LEGAL ENGLISH

There are several legal languages around the world.
This is a problem from the point of traductology, you can translate words but the notions and the concepts are different. That has an impact in the legal fields, because jurist work with words and with language.
The term we use define the words, words define what is permitted and what is not permitted, therefore def ines society.

USE OF ENGLISH
English is the most used language in the world, it is considered a 'lingua falanca' = a language used in a l ot of countries, in a lot of fields.
But for a time latin was the common language used for legislation and the activity of the scholars.
But also in the 17th, 18th and 19th century, french was the language of the culture and of the literature.

English is most used language because:
it is a easy language
used by the powers who won the IIWW
it is the language of business, used by traders
used by International Organisations
free language used in cases of arbitrations (= private method to resolve conflicts)
The privatisation of justice is not an element of the modern age, we can see it also in Roman Law.
A strong unifying factor that was able to build the possibility to communicate in a world that was changing.

COMMON LAW
English conveys the legal ideas, institutions and method of the Common Law, which was born in England but spread all over the world. This was mainly caused by colonisation.
The English Empire was huge, therefore spread the language all over the world.
For example, in India there are different languages.
In the English language there are two important aspects:
- terminology
- texts

There are some peculiarities in the English language for what regards the use of vocabulary.
1. English is used in the UK and abroad as integral part of the law.
2. English is used for international purposes, for example treaties(=a legal text with rules that is bounding for the parties)

What is Will?
In Private Law it has specific meaning.
Will (n) = It is a legal document that says who you want your money and property to be given after you die .

This is the definition that is given in a dictionary, that is generally correct and simple. However there some more complicated terms, therefore there might the problem of oversimplification.
In this definition there the reference to 'money and property', but these two aren't two distinct categories. I n fact money is simply one form of property.
We can se a different definition of 'will' in a specialised law dictionary (The Oxford Dictionary of Law):

will n. = A document by which a person (called the testator) appoints executors to administer his estate aft er his death, and directs the manner-in which it is to be distributed to the beneficiaries he specifies. To be valid, the will must comply with the formal requirements of the Wills Act 1837 (se EXECUTION OF WILL), the testator must have testamentary capacity when the will is made, . . .

SOURCES OF LAW

A source is something denoting, it means were do we find the rule of law.

1. Difference between Statute Law and Common Law

The Statute Law derives from the middle ages, the law as enacted by parliament.
The Common Law is never being approved by the parliament.
We do not have this distinction on the continent, because for us law is all statutory law.
So the word Statues referees to the
Common Law has two meaning:

- the systems in use in the UK /USA
- part of law that doesn't derive from legislation

In our continent all the law has been covered by a legislation, by a code.
Everything that is thought to be legal it is to be found
However in the US or the UK there is a large part of law that is not covered by legislation, it is elaborated by the courts. Therefore the sources of the law are one of the main distinctions between the Roman Civil Law system and the Common Law system.
In these two system the courts have different roles.
First of all, law can designate all the laws of a country, in the expression french law, in that case, we use t he term law to define all the regulation in that country, we use a legal system to order our conducts.
Law is a system of consistent rules.
There is a great body of law, which defines a country and its laws.
A large part of the body of law is not statutory, it is common law. So we may say that the common law is 'drawn' rather than 'made'. Common law is an historical law, it evolves.
The english term law can match different terms in continent legal language : droit/ recht.
However talking about statuary law it becomes :loi/ gesetz/ lex .
In this systems it is important to understand that statues are political acts, it is made by the parliament on the basis of political program.
Especially in British Law, the statues assume the existence of the Common Law, when the British parliam ent is passing the law, it knows that that law will be incorporated to the body of law.
We find the law in parliamentary acts or in political decisions.
When we find the source of law, we have to find and the understand the source of it.
The basic is that we have this two alternatives sources of law, the law decided by the parliaments and the law decided and interpreted by the courts.
Judicial activity is made up by the interpretation and the discovery of law.
In all the contents in Europe, the judges interpret the constitution, this also happens in the USA.
The English Constitution is not written, therefore it is a system that is basically oral.
The Magna Carta was not a constitution, it was just a statue, a written document.
It is the Statue that prevails over the Common Law, because of the principle of Sovereignty of Parliament.
This sovereignty gives all the power to the parliament.
Common Law cannot change Statutory Law.
The basic characteristics of the Statue is that it is draw in a definite from of words approved by the parlia ments. The law is thought in a written form.
Whereas common law has no authoritative texts, its rules can expressed at any time, it is an unwritten law .
The decisions are the opinions of judges on what common law is and on how we can frame the rules.
So their opinion can be re said in different matters.

