



# Trabajo de Investigación Final

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*BASCA v SoSBIS & Others*

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# **TRANSLATOR'S LOGBOOK**

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## **INTRODUCTION**

This linguistic work consists of the analysis of a legal document issued in London, England, United Kingdom and of the translation into Spanish of the pertinent parts of such document (from page 10 “Issue V” to page 12 “the achievement of such objectives.”).

The proposed study will be divided into a general analysis of the content and context of the source text and a detailed grammatical and terminological analysis of not only the parts to be translated, but also of the resulting translation. For this purpose, we will consult works written and published by well-known authors and additional judgments related to the case at issue.

Due to the fact that our target readers may be students in general, academics, teachers and professors, among others, our work will be written in academic language. Our aim is that any person interested in the subject may be able to understand and learn from this work, regardless of their level of knowledge in the subject.

In reference to the layout of our work, we intend to organize it in the following manner.

Firstly, we will explain the most distinct characteristics of English legal texts and of judgments in particular, stating the difference between the so-called legalese and plain English.

Secondly, we will provide a general description of how the judiciary works in the United Kingdom, more precisely in England and Wales, and an executive summary of the case in question, explaining where and when the document was issued, the parties involved in the case, and the nature and outcome of the case. Additionally, we will include and discuss any pertinent codes or acts mentioned throughout the document.

Thirdly, we will analyze the part of the text to be translated in detail, studying the source text fully in terms of grammar and terminology as well as all matters that may or may not limit the understanding of the text. We will discuss many aspects, such as the layout of the text, its grammatical particularities (verbs, passive voice and the use of punctuation marks), and the different kinds of terminology it contains.

Lastly, we will explain all matters related to the outcome of the translation process, highlighting any difficulties that may have arisen and any other issue or matter that serves to explain the decisions made throughout such process.

Once the analysis is complete, we will present our translation together with all the formalities required for a certified legal translation according to the *Colegio de Traductores Públicos de la Ciudad de Buenos Aires (CTPCBA)* (Association of Certified Legal Translators of the City of Buenos Aires, Argentina).

## ***THE ROLE OF CERTIFIED LEGAL TRANSLATORS***

As our research work involves, and is based on, a certified legal translation of a specific part of a legal document, before we begin with the analysis of the case at issue, it is important to state what a certified translator is and which his main duties are.

In general terms, “a translator operates on the verbal record of an act of communication between source language writer and readers and seeks to relay perceived meaning values to a (group of) target language receiver(s) as a separate act of communication” (Hatim & Manson, 1997).

We could define the translation process and profession in many ways. Robinson (2012), for example, states that translation is “an operation performed on language through the advanced knowledge of same, which aims at the production of a text”.

Such knowledge is primarily acquired through constant and thorough practice, and this is the only way in which translators can achieve good results as regards their work. This is what Robinson (2012) calls “practical experience” and it is what we incorporate during our course of studies at university, school or training courses. Practical experience is what gives us, translators, the ability to be “fully aware of the analytical problems and their possible solutions” (Robinson, 2012).

Translators need to be able to analyze fully and slowly the grammatical properties of a text whenever the circumstances require it. However, clients –or “users” as Robinson (2012) calls them– demand most of the times that translation works be finished quickly. This is why an efficient, reliable, and responsible translator must also possess the ability to shift from a slow and profound analysis to a swifter one, always maintaining the good quality of his renderings (Robinson, 2012).

For a translator to be reliable he must make sure he pays close attention to all the relevant aspects of the source text (grammatical features, context, content, and jargon, among others); take into account the client’s needs by, for instance, following the client’s instructions as regards the type of translation he desires and finishing the work on time; know how to use computer programs and all the technological tools necessary to perform his work well; and never stop studying and acquiring new skills and knowledge regarding the profession (Robinson, 2012).

Now, concerning the translation process itself and the “steps” that a translator takes to achieve the desired result, we can identify the following stages: (1) first attempt towards translating the text; (2) proofreading of what has been achieved in the first step; and (3) enhancement of the resulting text plus internalization of the work done for later use (Robinson, 2012).

Moreover, every translator from all the countries in which the art of translation is considered a serious profession has “authorities” to turn to in case he needs assistance. These authorities, as Robinson (2012) points out, may be entities, legislation, or even trustworthy books, dictionaries and glossaries.

In Argentina, for example, the *Ley 20305* is the act that governs the profession of certified legal translators. This act states that certified legal translators are university graduates qualified to translate any document written in a given foreign language.<sup>1</sup>

As all other translators, certified legal translators need to be professionally responsible and to have a high level of specialization and studies. The difference with translators in general lies in the fact that, through his signature, a certified legal translator ratifies what he has translated and becomes, therefore, legally responsible for his work. Accordingly, a translation is certified whenever it requires the signature and the seal of a translator certified in the languages involved and whenever it complies with the requirements established by the *CTPCBA*. If these requirements are fulfilled, the *CTPCBA* will authenticate the signature and seal of the professional.<sup>1</sup>

Apart from the *Ley 20305*, in Argentina, the profession of certified legal translators is protected by different public legal entities. As we have mentioned earlier, the association protecting certified legal translators who have established domicile in the *Ciudad Autónoma de Buenos Aires* (Autonomous City of Buenos Aires) is the *CTPCBA*, which was established by the above mentioned act. The *CTPCBA* has a professional code of ethics that further states what certified legal translators should and should not do as regards their profession, including the consequences they will suffer if they fail to comply with the pertinent rules.<sup>1</sup>

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<sup>1</sup> CTPCBA - Colegio de Traductores Públicos de la Ciudad de Buenos Aires. (n.d.). Retrieved September 14, 2015, from <http://www.traductores.org.ar>

## **GENERAL ANALYSIS**

Having provided a general panorama of the essence and intended outcome of this work, we will proceed to the general analysis of the document.

In this section of our work we will discuss all matters related to the case at issue. In the first place, we will introduce the most important characteristics of English legal texts and language. In the second place, we will explain in general terms the structure of the judiciary in England and Wales. In the third place, we will turn to the nature and classification of the judicial process itself. Finally, we will provide an executive summary stating the most important facts of the case.

### ***A GENERAL VIEW OF LEGAL TEXTS***

As the document that we are dealing with is a legal document (and a judgment, specifically), and taking into account the fact that legal texts are so singular, we will provide a general description of the main and most distinct characteristics of the English legal language and of legal texts, together with examples taken from our document. The aim is not only to define and explain each aspect, but also to illustrate everything with real examples.

