>	'Her husband'		Textual reference	
18. <i>The wife</i>	None		World knowledge	
19. <i>An interest</i>	Indefinite	That 'wife' refers to Mrs O'Brien		

preventing any possibility of confusing it with narrative of previous legal events. Narrative status in the Judgement may even be specifically acknowledged, as in "Mr Justice Wall said that *the matter had come before the court in an unusual way*" (corpus text T3, my italics).

As regards the problem of the identifiability of the agents, a considerable number of individuals or entities are identified in both newspapers. These are illustrated in Table 8.

The eventual degree of reading difficulty depends, in the first instance, on the extent to which discourse features guide the reader towards the correct reference. As Table 8 shows, The Times text introduces more individuals entities, although fewer of these items require inferencing from outside the text or background knowledge. The Independent sentence uses exclusively definite expressions, indicating that the information is already "given". However, as the table shows, very little of this "given" information is to be found in the text. The only expressions referring to a previous item in The Independent text are "the bank", "Mrs O'Brien" and "her". However, in order to understand "the bank" and "Mrs O'Brien", the reader must have read and understood the title (*Barclays Bank vs O'Brien*), which it is likely that readers do not always do. Moreover, the inference that it is Mrs O'Brien and not Mr O'Brien, who is the referent of the "O'Brien" in the heading cannot be confirmed until the facts of the case are established later in the text. The reader therefore has to keep this particular inference "on hold". The Times avoids these processing problems by describing the bank and Mrs O'Brien in terms of their legal role "the creditor, Barclays Bank plc" and "the surety, Mrs Bridget Mary O'Brien". The Times also makes greater use of indefinite expressions, which allows the reader to acknowledge the information as "new" and therefore give it the level of attention appropriate to this "new" status. If all information is given, as is the case in The Independent, there is no signal to the reader as to which information is more important.

Extra-textual inferencing in the narrative sections of both newspapers is of variable difficulty (see columns 3 and 4 of Table 8). Easy inferences are "the decision" (The Times) and "the Court of Appeal's decision" (The Independent), "the jointly owned matrimonial home" (The Times) and "the matrimonial home" (The Independent) and "her husband" (both newspapers). Other inferences depend on background legal knowledge. For example, if the role of "The Court of Appeal" within the English court system is already known to the reader, he or she will understand the sequence of legal events in both The Times and The Independent much more quickly. Without this knowledge, and in the absence of tense markers, the reader will have to deduce the sequence of legal events, from the words "against" (The Independent) or "from" (The Times) – a kind of semantic inferencing which is more cognitively demanding. Similarly, if the legal connotations of "charge" and "liability" (Independent) or "creditor" and "surety" (Times) are already known then the reader will not have to infer their meaning from the rest of the text. In the Judgment section, definite "legal role" expressions, such as "the appellant" are commonly used (see Minow 1990: 251, for a discussion). However, reading difficulty may be caused when such definite

expressions are applied “across the board”. For example, a party bringing a case before the Court of Appeal may be described *throughout the law report* as “the appellant” regardless of whether or not a prior stage of proceedings (i.e. a stage before the person actually became an appellant) is being described. This sometimes leads to such bizarre constructions as “*The appellant* who denied the allegations was convicted. *He appealed*”. (Independent law report, 15 April 1992, ll.33–35, my italics). Other particularly troublesome “legal role” terms systematically used in both papers to refer to different parties on different occasions are “the judge”, “the plaintiff”, and “the defendant”.

Frequently, a combination of intratextual cross-referencing and extra-textual inferencing is required to understand certain conventions. For example, The Times’ convention of introducing the arguments of plaintiffs/defendants through the lawyers [already described in 1.(d)(ii)] requires greater powers of inference than the Independent convention if the reader is to understand which side of the dispute the argument is coming from. Use of the lawyer’s name to introduce the argument (“Mr Ellis had submitted that ...”) only helps the orientation of the reader if he or she remembers who Mr Ellis was representing (an intratextual inference from the para. naming the lawyers) and knows that the plaintiff’s arguments are generally given first in a judgement (a “background knowledge” inference).

(c) Understanding Argument Structure

As well as difficulty in understanding narrative, there is also difficulty in the understanding the argument in the Judgement section of Independent reports. As Tables 6, 7(a) and (b) above have shown, there are considerably more connectors used in the Judgement section of The Times than The Independent. The absence of connectors creates difficulty for Independent readers because they will have to work hard to supply their own connections through semantic inference from the arguments contained in the text. Since The Independent arguments are not intended to be connected [see The Independent text in Table 7(b), for example], these attempts will be largely frustrated.

The Independent’s lack of reporting clauses to act as reminders to the reader that he/she is still within the Judgement often makes a long Judgement difficult to interpret. Indeed, by eliminating reporting clauses and adopting what is technically known as “indirect free style”, the Judgement section of the Independent law report comes to share much of the interpretive difficulty of other texts written in this way (see, for example, Lodge 1992: 43ff., for an analysis of reading difficulty as a consequence of a lack of reporting clauses in Virginia Woolf’s *Mrs Dalloway*).