It is on this basis that there is one part of law that is unwritten that we may understand the binding force of precedent.
The decisions if the House of the Lords are absolutely binding on all lower courts and usually upon itself.
The minister decides the 9 peers that made the House of Lords.
The House of Lords had to became the Supreme Court of United Kingdom.
In 1966, the House of Lords decided that it would in the future consider itself able to depart from any previ ous decision of the House when it appears right to do so.
In the US it changes the interpretation of the text, that is a written text.

But in the UK, it is a matter of overcoming what came before.

RATIO DECIDENDI AND OBITER DICTUM

A decision it is in itself a document.

We must divide into:

ratio decidendi = it is binding, the principle upon which the decision of the judge is based to decide the dispute between the parties

obiter dictum = principle upon which a case has been decided, it is a statement of the law made in the course of a judgement

The British Court system is different from the continental one, for what regards the amministrative system.

There are 9 judges in the English Supreme court.

Therefore it's easier not having a not written constitution.

There are law and by-laws , these rules have the same power of statuary rules.

2. Common Law and Equity

For us equity is just one of the many concepts of justice. It a branch of the law.

The rules of Equity are a different kind of law, which is equally law as Common Law One.

These rules are not only moral but actually legal.

The main concept of equity is trust. Equity is a part of law, is an addendum of Common Law.

The rules of equity do not contradict the rules of Common Law, but it may produce a contrary effect.

The english law never lived a revolution such as France, the most important reform was the Judicature Acts(1875): the rules of Common Law and Equity are recognised and administered in the same court but they still remain distinct bodies of law.

END OF THE 13TH CENTURY

three great court= the king's bench, Common Pleas a s Exchequer.

the Chancellor is the head of the great government office

COMMON LAW COURT SYSTEM

There is a specific political entity which is the UK.

We are speaking of the system of the courts that is established for England and for Wales, and with some differences for Northern Ireland. Not Scotland, which had a different legal development, it is considered a mixed legal system, therefore it had been influenced by both common law and civil law.

There is basic level, which is represented by two different types of courts the so called magistrate courts and the county courts. They are competent for the minor offences in civil and criminal matters. The English territory is divided for administrative reasons, these two courts are spread all over the British territory and have competence over a particular territory.

The second level of jurisdiction is the High Court of justice, it is a complex system, it is divided into three different chambers: the Queen's Bench division, the Family division (family law and minor aspects of family law) and the Chancery Division. This division are the evolution of the old houses during the reign of William I, he conquered the Anglo-Saxon England in the 1166 (Battle of Hastings), he created the new England. He created centralised courts in London to deal with the controversy of the courts. Today this subdivision of the High Court of Justice represents this division. Some cases, in civil matters, are heard in second instance by the Queen's Bench Division. But there are some matters that can by be appealed only the Crown Court.

The third level is the Court of Appeal, that is divided in Criminal Division and Civil Division. From civil matters, first there the possibility to appeal to the Family division or to the Queen's Bench division, and then we can arrive to the Court of Appeal.