As pointed out by academics and linguists in papers and articles on the subject (one helpful example is the work done by Ríos [2005] in the University of Murcia), the legal language is the specific and technical language used by all those bodies or authorities that represent the administration of justice. These bodies and authorities employ the legal language whenever they have to establish a relationship with individuals or entities from the general public (the citizens, as Ríos [2005] mentions in his work).<sup>2</sup>

Therefore, it is said that the legal language is a result of the process of institutionalization to which the law (as a system) and the administration of justice submit those individuals or entities that constitute the society. This type of language defines the place that individuals occupy in society, and the relationships among them.<sup>2</sup>

When we talk about a particular language, we are referring to a **communication process** in which we can identify the following components: as regards the parties involved in such process, a **sender** and a **receiver**; then, a **message** and an **intention** to be transmitted; and finally, a **channel** through which said message is communicated.<sup>2</sup>

In the case of the judgment at issue, the sender is the judge hearing the case, Mr. Justice Green, while the receivers are all the parties involved (the three Claimants, the Intervener, and the Defendant). The sender almost always seeks to remain anonymous and to hold a position of control over the receiver. On the other

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<sup>2</sup> Ríos, J. T. (2005, June). Las sentencias judiciales: Estudio y análisis sociolingüístico. Retrieved February 06, 2016, from <https://www.um.es/>

hand, the receiver, a subordinate to the authority that prepares the document, is a citizen or, more specifically, a party to the case.<sup>2</sup>

Regarding the message to be communicated, whenever we are referring to a legal judgment, the aim of the text is generally to induce, inform, or order the receiver to do something specific. Notice that, in those cases in which the sender is the citizen (or the party to the case), the intention would change completely to one of requesting or claiming something to the authority, who would thus become the receiver. As to the channel of communication, a judgment is written on an official paper which shall be properly dated and signed by the intervening and competent authorities.<sup>2</sup>

Before mentioning the general characteristics of legal texts, it is essential for us to understand how a text is organized. All texts have a superstructure which is in general terms defined as “the part of a structure that is above the lowest part”.<sup>3</sup> This definition gives us an idea of what this term refers to, although it is a generic definition given by Merriam-Webster’s dictionary which applies to many fields. In specific terms, what we call “*superestructura*” in Spanish is the formal and global structure that characterizes the category to which the text belongs. It does not depend on the content or linguistic structures of the text. Instead, it determines the order (*i.e.* the organization) of the global parts of a text and represents the body of the text (Van Dijk, 1997).

The superstructure of a text organizes the sequence of phrases and provides these phrases with a specific communicative function. As regards judgments, these have the following common (super)structure: an introduction that specifies the most important matters regarding the formalities of the case, such as the place, the date, and information about the intervening parties and authorities; a body that contains the facts argued by the parties, the observance (or nonobservance) of the law, and all the arguments and legal grounds used by the defendant; and finally, the decision that has been adopted by the court. This information is divided into well-organized paragraphs and is accompanied by all the pertinent laws or previous cases that the parties wish to cite<sup>2</sup>

The way the information is organized and displayed in the legal document subject matter of this work fits the previous description. The judgment consists of 107 pages, each of which (with the exception of the initial page and the index) contains the following information: “Judgment Approved by the Court for handing down” and “BASCA v. SoSBIS & Others”, both of which appear on the upper margin. The former refers to the type of the document, while the latter is the name of the case.

As in many other legal documents of this sort, there is an initial page that includes the important data as regards the case, the parties involved, and the court hearing the case. The first page of our document contains the following information: the badge of the Royal Courts of Justice (the court in which the High Court of

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<sup>2</sup> Ríos, J. T. (2005, June). Las sentencias judiciales: Estudio y análisis sociolingüístico. Retrieved February 06, 2016, from <https://www.um.es/>

<sup>3</sup> (n.d.). Retrieved September 14, 2015, from <http://www.merriam-webster.com/>

Justice is located); the Administrative Court's Neutral Citation Number; the number of the case; the address of the Royal Courts of Justice; the date on which the judgment was rendered; the judge presiding over the case; the intervening parties; the parties' attorneys; the hearing dates; and the type of document (an approved judgment).

After the first page, there comes the index, in which the different sections of the document are listed. Those well-organized sections are introduced by titles and are divided into numbered paragraphs, and they also contain subsections. The part of the text to be translated, for instance, involves a part of *subsection ii* (The Issues) of Section A (Introduction, issues and conclusions) and the first paragraph of *subsection i* (Directive 2001/29) of Section C (Legislative provisions). They present the reader with some of the main issues of the case, the consequences of the Court's decision, and an overview of the Directive 2001/29 and of Section 28B. Moreover, Section B provides a brief description of the parties to the case.

Furthermore, inside the superstructure of all texts it is possible to identify both a macrostructure and a microstructure. If we apply this to legal documents, and to judgments in particular, we can say that the macrostructure indicates the nature of the case and of the particular dispute on which the court will rule. The case that we are analyzing, for example, is of civil nature because it is based on "private rights and remedies that are sought by action or suit" (Garner, 2009). The concrete matter on which the court rules is the decision of the Defendant to introduce Section 28B, and whether it causes financial losses to right-holders (this will be further explained in the executive summary).

As regards the special features of English legal texts, it is of the utmost importance that we define and state the main characteristics of the so-called **legalese**. For this purpose, we chose to quote a statement made by Richard Wydick, a law professor and writer who is in favor of plain English (the opposite of legalese):

"We lawyers do not write plain English. We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic, four outstanding characteristics. It is '(1) wordy, (2) unclear, (3) pompous, and (4) dull.'"<sup>4</sup>

Following this statement, it could be said that legalese is a type or form of legal language used by lawyers (and especially by judges) when drafting legal or judicial documents (judgments, acts, contracts, and the like), which turns out to be almost impossible to understand for the average layperson.<sup>4</sup>

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<sup>2</sup> Ríos, J. T. (2005, June). Las sentencias judiciales: Estudio y análisis sociolingüístico. Retrieved February 06, 2016, from <https://www.um.es/>

<sup>4</sup> Schane, S. (n.d.). Language and the Law. Retrieved January 8, 2016, from <http://idiom.ucsd.edu/>



The English legal language (and therefore English legal texts) has various characteristics that we will discuss in this part of the section. We will start with the use of Latin and French terms which are particularly abundant in legal texts due to a precise historical event: the Norman Conquest of England of 1066.<sup>5</sup>

Everything started when, on October 1066, the King of England, Harold Godwinson, was defeated and killed by William, the Duke of Normandy, in the Battle of Hastings.<sup>6</sup> Up to that moment, English had been the language that most of the English people could speak and understand, while Latin had remained a universal language used mainly for oral proceedings in the courts.<sup>5</sup>

However, as Normandy was (and still is) a region within France, the language of the conquerors was the French language, which started to prevail over the courts in England. The problem was that, as we mentioned before, most of the English people did not speak French, and could not understand Latin documents either.<sup>5</sup>

“Participants in legal matters therefore utilized all three languages in the administration of justice. In legal disputes, an injured party (plaintiff) and the accused (defendant) might state their cases and bring their evidence in English. The case would be argued, tried and judgment rendered in French and reported to the outside world in Latin. Then, the record of the court proceedings and decision in French had to be translated back into English to inform the parties of their rights and duties. As the law evolved, the language evolved, incorporating legal expressions in all three languages, all in active use.”<sup>5</sup>

This statement illustrates that such mixture of cultures and languages resulted in a legal language that has translated into English many of the common terms of those languages and preserved those “hybrids” to this day.

Below we give a few examples taken from the document at issue with the aim of showing what has been previously stated.

“A condition that was attached to the right of Member States to exercise the discretion under the Directive was that if the now permitted use caused more than *de minimis* harm to the copyright owner then compensation had to be payable.” (page 7, line 32).

“[...] this meant that the exception would be strictly limited to private own, non-commercial, use by legitimate *bona fide* purchasers of content.” (page 8, line 39).

“The Regulations were adopted pursuant to section 2(2) of the European Communities Act 1972 and introduced, *inter alia*, a new section 28B CDPA 1988.” (page 17, line 31).

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<sup>5</sup> Holdsworth, J. (n.d.). English Legal Language and Terminology. Retrieved January 8, 2016, from <http://dh-resources.com/>

<sup>6</sup> Overview: The Normans, 1066 - 1154. (n.d.). Retrieved January 8, 2016, from <http://www.bbc.co.uk/>

“However, if I am wrong in my conclusion about relevant ‘harm’ no amount of repair work to the consultation and decision making process could save it from being quashed and set aside in its entirety [...]” (page 65, line 18).