To sum up, understanding the concepts expressed by a particular section of a newspaper law report is highly dependent on understanding concepts in other sections. We may need to understand a headline in order to understand a summary, or vice-versa. We may need to understand a heading in order to understand a Decision. In order to understand aspects of the Argument we almost certainly need to have understood prior legal events and in order to

understand prior legal events we need to have understood the facts of the case. Thus, although the discourse of newspaper law reports has an identifiable discourse structure, the discourse itself is strongly interdependent. Difficulty arises for the non-expert reader of the newspaper law report because the discourse markers conventionally used to guide readers in understanding this kind of interdependence (definite and indefinite expressions, connectors, tense, reporting clauses) are not available, particularly in *The Independent* reports. Secondly, complex inferencing procedures using background and legal knowledge from outside the text are required for an understanding all sections of the newspaper law report. When added to the lack of orientation in the discourse, the amount of extratextual inferencing required for understanding creates a considerable cognitive burden on the reader.

Pedagogical Implications

Case reports constitute a crucially important legal resource for lawyers because judge's decisions are bound by precedent and precedent can only be deduced from previously documented cases. The ability to identify the legal principles followed in a previous case (the judge's *ratiodecidenti*) and to adapt it to a current case is therefore one of the most important skills of the lawyer working in the common law tradition.

Given the importance of case reports for the common law lawyer, they are doubly useful for teachers of legal English because they provide authentic raw material for practising both legal and linguistic skills *at the same time*. The newspaper law report has particular pedagogical advantages over other types of case report (case books and AE reports) because they are selected cases of legal and public interest (an inbuilt motivational advantage), and are accessible and widely available. Other forms of case report are available only in specialist libraries and bookshops and only in certain countries.

Given the analysis in sections 1 and 2, it would seem that the teacher's principal task is to relieve the cognitive burden on the newspaper law report reader. This can be achieved in a number of ways:

- (i) Law students need to be as highly motivated as the expert law report reader. Clearly teachers should choose reports whose subject matter is interesting in itself and not just of legal interest so as to give students a reason for reading. Apart from intrinsic interest, teachers should also take account of the relevance of a case to motivate students. In European countries, for example, which generally adopt the civil law system, cases with a European Community law basis will be of greater relevance.
- (ii) Students need to be made explicitly aware of the discourse structure of newspaper law reports. Once students understand how the information of a report is being packaged they will be much freer from a cognitive point of view to concentrate on other discourse difficulties. This awareness of discourse structure can be achieved in a number of ways. The most basic is to divide individual law reports into Summary, Decision,

Description and Judgement sections and to give students practice in identifying each of them separately (e.g. "which paragraph describes legal principle?", "which describes the facts of the case?" and so on). The putting together of the different sections jigsaw-fashion would then raise the question of the adequacy of discourse marking. After individual analysis, comparative exercises showing how AE discourse structure differs from newspaper structure could then be pointed out.

- (iii) Once they have achieved an awareness of structure, students need to have practice in recognising those parts of the text which have to be immediately understood and those which do not. This can be achieved by questioning that helps the student to look for the information that is unique to particular sections of the discourse. For example, in the complex Decision section, what needs to be understood is the sequencing of previous trials, the parties involved in them and the result. By guiding students in a consistent fashion towards finding *appropriate* information, they will themselves become able to apply this hierarchy of priorities when reading. They will thus be better able to know what to look for, i.e. to identify what they do and do not necessarily need to understand at a particular moment. In searching for this essential information, students should also be strongly encouraged to take notes while reading so as to free working memory to deal with the comprehension of subsequent discourse.
- (iv) In order to lighten the inferencing burden, students need to understand those aspects of the English legal system that are presupposed in newspaper law reports. For example, if the reader of a text does not know in advance that the House of Lords is the final step in legal proceedings, he or she will only be able to understand this important piece of information after the immense mental effort of reconstructing the entire case. The application of relevant background knowledge of the English legal system greatly assists interpretation of law reports because it makes inferencing easier. Teachers should be aware of exactly what kind of information is being presupposed in a particular law report (a skill requiring considerable expertise) and pre-teach it before asking students to read the report. Such teaching of the English legal system is essential to any course involving the reading of law reports, particularly in view of the problem of chronological sequencing. Law report writers presuppose that readers already know the chronological passage of a case through the courts and it is for this reason that they often dispense with the markers needed to show that the sequence is not being followed.
- (v) As noted in the analysis, the variety of the terminology used in law reports means that the reader must constantly remind him/herself who these labels (e.g. "the judge", "the plaintiff", "the wife" etc.) refer to and what stage of the legal process is being described. Exercises should therefore be designed (e.g. "Identify all the terms referring to Mrs O'Brien") to make sure that the student is aware of the problem of coreference.

- (vi) At a more sophisticated level students might be directed to an analysis of how point of view is manipulated in the newspaper report. This could be achieved, for example, by examining how the same case is reported in a Times law report and a tabloid newspaper. Alternatively, students could be asked to rewrite an AE report as a Times law report and then as an Independent law report, using the respective techniques that were noted in section 1. Short (1994: 182) suggests that this kind of re-writing exercise enables students to focus on their own representation of point of view and consequently on point of view in general. Clearly, however, this kind of exercise is only suitable for advanced students.

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