The most important matters are given to highest court, the Supreme Court of the United Kingdom. This is the name that Europe gave to it before Brexit, the original name is the 'House of Lords'. It is a special co

mmittee of the British Parliament. Between 40 to 60 cases are resolved in a year by the Supreme Court of the UK, while the Court of Cassation in Italy resolves 25.000 cases a years. The question in the House of Lords has to be of interest in the development of law. There is also the question of fees, it is really expensive to bring a case before the House of Lords (one million pounds). In Italy, it is only a few thousand euros. In the Supreme Court of the UK, the decision are binding on the inferior courts, there is also the fact of the impact of the decision on the development of law. For this reason, the Supreme Court only looks at 'points of law of public interest'. In addition, from the administrative point of view, first there must be the asking of permission of the Court of Appeal. If denied, can ask for 'leave' to the Supreme Courts. Moreover, cases are heard from panels of anywhere from 3 to 9 judges. There is also the role of 'dissenting opinions' which are really important for the development of law.

The High Court of Justice, works both as first instance and appeals court. The decision of the High Court are binding for the lower courts.
It is divided in:
- Queens Bench:
- Family
- Chancery

The Court of Appeal hears appeals on law only. There is a difference between matters of law and matters of fact, because non lo so non ho capito, something con sources of law a quanto pare.Law is more theoretical while matters of fact are more concrete.

AMERICAN COURT SYSTEM

It consists of two separate system: Federal and State.
The US is a Federal State, there is the State level of justice and the Federal level of justice.
95% of all cases are handled in State courts.
The US courts are divided into three layers:
trial courts, where cases start
intermediate (appellate) courts, where most appeals are first heard
courts of last resort, which hear further appeals and have final authority in the cases they hear.

These two systems are arranged in a Court Hierarchy :
STATE LEVEL= State Districts Court——> State Court of Appeal——> State Supreme Court
FEDERAL LEVEL= U.S District Courts——>U.S Courts of Appeal
Both led to the U.S Supreme Court.
The adjective U.S means that is a federal matter.
You can pass from a state case to a federal case only if the federal constitutions are to be discussed in the case and there are principle of state law that are in conflict with the principles of federal law.

The Federal Court System is based on the 3rd Article of the Constitution.
The constitution itself establishes in the 3rd Article that:
"The judicial Power of the United States, shall be vested in
one supreme Court, and in such inferior Courts as the
Congress may from time to time ordain and establish."

Therefore the Congress has control over creation and jurisdiction of lower federal courts, but not on the existence of the Supreme Court.
Higher court decisions are binding for lower courts.
The federal system is divided into 13 circuits, within each are several district courts and an appeals court.

U.S COURT OF APPEALS
These circuits represent the way American Federal law has located and mapped on a continental basis to

administer the federa, jurisdiction.

OBJ

THE US FEDERAL COURTS

Have same system for both civil and criminal cases.

The first federal level of jurisdiction is represented by the:

• District Court:is a trial court, cases start here and fact finding is done here.Those are courts design to collect and check the facts of the cases.

• Court of Appeals: have the right to appeal, this court generally only looks at legal issues, not facts. (Fact = time and space/ point of law= nature and definition of contract)

Leave must be granted to get hearing the Supreme Court.

THE FEDERAL COURT OF APPEAL

The 13 circuits include the District of Colombia and the Federal circuit.
The appeal within this system is a matter of right.
Court will only look at legal issues, not facts.
Hearing is before a randomly selected three judge panel.
Number of judges in each circuit ranges from 6 (1 Circuit) to 28 (9 Circuit).
A decision by a judge panel can be reviewed by full panel (called en banc).
Bound by decisions of Supreme Court only.

U.S SUPREME COURT

9 justices appointed for life,selected by President.

-the hearing happens before the panel.

-4 justices must agree to hear a case before an appeal is granted, the Supreme Court selects the cases to be held before the Supreme Court.

-Court is not bound by past decisions, although they are given great weight. (Plessy v. Ferguson)

-Constitution is the supreme Law of the Land.

-Can hear appeals from state courts if U.S. Constitutional or federal law issue is involved in staged cases. (Gore v. Bush)

STATE COURT SYSTEM

Generally, same three tier system as federal.

• some states have four tiers
• names of the courts vary from state to state

-Courts hear both criminal and civil cases.

-State system is separate and distinct from federal

-U.S. Supreme court can review state decisions that are based on federal law.