The first three terms that were underlined are examples of Latin words, whereas the fourth one has its origins in the French language. The verb *quash*, in particular, comes from the Old French *quasser*, *casser*, which means “to annul; declare void”.<sup>4</sup>

On the other hand, the meanings of the Latin expressions are as follows: *de minimis* makes reference to something that is “so minor as to not be worth regarding”; *bona fide* means “(in) good faith”; and *inter alia* is used, for example, at the end of an enumeration since it means “amongst other things.”<sup>7</sup>

Moreover, the typical stylistic features of legal texts include words from the Old and Middle English, which nowadays are considered obsolete. Some of these are the so-called “here” and “there” words and adjectives like “such” and “said” whenever they do not have an immediate and clear antecedent.<sup>5</sup> The following are the examples that we could identify in the document at issue. We underlined the antecedents of the words in question.

“iTunes: The first piece of evidence concerns iTunes. This is set out at paragraph [100] (2<sup>nd</sup> to 4<sup>th</sup> paragraphs *therein*) above.” (Page 87, line 41).

“The Defendant consulted upon four options, one of which (Option 0) was [...] and another option (Option 1) was to introduce an exception only if it led to minimal or zero harm and *thereby* did not necessitate the introduction of a compensation scheme.” (Page 95, line 9).

“The fact that (as I find) the Defendant erred in this regard does not prove predetermination or the appearance *thereof*.” (Page 96, line 23).

“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form *whatsoever* which distorts or threatens to distort competition [...]” (Page 75, line 5).

Another characteristic of legal texts as regards terminology is the use of technical and specialized terms that have precise definitions within one or more areas of the law.<sup>5</sup> We have selected the following two examples from the text:

“This application for judicial review concerns the decision of the Secretary of State for Business, Innovation and Skills (the “Defendant” or the “Secretary of State”) to introduce a

<sup>4</sup> Schane, S. (n.d.). Language and the Law. Retrieved January 8, 2016, from <http://idiom.ucsd.edu/>

<sup>5</sup> Holdsworth, J. (n.d.). English Legal Language and Terminology. Retrieved January 8, 2016, from <http://dh-resources.com/>

<sup>7</sup> Online Etymology Dictionary. (n.d.). Retrieved January 8, 2016, from <http://etymonline.com/>

new section (“Section 28B”) into the Copyright, Designs and Patents Act 1988 (“CDPA 1988”) [...]” (Page 7, line 4).

“[...] see in this regard *R v MMC ex parte National House Building Council* [1993] ECC 388 at [398] (upheld on ***appeal***: [1995] ECC 89) [...]” (Page 86, line 10).

The context provided in the first paragraph and in the whole document suggests that the term *judicial review* makes reference to “a review by a court of law of some act, or failure to act, by a government official or entity, or by some other legally appointed person or organized body” (Barron’s, 2003). Since we know that the decision subject matter of this review was made by a government official of the United Kingdom (the Secretary of State for Business, Innovation and Skills), we can match that definition to the term. This indicates the importance of the context when it comes to the meaning of an isolated word or expression. Otherwise, if the context is unknown to us, we cannot be sure of which definition is the correct one.

Barron’s (2003), for example, gives two other definitions for the term we have just discussed: (1) “the review of the decision of a trial court by an appellate court”; and (2) “in a constitutional law context, the doctrine under which the U.S. Supreme Court and the highest courts of every state have assumed the power and responsibility to decide the constitutionality of the acts of the legislative and executive branches of their respective jurisdictions.” Notice that both definitions are quite different from the one that applies to the context of our document. One of them even belongs to the law of the United States of America, since it mentions the United States Supreme Court.

On the other hand, the term *appeal* in the second paragraph means, in the words of Garner (2009), “a proceeding undertaken to have a decision reconsidered by a higher authority; especially, the submission of a lower court's or agency's decision to a higher court for review and possible reversal.” However, a second definition given by the same author reads as follows: “the charging of someone with a crime; specifically an accusation of a crime, especially treason or a felony.”

As we are well aware that the document that we are analyzing belongs to the civil area of law, we could never consider the second definition to be the correct one, as it evidently applies to a criminal law term.

Now that we have discussed the main characteristics of legal texts in reference to terminology, we will turn to another distinct feature of this kind of texts: the structure of the sentences. We will focus mainly on syntactic ambiguity and passive voice.

According to Schane (2006), ambiguity refers to a construction that is not clear and lacks certainty. **Syntactic ambiguity** in particular may be the result of the order of the elements in a sentence or of special grammatical features, such as the relationship between nouns and the preceding adjectives that may refer to each or all of them.

Syntactic ambiguity can only contribute to the reader's confusion and misunderstanding of the text.<sup>5</sup> In an attempt to demonstrate this, we selected two sentences from the text:

“However, if I am wrong in my conclusion about relevant ‘harm’ no amount of repair work to ***the consultation and decision making process*** could save it from being quashed and set aside in its entirety upon the basis that it was permeated through by an error of law.” (Page 65, lines 17-18).

“They used this phrase in contra-distinction to what they submitted should have been the correct legal principle ***which*** they called the ‘legitimation approach’ ***which*** was harm ***which*** flowed from all that copying ***which*** was not legitimised but ***which*** hitherto had been illegal.” (Page 65, lines 35-38).

In the first case, the noun *process* is clearly modified by the antecedents *decision* and *making*. However, as the consultation can also be regarded as a process, we cannot be sure if this noun is modifying *process* as well. If we wanted *process* to be only modified by *decision* and *making*, therefore leaving *consultation* on its own, we would need to add another element, such as the determiner *the*:

“*The* consultation and ***the*** decision making process.”

As to the second example, there is a high use of the relative pronoun *which*, in addition to the fact that there are no commas separating each subordinate clause from the main clauses. This makes it difficult to identify the antecedents of each *which*. If we wanted to enhance the phrasing of this sentence in an attempt to clarify its meaning, we could add punctuation marks or replace some of the relative pronouns:

“They used this phrase in contra-distinction to what they submitted should have been the correct legal principle ***which*** they called the ‘legitimation approach’. ***Said principle*** was harm ***and it*** flowed from all that copying ***which*** was not legitimised but ***which*** hitherto had been illegal.”

On the subject of **passive voice**, we must say that there is an excessive use of this kind of construction, which contributes to the impersonal nature of the sentence by, for example, hiding the doer of the action and making him anonymous. This only results in the reader's confusion and misunderstanding of the text.<sup>5</sup> Some of the examples in the text are the following:

“The first premise was that the only relevant ‘harm’ that would, in principle, need *to be compensated for* was the risk to rightholders of lost, duplicate sales [...]” (Page 9, line 4).

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<sup>5</sup> Holdsworth, J. (n.d.). English Legal Language and Terminology. Retrieved January 8, 2016, from <http://dh-resources.com/>

“If the former *was constrained* the latter would not necessarily occur.” (Page 9, line 11).

“The IPO instructed external consultants to conduct empirical analysis into the extent to which post-sale copying *was already factored into* initial pricing.” (Page 9, line 28).

“Research *was conducted* in the music, film and book sectors with a control *conducted* in the software sector [...]” (Page 9, line 28).

“[...] the decision *was taken by the Secretary of State* to introduce a new exception for limited private use, but without a concomitant compensation scheme.” (Page 9, line 32).

Notice how many uses of the passive voice can be identified in a single page. The fifth case is the only one that includes the agent by introducing it with the preposition *by*.