MICHIGAN SUPREME COURT

Seven justices elected for six-year terms.
All cases are heard before entire bench.
Must get leave for appeal to be heard.
Decisions are binding on all lower Michigan courts.
Only decisions concerning federal law can be reviewed by the U.S. Supreme Court.

Case Structure, Precedent, & Stare Decisis

ELEMENTS OF A CASE:

• caption= the name of the court, the names of the parties, the number of the case, the citation of the case(first number is the volume, then the number of the report, the number of the page), the name of the judge/ judges.

• type of action=it is usually found at the very beginning of the opinion, some opinion might begin with the facts, however legal english is rather different than normal english, the purpose of the type of action is to explain the general substantive and/or procedural issues are in the case.
• procedural: the kind of relief the moving party is requesting
• substantive: the legal issues raised by the parties that will determine who wins the case

• statement of the facts=
• procedural history
• contentions of the parties
• issues

• holding/rules of the parties= the ratio decidendi is a latin phrase meaning “the reason for deciding”, its characteristics are:
• Rules necessary for final decision
• Rule without which decision would be different
• Rules grounded in specific facts
• Theory used to make decision based on specific facts
why is it important?
tells the reader how the court came to its decision
more importantly, this is precedent that lower court should follow
• rationale
• result

Holding v. Dicta
HOLDING
Rule necessary for court to reach decision
Rule directly related to material facts

DICTA
Latin for "remark,"
a comment by a judge in a decision or ruling which is not required to reach the decision, but may state a related legal principle.
Has no value as precedent.
Often hear “it is only dictum (dicta).”

TECHNIQUES FOR FINDING THE RATIO

Distinguish between material facts and those which appeared unimportant to the court.
Discover the precedents applied.
–What rules from prior cases did the court use?
–These will provide an indication of the court’s approach. Restrict your analysis to the opinions of the majority judges.
Read subsequent decisions to find how the decision has been interpreted.

RATIONALE AND RESULT
Rationale:
–Why did the court decide the way they did? What reasons did they use.
–This may include precedent (i.e. they ruled the way they did because they had to).
Result:
–what was the disposition of the case

PLESSY V. FERGUSON
This case created the concept of “separate but equal”.
Here we shall find the difference between the:
majority opinion= what the majority of the court thought being the legal reasoning behind the court’s rulin g on a case
dissenting opinion= statement by the Justice ahi disagreed with the majority ——> feature of common la w
concurring opinion= statement by the Justices who agreed with the majority, but for a different reason th an the Majority.

In 1892, Homer Plessy took a seat in the “whites only” car of a train and refused to move. He was arreste d, and convicted for breaking Louisiana’s segregation law.
So this is a case of race.
Homer Plessy was for 4/5 caucasian and for 1/5 African American, he was however forbidden to take a se at in a “whites only” car.
He appealed against the state of Louisiana claiming that he had been denied equal protection under the l aw.
The Supreme court handed down its decision on May 18, 1896.
The Supreme Court ruled that separate-but-equal facilities for blacks and whites did not violate the Consti tution.
This means that if there are similar cars with equal facility for white and not whites you can leave as ‘sepa rate but equal’ on the constitution of the U.S. According to the Supreme Court segregation was legitimate.

Supreme Court Justice Henry B. Brown ruled, “the object of the 14th amendment … could not have been i ntended to abolish distinctions based upon color… or a commingling of the two races.”
The opinion of a judge could work in practice, the opinion of Harry Brown was that the legislation didn’t wa nt to abolish distinctions made on skin colour. In practice, a reading of juridical history cam bring justice t o such a extreme view, in fact in the ‘Declaration of Independence’ it is said that ‘all men are born equal’.

Justice John Marshall Harlan dissented from the majority opinion, “In respect of civil rights, all citizens are equal before the law…the seeds of race hate…planted under the sanction of law…the thin disguise of ‘eq ual’ accommodations…will not mislead anyone, nor atone for the wrong this day done.”
Justice Harlan thought that the Supreme Court made a mistake, and it was not possible to resolve a issue through the thin disguise of equal accommodation.
The opinion of the court was: ‘as long as the accommodation was equal, segregation was legitimate’.
And Justice Harlan is mocking this reasoning as a thin disguise.
The historical background of the case is that: in the decades following the Civil War, Southern states pass ed laws that aimed to limit civil rights for African Americans.
The States could not deny the civil rights for African Americans, but they tried to separate the two races.
Facilities for whites were distinct that facilities for others.
The Black codes of the 1860s, and later Jim Crow laws, were intended to deny African Americans of their newly won political and social rights granted during Reconstruction.
From a social point of view, segregation was really widespread.
The separation thought to be legitimate as long as there were facilities for both groups.

Plessy was one of several Supreme Court cases brought by African Americans to protect their rights agai nst discrimination.
However for these cases the thought of the Supreme Court was the one of thinking that ‘separate but equ al’ was legitimate.
As a result, city and state governments across the South, and in some other states, maintained their segr egation laws for more than half of the 20th century.
These laws limited African Americans’ access to most public facilities, including restaurants, schools, and hospitals.

It is important to underline the importance that term 'facility' acquired during this time, since the case of Plessy the matter became the one of facilities.
Signs reading "Colored Only" and "Whites Only" served as constant reminders that facilities in segregated societies were separate but not equal.

BROWN V. BOARD OF EDUCATION

It was not until 1954 in Brown v. Board of Education that the Supreme Court overturned any part of Plessy.
This story is important because of its methodology, for the way in which the Supreme Court must struggle with a precedent that needed overturning.

BACKGROUND:

In Topeka, Kansas, a black 3rd grader named Linda Brown had to walk one mile through a Railroad switchyard to get to her elementary school. There was a white elementary school only 7 blocks away.
She was turned down for enrollment in the white school. Brown's father went to McKinley Burnett, head of Topeka's branch of the NAACP. (National Association of the Advancement of Colored People). He agreed to help, he felt that they had the "right plaintiff at the right time". This is a basic principle of lawyering.
It was time to change the concept of 'separate but equal'.

SEGREGATION IN SCHOOLS 1954

OBJ

HOW WERE SCHOOLS DIFFERENT?

• Textbooks

-White Schools received the new books
-Black Schools received the books the white schools no longer needed (hand-me-downs); black students also had to share textbooks since there were more black students per class

• Teachers

White teachers received more pay than the black teachers.

• Buildings

White schools were in better shape than black schools.
In this way the Supreme Court could overthrow the concept of 'separate but equal', because facilities were inherently unequal.

APPELS COURT ARGUMENTS

The Board of Education's defence was that segregation in the schools would prepare them for segregation in adulthood. They argued that segregated schools were not detrimental. They used examples such as Frederick Douglass, Booker T. Washington, and George Washington Carver.
On one hand the Appeals Court judges agreed with the plaintiff, but on the other hand Plessy v. Ferguson set a legal a precedent.

Appeals Court Ruling?

They ruled in favor of the Board of Education.
The court cited the precedent of Plessy v. Ferguson as the main reason.
The Plaintiffs Appealed to the U.S. Supreme Court.

THE SUPREME COURT

The Supreme Court in 1954, wasn't good representation of the population, in fact all 9 judges were old white men.
They decided the faith of all American people and they were appointed for life.
At the time, they were basically all liberal.

ARGUMENTS

• The NAACP lawyer who argued the case, Thurgood Marshall, is seen on the right.
• Main argument: that separate school systems for blacks and whites were inherently unequal, and thus v iolate the "equal protection clause" of the Fourteenth Amendment to the U.S. Constitution.

Ruling
-In a unanimous vote, 9-0:
-“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separ ate educational facilities are inherently unequal. . ."

Results
-American schools desegregated. Most did so peacefully, but other areas had major violence (especially i n the south).
-Some states even dragged their feet.
Integration wasn’t completed, totally, until 1970’s
It was essential in the educational law, however the Court could not change the law, because it was boun d by precedent.
The Court ruling was only about the inequalities of facilities in public education.
Case law and statutory law, are working differently:the ruling of the Supreme Court,the immediate impact on society.