We have seen several characteristics of what we defined earlier as legalese. With that in mind, we will discuss briefly what is meant by plain English and how it differs from the old legal English.

In the 1970s, a movement in favor of plain English, known as the Plain English Campaign, was initiated in the United Kingdom. Its main purpose was (and still is) that every individual could have access to clear and concise writings and documents.<sup>8</sup>

In 1999, the English courts had already introduced new rules of civil procedure, eliminating some traditional and archaic legal terms for good and replacing them with more modern equivalents. One example is the fact that the term *plaintiff* which was widely used mostly in civil procedure documents was substituted for the term *claimant*.<sup>9</sup> The latter, for instance, is used throughout the text at issue to refer to the complaining entities. The following examples serve as proof of this:

“In this judicial review the *Claimants* challenge the assumptions adopted by the Defendant as both legally and factually incorrect and flawed [...]” (Page 9, line 38).

“The Third *Claimant* is UK Music 2009 Limited (‘UK Music’) [...]” (Page 12, line 9).

Peter Butt (2001) describes plain English as the language intended to directly reach its recipients, the people for which such language was written. Since texts written in Modern or Standard English are prepared in a way that satisfies the needs of the reader and not those of their writers, readers should be able to understand them easily.<sup>10</sup>

Furthermore, in contrast with legalese, which has a tendency to hide ambiguities and mistakes due to its dense and complicated prose, this kind of legal writing helps to identify errors.<sup>9</sup>

<sup>8</sup> Plain English Campaign. (n.d.). Retrieved January 9, 2016, from <http://www.plainenglish.co.uk/>

<sup>9</sup> Peter, T. (n.d.). The Plain English Movement. Retrieved January 9, 2016, from <http://www.languageandlaw.org/>

<sup>10</sup> Butt, P. (2001, June). Legalese versus plain language. Retrieved February 06, 2016, from <http://sas-space.sas.ac.uk/>

Nevertheless, Butt (2001) insists on the fact that lawyers are reluctant to abandon legalese and to turn to plain English due to two factors. Firstly, at law school they are taught the style of legalese and encouraged to use it in their future professional lives. Secondly, according to Butt (2001), lawyers are afraid of using a simpler form of legal language because they believe the documents will contain flaws and will be criticized by their “loophole-seeking opponents”.<sup>10</sup>

All things considered, we could say that the document at issue exhibits many of the typical characteristics of legalese, but even so it is simple enough for us to understand its content. In general terms, it is well-written, with the exception of a couple of typographical errors that we have found.

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<sup>10</sup> Butt, P. (2001, June). Legalese versus plain language. Retrieved February 06, 2016, from <http://sas-space.sas.ac.uk/>

## ***THE JUDICIARY IN ENGLAND AND WALES***

The document at issue is a legal text that illustrates a judgment rendered by the Divisional Administrative Court of the Queen's Bench Division, which belongs to the High Court of Justice of the United Kingdom.

In general terms, a judgment is “a court's final determination and binding adjudication that establishes the rights, obligations, and other legal relations of the parties in a case” (Garner, 2009). The case is specifically based on a judicial review, which can be described as a review made by a higher court of the decisions made or of the acts performed by a lower court or by an administrative body (Collin, 1995). After such judicial review, the next stage was the passing of the judgment. We will later see the specific effects of the judgment as we discuss the case, together with its context and content.

Now, in an attempt to achieve a better understanding of the case at hand, we will provide a brief explanation of how the English administration of justice works and the relevant institutions that compose it.

As a legal system, the law has two main goals: to solve disputes or conflicts and to promote compliance with pertinent and current legal rules. English law in particular “works on a common law system, as opposed to a civil law system, which relies on statute and certain texts.”<sup>11</sup>

In the words of Holdsworth, **common law** is “a system of jurisprudence that includes the whole system of law, including case law, statutes, codes and equity, which originated in England and was later applied and adapted in the United States and other countries of the English Commonwealth.”<sup>5</sup>

Common law may also refer to the law common to an entire jurisdiction in contrast to local or customary, merchant and ecclesiastical law. In addition, this term may be used to differentiate between case law (precedents of court decisions) and statutory law (written laws). Finally, common law also contrasts with the Equity system, which originated in England to address the deficiencies of common law.<sup>5</sup>

In particular, the case at issue belongs to the civil area of the law. The civil process focuses on establishing the rights and duties of individuals or entities in relation to each other (White, 1999). These are two of the main features of the English civil procedure: it is based on the adversary principle, which means that one party brings before the pertinent institution a series of statements of fact that will be challenged by the opposing party; and it is governed by the Civil Procedure Rules which “make up a procedural code whose overriding aim is to enable the courts to deal with cases justly.”<sup>12</sup>

The individual or entity that begins most of the civil proceedings is called the **plaintiff**. The plaintiff normally brings an action against another person or entity referred to as the **defendant**, and seeks a certain

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<sup>5</sup> Holdsworth, J. (n.d.). English Legal Language and Terminology. Retrieved January 8, 2016, from <http://dh-resources.com/>

<sup>11</sup> Comprehensive Guidance on Appearing in Court. (n.d.). Retrieved October 15, 2015, from <http://www.courtroomadvice.co.uk/>

<sup>12</sup> Courts: Procedure rules. (n.d.). Retrieved October 15, 2015, from <http://www.justice.gov.uk>

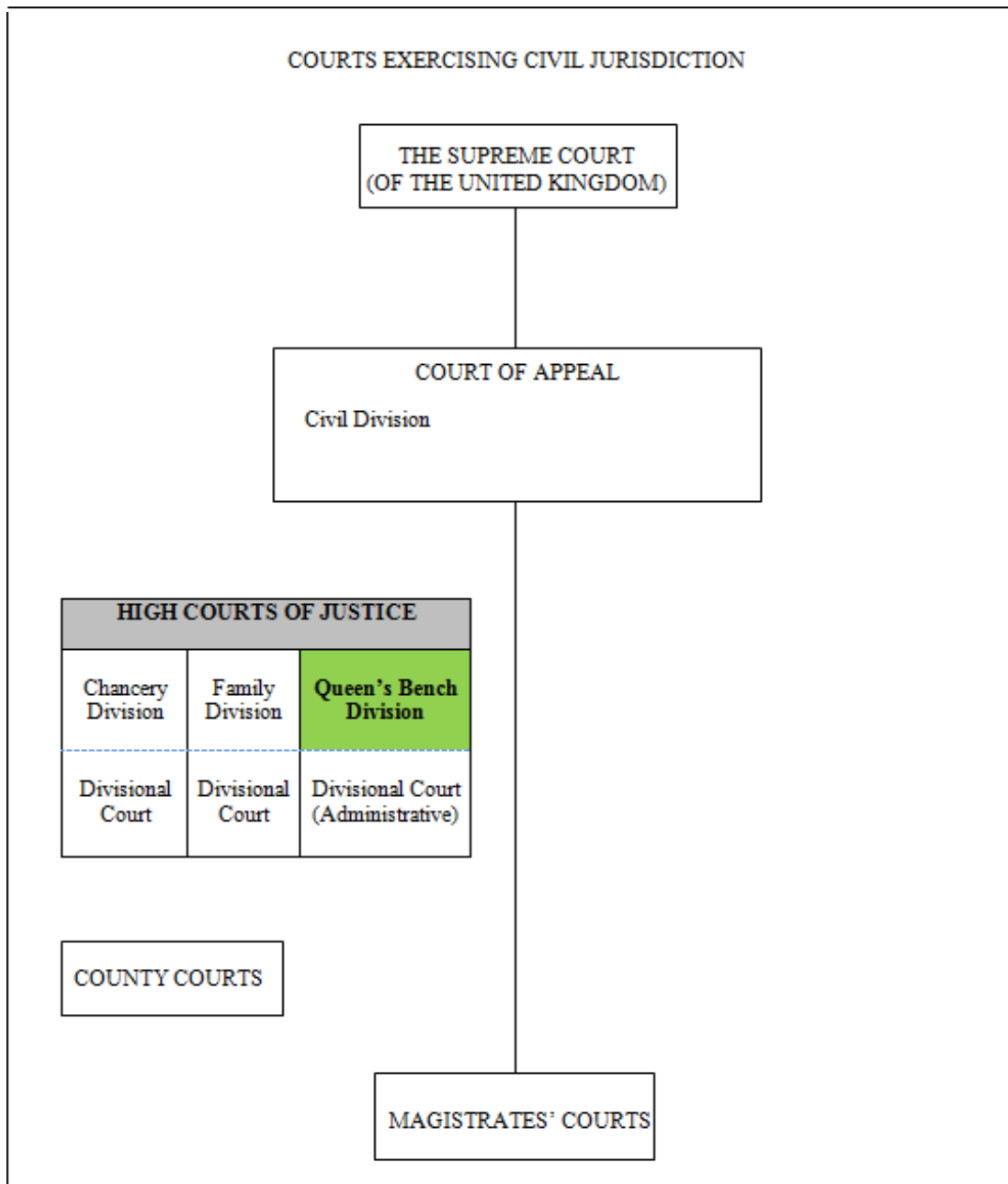
remedy by means of that action (these are the most common terms by which the parties to a civil case may be referred to).