Remember Thurgood Marshall?
He argued a total of 32 cases in front of the Supreme Court.
He won 29 of them.
He became the first African-American Justice on the Supreme Court (1967).

CONTRACT LAW

Covenant - An agreement, contract, or written promise between two individuals that frequently constitutes a pledge to do or refrain from doing something. The individual making the promise or agreement is know n as the covenantor, and the individual to whom such promise is made is called the covenantee.

Offer - an offer to contract must be made with the intention to create, if accepted, a legal relationship. It m ust be capable of being accepted (not containing any impossible conditions), must also be complete (not r equiring more information to define the offer) and not merely advertising.

•Acceptance - the unconditional agreement to an offer. This creates the contract. Before acceptance, any offer can be withdrawn, but once accepted the contract is binding on both sides. Any conditions have the effect of a counter offer that must be accepted by the other party.

Consideration - in a contract each side must give some consideration to the other. Often referred to as the quid pro quo - see the Latin terms below. Usually this is the price paid by one side and the goods supplie d by the other. But it can be anything of value to the other party, and can be negative - eg someone promi sing not to exercise a right of access over somebody else’s land in return for a payment would be a valid contract, even if there was no intention of ever using the right anyway.

Comfort letters - documents issued to back up an agreement but which do not have any contractual stand ing. They are often issued by a parent or associate company stating that the group will back up the positio n of a small company to improve its trading position. They always state that they are not intended to be le gally binding. Also known as letters of comfort.
Confidentiality agreement - an agreement made to protect confidential information if it has to be disclosed to another party. This often happens during negotiations for a larger contract, when the parties may need

to divulge information about their operations to each other. In this situation, the confidentiality agreement forms a binding contract not to pass on that information whether or not the actual contract is ever signed. Also known as a non-disclosure agreement.

Subject to contract - words used on documents exchanged by parties during contract negotiations. They denote that the document is not an offer or acceptance and negotiations are ongoing. Often the expression without prejudice is used when subject to contract is meant.

Without prejudice - a term used by solicitors in negotiations over disputes where an offer is made in an attempt to avoid going to court. If the case does go to court no offer or facts stated to be without prejudice can be disclosed as evidence. Often misused by businesses during negotiations when they actually mean subject to contract.

Exclusion clauses - clauses in a contract that are intended to exclude one party from liability if a stated circumstance happens. They are types of exemption clauses. The courts tend to interpret them strictly and, where possible, in favour of the party that did not write them. In customer dealings, exclusion clauses are governed by regulations that render most of them ineffective but note that these regulations do not cover you in business dealings.

Exemption clauses - clauses in a contract that try to restrict the liability of the party that writes them. These are split into exclusion clauses that try to exclude liability completely for specified outcomes, and limitation clauses that try to set a maximum on the amount of damages the party may have to pay if there is a failure of some part of the contract. Exemption clauses are regulated very strictly in consumer dealings but these don't apply for those who deal in the course of their business.

Liability - a person or business deemed liable is subject to a legal obligation. A person/business who commits a wrong or breaks a contract or trust is said to be liable or responsible for it.

Joint and several liability - where parties act together in a contract as partners they have joint and several liability. In addition to all the partners being responsible together, each partner is also liable individually for the entire contract - so a creditor could recover a whole debt from any one of them individually, leaving that person to recover their shares from the rest of the partners.

Breach of contract - failure by one party to a contract to uphold their part of the deal. A breach of contract will make the whole contract void and can lead to damages being awarded against the party which is in breach.

Injunction - a remedy sometimes awarded by the court that stops some action being taken. It can be used to stop another party doing something against the terms of the contract. Injunctions are at the court's discretion and a judge may refuse to give one and award damages instead - see the finance contract terms below.

Arbitration - using an independent third party to settle disputes without going to court. The third party acting as arbitrator must be agreed by both sides. Contracts often include arbitration clauses nominating an arbitrator in advance.

OBJ