In addition, the plaintiff must prove all the facts on which he bases his claim (this means that he has *the burden of proof*). In an attempt to successfully prove his claim and finally convince the judge of the truth of his allegations, the plaintiff must produce admissible evidence. In the majority of civil proceedings, cases are heard by only one judge who weighs the evidence that the parties offer and subsequently render a judgment, which can be final or not (White, 1999).

As regards the English courts, these may be classified into superior and inferior courts. The main effect of this distinction is that those decisions made by superior courts are, in most cases, binding on lower courts. The main difference between inferior and superior courts lies in the jurisdiction that they have: lower courts have local and limited jurisdiction (subject, at the same time, to the supervision of the High Court), whereas the jurisdiction of superior courts is not limited (White, 1999).

Having stated the basic and general classification of English courts, we will provide a chart with the aim of illustrating the organizational division of English courts, particularly of those English courts exercising civil jurisdiction, since this is the area of the law in which we are interested. We will then explain the functions of each of the courts in more detail.





Source: (Alcaraz Varó, 2007, p.17)

The previous organizational chart applies only to England and Wales. As we have mentioned, we chose to show the civil side only, omitting the criminal divisions and courts.

To begin with, civil cases are sometimes dealt with by Magistrates' Courts, although most of the times they are heard by County Courts. As regards appeals, these first go to the respective division of the High Courts of Justice, and, in the event that one of the parties wishes to request for a second appeal, the case is reviewed by the Court of Appeal. The High Court of Justice and the Courts of Appeal are housed in the Royal Courts of Justice. The Supreme Court, the ultimate appellate court for civil cases in the United Kingdom, was created in 2005 (upon the Constitutional Reform Act 2005), and it started operating in 2009. Prior to its creation, the final court of appeal for civil cases in the United Kingdom was the *House of Lords*. The decisions made by the House of Lords were binding on all courts below, as are those decisions made by the Supreme Court today.<sup>12</sup>

The **Queen's Bench Division** is the court that heard the case at issue, and it belongs to the **High Court of Justice** alongside two other divisions: the *chancery division* and the *family division*. The work done by the Queen's Bench Division (mainly governed by the Civil Procedure Rules 1998) is controlled by the Central Office of the **Royal Courts of Justice** located at the City of London, England, United Kingdom. The judges sitting in the courts of the Queen's Bench Division are High Court Judges, referred to as "*Honourable Mr. or Mrs. Justice*".<sup>13</sup>

The claims addressed by the courts of the Queen's Bench Division are mainly related to "personal injury, negligence, breach of contract, libel and slander (defamation), non-payment of a debt, and possession of land or property".<sup>12</sup>

The **Administrative Divisional Court** is another area belonging to the High Courts of Justice. This court is the key to our understanding of how the English judicial organization works as regards our case in particular, due to the fact that one of the many functions of the Administrative Court is to review the decisions made by inferior courts, *public or regulatory bodies, and all persons exercising public functions*. This is the reason why this court is said to have supervisory jurisdiction, a jurisdiction that is mainly exercised by the process of Judicial Review.<sup>12</sup>

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<sup>12</sup> Courts: Procedure rules. (n.d.). Retrieved October 15, 2015, from <http://www.justice.gov.uk>

<sup>13</sup> The Queen's Bench Guide. (n.d.). Retrieved October 17, 2015, from <http://www.justice.gov.uk>

## ***EXECUTIVE SUMMARY***

Now that we have given a general view of what a legal text is and how the English judicial system is organized, we will explain briefly the facts of the case.

The case at issue is entitled *BASCA v SoSBIS & Others*. It was brought before the Queen's Bench Division (Administrative Court) of the High Court of Justice, in the City of London, England, United Kingdom. This case concerns the Claimants' application for *Judicial Review*. As we have explained earlier, a judicial review is "a review by a court of law of some act, or failure to act, by a government official or entity, or by some other legally appointed person or organized body" (Barron's, 2003).

As regards this case, the government official is the Secretary of State for Business, Innovation and Skills, the Defendant, who decided to introduce an exception to copyright (Section 28B) into the Copyright, Designs, and Patents Act 1988. This exception permitted those purchasers that had acquired content (*e.g.* music or films, with the exception of computer software) legally and in a permanent basis to copy, format-shift and/or store such content for their own private and personal use. Under no circumstances could this use be commercial or infringe copyright.

However, the Secretary of State did not make this decision arbitrarily; on the contrary, as the United Kingdom is a Member State of the European Union, he possessed a discretion under Article 5(2)(b) of the Directive 2001/29 of the European Union which enabled him to introduce a copyright exception of the kind that was described above. Nevertheless, the Directive also stated that, in the event that more than zero or *de minimis* harm was caused to right-holders, a compensation had to be paid to them.

Now, what the Claimants (the British Academy of Songwriters, Composers and Authors; the Musicians' Union; and the UK Music 2009 Limited) challenged about the Defendant's decision was the following: the decision of not including a compensation scheme in Section 28B; the economic premises on which the Defendant based such decision, together with the evidence used to support those premises; and the economic effects caused by the introduction of Section 28B, which are said to be contrary to Articles 107 and 108(3) of the Treaty on the Functioning of the European Union.

The following are the two economic premises on which the Defendant based his decision. They were evaluated and subsequently included in a document (the Updated Impact Assessment of March 2014) that was prepared by the Intellectual Property Office, an executive agency of the Department for Business, Innovation and Skills.

The first premise had to do with *lost or duplicate sales* suffered by producers or right-holders. As regards this one, the Defendant stated that if the exception to copyright to be introduced was narrow and limited, no harm or impact would be caused on duplicate sales.

The second premise dealt with the *pricing-in principle* and the Secretary of State's assertion that, if sellers of content added to the product's original price an extra value on account of the assumption that the purchaser of the product would make copies of it, no economic harm would be caused.

Finally, after considering all the relevant facts of the case, the presiding Judge, Mr. Justice Green, ruled against the Defendant, and concluded that the decision of introducing Section 28B was unlawful. However, the case did not end there: the Defendant had the possibility of tackling the evidential flaws or either amending Section 28B. Otherwise, Section 28B would have to be repealed. Moreover, the Court ordered the parties to make submissions in reference to the steps that would have to be taken as regards the conclusions reached by the Court and the relief that would have to be granted.

Now that we have analyzed the general context and the legal background of the case in question, we will mention and describe briefly the parties involved in the case, together with pertinent entities, acts and international instruments.

As regards the parties of the case at issue, even though they are well-described in the text, we will give some additional information about each of them. For this purpose, we have visited their official Web sites and we have relied on the information provided in the text itself.

The first Claimant is the *British Academy of Songwriters, Composers and Authors (BASCA)*, which is a 65-year independent and self-funding professional association that represents music writers or composers from all genres. It is a company limited by guarantee (basically, a non-profit and membership organization) that represents and protects the interests of its members, who may own copyrights and may receive a continuous economic benefit due to that.<sup>14</sup>

The second Claimant of the case is the *Musicians' Union*, an independent trade union that represents almost 30,000 musicians most of whom reside in the United Kingdom. This organization provides its members (who own performers' property rights and hence receive an economic benefit) with legal and career advice.<sup>15</sup>

The third and last Claimant is the *UK Music 2009 Limited* which is a group that promotes the interests of right-holders related to the music industry. In addition, it "works to ensure music – and the copyright that underwrites it – is recognised and valued at all levels of Government, throughout the wider economy and by consumers."<sup>16</sup>

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<sup>14</sup> Home - BASCA | British Academy of Songwriters Composers and Authors. (n.d.). Retrieved January 6, 2016, from <http://basca.org.uk/>

<sup>15</sup> Musicians' Union MU. (n.d.). Retrieved January 6, 2016, from <http://www.musiciansunion.org.uk/>

<sup>16</sup> UK Music. (n.d.). Retrieved January 6, 2016, from <http://www.ukmusic.org/>

There is also an Intervener, the *Incorporated Society of Musicians*, who was authorized by the High Court of Justice to take part in the claim as a supporter of the Claimants.<sup>17</sup> This is a professional organization that works for the promotion and protection of the rights of those working in the music industry and provides its members with legal assistance and advice, insurances, and financial aid, among other types of aid.<sup>18</sup>

The Defendant, the *Secretary of State for Business, Innovation and Skills* (currently, The Right Honourable Sajid Javid MP), is mainly responsible for the reform of intellectual property. He is in charge of the Department for Business, Innovation and Skills (BIS), which “invests in skills and education to promote trade, boost innovation and help people to start and grow a business; BIS also protects consumers and reduces the impact of regulation.”<sup>19</sup>

As regards the main institutions or organizations that are mentioned in the text, we will explain briefly what they consist of and what their most important functions are.

To begin with, it is of the utmost importance to understand the European Union, even though this is not directly mentioned in the part of the text to be translated. The **European Union (EU)** is an economic and political partnership that currently has 28 Member States: *Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom*. The EU was created in 1958 after World War II and, at that time, its main aim was promoting economic cooperation and making trade easier and free from conflict. The initial members were Belgium, Germany, France, Italy, Luxembourg and the Netherlands. After having been improved and developed over the years, this international organization created an internal or single market which allows the free movement of people, goods, services and money among the Member States.<sup>20</sup>

Furthermore, two institutions or bodies that belong to the European Union are also mentioned in the text: the European Union Commission and the Court of Justice of the European Union.

In particular, the **European Union Commission** is the executive body of the EU in charge of representing and promoting the interests of this international organization as a whole. The Commission is made up of the institution itself and the “College of Commissioners”, which is re-elected every five years. The College of Commissioners represents the political leadership of the Commission and is made up of the President of the Commission, the Vice-Presidents and one Commissioner from each Member State. The following are the principal functions of the European Union Commission:

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<sup>17</sup> UK Music Industry wins High Court copyright case against UK Government – Summary of Judgment by Mr. Justice Green, Dated 19 June 2015, Case No: CO/5444/2014. (n.d.). Retrieved January 7, 2016, from <http://www.ukmusic.org>

<sup>18</sup> Incorporated Society of Musicians. (n.d.). Retrieved January 7, 2016, from <http://www.ism.org/>

<sup>19</sup> Secretary of State for Business, Innovation and Skills and President of the Board of Trade. (n.d.). Retrieved January 7, 2016, from <https://www.gov.uk/>

<sup>20</sup> The EU in brief. (n.d.). Retrieved January 29, 2016, from <http://europa.eu/about-eu/basic-information/>

“propose legislation which is then adopted by the co-legislators, the European Parliament and the Council of Ministers;  
enforce European law (where necessary with the help of the Court of Justice of the EU);  
set objectives and priorities for action, outlined yearly in the Commission Work Programme and work towards delivering them;  
manage and implement EU policies and the budget; and  
represent the Union outside Europe (negotiating trade agreements between the EU and other countries, for example).”<sup>21</sup>

On the other hand, the **Court of Justice of the European Union**, which is situated in Luxembourg, is the judicial body of the EU in charge of interpreting and applying EU treaties when hearing the disputes brought before it. It is composed of the Court of Justice, the General Court and the Civil Service Tribunal. When Mr. Justice Green states that he “should consider the possibility that questions should be referred to the Court of Justice”, we assume he is referring to the Civil Service Tribunal, since this court particularly hears “actions for annulment to void a regulation, directive or decision” brought by individuals.<sup>22</sup>

Now that we have discussed the pertinent legal institutions regarding the case at issue, we will look at the legislation.

As we have mentioned earlier in this section, the Defendant’s decision to introduce Section 28B was based on the discretion he has under Article 5(2)(b) of the Directive 2001/29. This legal instrument approved by the European Parliament, whose full name is “**Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society**”, entered into force on June 22<sup>nd</sup>, 2001, and its main purpose is to provide Member States of the European Union with legal protection as regards copyright and related rights (these include the right to reproduction, communication of works to the public and distribution) in the information society.<sup>23</sup>

**Article 5(2)(b)** of the Directive 2001/29 addresses the exceptions and limitations imposed by Member States on the reproduction right “in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive

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<sup>21</sup> About the European Commission - European Commission. (n.d.). Retrieved January 29, 2016, from <http://ec.europa.eu/>

<sup>22</sup> Court of Justice of the European Union. (2012). Retrieved January 29, 2016, from <http://www.ijrcenter.org/>

<sup>23</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. (n.d.). Retrieved January 9, 2016, from <http://www.ipkey.org/>

fair compensation which takes account of the application or non-application of technological measures referred to in Article 6 to the work or subject matter concerned.”<sup>24</sup>

As regards Section 28B, the Defendant had decided to include it in the **Copyright, Designs and Patents Act 1988**, which is the current law governing copyright in the United Kingdom. It basically gives the owners or creators of original works or content the right to control the way in which such works can be used by purchasers.<sup>25</sup>

On the whole, Section 28 of the Copyright, Designs and Patents Act 1988 enumerates the acts that may be done regarding copyright works, the main purpose being the avoidance of copyright infringement. The controversial section (or subsection), **Section 28B**, was supposedly added to Section 28 in an attempt to allow the purchasers of permanent and lawful content (music, films and books) to copy, store and format-shift such content for their own private non-commercial use.<sup>26</sup>

Another legal instrument that is essential for the understanding of the case at issue is the **Treaty on the Functioning of the European Union (TFEU)**. This international agreement, together with the Treaty on European Union, is one of the most important treaties of the EU since it is the basis of most of the laws enacted by this international organization. It essentially details the organization of the European Union and the scope of its power in each of the areas where it operates.<sup>27</sup>

Articles 107 and 108(3) of the TFEU are also mentioned several times in the text. These articles deal with the different forms of aid granted “through State resources”. **Article 107**, on the one hand, explains that aid, which may be granted to different individuals or entities within a particular Member State, must be compatible with the internal or single market of the EU and must not affect trade between Member States in any way. On the other hand, **Article 108(3)** particularly states that the European Union Commission must always approve the granting or altering of aid before the measure comes into effect.<sup>27</sup>

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<sup>24</sup> DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. (n.d.). Retrieved January 29, 2016, from <http://eur-lex.europa.eu/>

<sup>25</sup> UK copyright law: A summary. (n.d.). Retrieved January 9, 2016, from <https://www.copyrightservice.co.uk/>

<sup>26</sup> The Copyright and Rights in Performances (Personal Copies for Private Use) Regulations 2014. (n.d.). Retrieved January 29, 2016, from <http://www.legislation.gov.uk/>

<sup>27</sup> Consolidated Version of the Treaty on the Functioning of the European Union. (n.d.). Retrieved January 29, 2016, from <http://eur-lex.europa.eu/>

## **DETAILED ANALYSIS OF THE PART OF THE TEXT TO BE TRANSLATED**

In this section of our work we will mainly analyze the part of the text to be translated in terms of grammar. All the explanations will be accompanied by examples taken from the text, together with the page and the line in which they can be found.

We will address this section's analysis by studying the subject of verb phrases in particular and focusing on the classifications that we consider relevant and useful. At the end of this section we will include a thorough analysis of the punctuation marks used in the text and of the jargon that we consider pertinent for its understanding. We preferred to present these two parts or "subsections" separately because, in general, they are not considered part of the grammatical analysis found in the majority of the traditional grammar books that we have consulted (the jargon analysis, for instance, would actually correspond to a semantic analysis).

However, we cannot begin with our study without first defining **grammar**. Several authors including Farrell (1997), Quirk (1997), and Yule (2006) refer to grammar as the set of rules that govern how words and phrases are structured and how we arrange and use words to convey our ideas. Grammar includes *syntax* which, according to the Oxford English Dictionary (1989), examines the way in which words are arranged in an attempt to form phrases, clauses and finally sentences, and *morphology*, which deals with "the study and description of how words are formed in language" (Quirk, 1997).

To start with, it is important that we define and explain the concept of *sentence* and its different kinds. As Quirk (1997) points out, **sentences** are made up of one or more **clauses**, each of which comprises **elements** or **constituents** (these finally consist of *words*). Sentences may be classified into four different types: declarative, interrogative, imperative, and exclamatory. *Declarative sentences* have the function of expressing information or making statements, while *interrogative sentences* are employed whenever one wants to ask a question. As to *imperative sentences*, these are used when giving orders or commanding somebody to do something, while *exclamatory sentences*, on the contrary, are used to make an exclamation.<sup>28</sup>

As regards the types of sentences of the text, we found that all of them are declarative sentences, with the exception of one which seems to be in the interrogative form, but lacks a question mark at the end of it. The third of the following three examples illustrates what we have just mentioned:

"This is a conclusion I would arrive at on the basis of any test for judicial review [...]" (Page 11, lines 10-11).

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<sup>28</sup> The Discourse Functions of Sentences. (n.d.). Retrieved January 3, 2016, from <http://www.ucl.ac.uk/>



“The Intervener is the Incorporated Society of Musicians (“ISM”).” (Page 12, line 15).

“*Does* the introduction of Section 28B constitute unlawful State aid within the meaning of Article 107 TFEU which was not notified to the Commission under Article 108(3) TFEU and so is unlawful [...]” (Page 10, line 39-41).

In addition, it can be easily noticed that the sentences of the text have a normal or an average length. Some of them are longer than others, but since the use of punctuation marks throughout the text is correct we have not found any special features as regards this matter.

### ***THE VERB PHRASE***

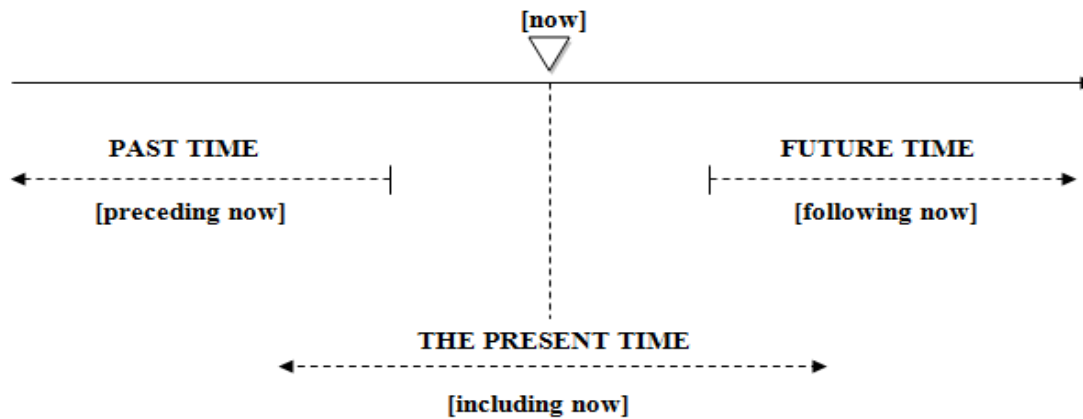
In reference to words, we must say that they belong to different parts of speech which indicate their function within a sentence and the particular rules that apply to them. As we mentioned earlier, we will focus mainly on verb phrases due to the fact that these play an important role in the organization and structuring of sentences. They are the central word (or words) within the predicate of a sentence (Farrell, 1997).

Verb phrases can be divided into two major groups: finite verb phrases and non-finite verb phrases. We will start with the first group as it requires a more extensive classification and description.

According to Quirk (1997), finite verb phrases are phrases in which there is one finite verb which may not be the only verb within the phrase. They are *simple* whenever they are made up of only one word, as in the sentence “I *go* to the park”; or *complex*, whenever they include two or more words, as in “I *must go* to the doctor on Monday”. As we may notice, complex finite verb phrases may include words that belong to other grammatical categories, such as modal verbs (these will be further explained later in this section).

Moreover, finite verb phrases may vary according to tense, aspect, mood and voice (Quirk, 1997). These will be the focus of the analysis of this section of our work.

To begin with, when it comes to verb inflection, our understanding of the notion of time is of the utmost importance. **Time** could be explained as a line on which the event described by the verb is placed at a specific moment. Generally, the present time is always the point of reference, with the past time before it and the future time following it (Quirk, 1997). The diagram below illustrates this explanation in a clear way:



Source: (Quirk, 1997, p.47)

Now that we have introduced the subject of time, we can discuss **tense**, which particularly refers to *verb inflection*. As Farrell (1997) points out, the word *tense* has its origins in the Latin word *tempus* and in the French word *temps*, meaning *time*. Tense tells us “when something happened, how long it lasted, or whether it is completed” (Farrell, 1997).

The English language in particular has only two inflected forms of the verb: the present tense and the past tense, which make reference to the present time and the past time respectively (Quirk, 1997). Future meaning, on the other hand, may be expressed in other ways that will be further explained later.

Now, we will discuss the present tense and the past tense by applying their definitions, uses, and examples to the specific part of the text to be translated.

**Simple present** is usually employed to convey present time. Among the various uses of the simple present tense, in the text we could identify the use of the *state present*, which refers to a single event that took place in the past, exists at the present time, and will probably still exist in the future as well. The event expressed by the verb must always apply to the moment of speaking or, in this case, of writing (Quirk, 1997). The examples found in the text include the following:

“The Claimants **contend** that the Secretary of State was so firmly committed to introducing an exception without a compensation scheme that [...]” (Page 10, line 35).

“The impact assessments **record** that the new exception will confer a benefit worth about £258 million over ten years on technology providers.” (Page 10, line 42).

“It is, in theory, possible for the Secretary of State to re-investigate the issue in order to address the evidential gap which *now* **prevails**.” (Page 11, line 19).

As we may notice, the third sentence contains the adverb of time *now* modifying the verb *prevails*. If we consider the moment in which the judgment was written as the present moment or time, we could therefore conclude that such evidential gap prevails at the present time. However, we cannot be sure of whether it will continue to prevail in the future or not. In fact, judging from how the text continues after this sentence, not even the author knows if such gap will prevail in the future. These are the reasons why we can conclude that this particular example, together with the remaining two, uses the state present.

Another common use of the simple present that appears recurrently in the text is the *habitual present*. In the words of Leech (1974), the habitual present “represents a series of individual events which as a whole make up a state stretching back into the past and forward into the future.” Quirk (1997) states that in this particular use the event expressed by the verb occurs repeatedly. These are some of the examples extracted from the text:

“The Second Claimant is the Musicians’ Union [...]. It **represents** over 30,000 musicians [...].” (Page 12, line 2).

“UK Music **lobbies for** the rights of its members and promotes their interests.” (Page 12, line 13).

“The Intervener is the Incorporated Society of Musicians [...]. Its objects **include** ‘to promote and support the Art of Music’ and ‘to promote and support the interests of persons working as professionals within the music profession’” (Page 12, line 17).

“It is recognised that harmonisation of the laws of the Member States on copyright and related rights **contributes** to the achievement of such objectives.” (Page 12, line 37).

As regards the **simple past** tense, its most common use refers to an event or situation that took place at a specific moment in the past (Quirk, 1997). Even though there are not so many uses of this tense in the text, the following are some of the examples that we could identify.

“The Intervener is the Incorporated Society of Musicians [...]. It **was established** in 1882 [...].” (Page 12, line 16).

“Whether the Secretary of State **predetermined** the outcome of the consultation [...].” (Page 10, line 34).

“The Intellectual Property Office [...] was responsible, in practical terms, for conducting the consultative exercise which **led** to the introduction of section 28B CDPA 1988.” (Page 12, line 29).

Regarding the first example, the use of the simple past that can be identified here is the *event past*. The event past refers to a single event that occurred in the past, usually at a specific moment of the past (Quirk, 1997). The adverbial modifier “in 1882” accounts for this.

On the other hand, the remaining two cases exemplify another use of the simple past which may be very similar to the one that we described above. This is the *state past*, and it makes reference to “a single unbroken state of affairs in the past” (Quirk, 1997).

Turning to **aspect**, Leech (1974) describes it as the way in which we may regard the meaning of a verb in reference to time. Two are the aspects that may be identified in English: the *perfect* and the *progressive*. Both are classified into present and past, and they can be combined to form complex finite verb phrases (Leech, 1974).

Progressive constructions basically consist of a form of the verb *to be* plus a verb ending with *-ing*: “My aunt *is working* on a new project.” This type of construction is mainly used to refer to “temporary situations, activities, or goings-on” (Leech, 1974).

As regards the perfect aspect, we have stated that the present perfect and the past perfect tenses may be distinguished. The difference between the two is that, on the one hand, the present perfect describes an event taking place at an indefinite time in the past which extends up to the present time (this is a major difference between the present perfect and the simple past tense in which the exact time reference is known or conveyed). On the other hand, past perfect “refers to a time earlier than another past time” (Quirk, 1997). Leech (1974) further describes past perfect as “the past in the past, a time further in the past, seen from the viewpoint of a definite point of time in the past.”

Only the present perfect was used throughout the text. We have decided to include the following examples, all of which refer to the state present perfect use. According to Quirk (1997), this use of the present perfect makes reference to specific events that started in the past and lasted to the present time, possibly continuing in the future:

“However, I **have decided** issue IV in favour of the Claimants [...]” (Page 11, line 7).

“This is because the conclusions and inferences which **have been drawn** from the evidence the Secretary of State **has relied** upon are simply not warranted or justified by that evidence.” (Page 11, lines 8-9).

“If he does this then one possible outcome would be that the gap that I **have identified** is plugged and the present decision becomes justified.” (Page 11, line 20).

“A second issue arising is that although I **have come** to conclusions on the central legal issues arising [...]” (Page 11, line 25).

“They may also **have assigned** those rights in exchange for contractual rights [...]” (Page 11, line 39).

“Its membership **has** traditionally **been drawn** from the classical side of the profession though in recent years its membership **has expanded** and *now it includes* members from a wider range of genres [...]” (Page 12, lines 21-22).

The adverbial modifier *now* in the last paragraph makes it clear that the membership started to expand at some time in the past that we do not know and continued to expand until the present time. Hence, we are able to understand the event described by the verb (the membership’s expansion) as a process.

Another grammatical point of view from which we must analyze verb inflection is **mood**. Farrell (1997) describes mood as the attitude that the speaker adopts when speaking or writing. The three English moods are the indicative mood, the imperative mood and the subjunctive mood.

The *indicative mood* is mainly used for making factual assertions. This is the most common of the three moods, and the only one that can be identified in the text (Farrell, 1997). These are the examples that we selected:

“In relation to the substantive issues (i.e. II-VI) I **have decided** Issues II, III, V, and VI in favour of the Secretary of State” (Page 11, line 5).

“**Does** the introduction of Section 28B **constitute** unlawful State aid within the meaning of Article 107 TFEU which **was** not **notified** to the Commission under Article 108(3) TFEU and so **is** unlawful [...]” (Page 10, lines 39-41).

As to the *imperative mood*, this is used to give orders or commands. It can only be used with the second person singular or plural, and there is no subject expressed (“Leave!”) (Farrell, 1997). In the text, we found only one case which could be taken as an example of the imperative mood, but it cannot be considered an order. Instead, it could be regarded as a suggestion or an indication given by the author:

“However, I have decided Issue IV in favour of the Claimants: **see** section I below at paragraphs [232] – [273].” (Page 11, line 7).

Lastly, the *subjunctive mood* expresses ideas or events that may or may not be true, and makes recommendations or suggestions, as in the sentence “I recommend that you do some exercise regularly.” This mood is rarely used in English (Farrell, 1997).

It is also important to explain what is meant by **voice**. When it comes to finite verb phrases, these may be in the *active voice* whenever the subject of the clause is performing the action expressed by the verb, or in the *passive voice*, in which case the subject of the clause is “acted upon by an agent” (Farrell, 1997).

Now, a significant detail that cannot be ignored is that, in an attempt to express a finite verb phrase in the passive voice, the verb must be *transitive*. Transitive verbs require a direct and/or an indirect object in order to convey their meaning completely (Farrell, 1997). We will provide a couple of examples of the text.

“The Intervener is the Incorporated Society of Musicians [...] It **was established** in 1882 [...]” (Page 12, line 16).

“This is because the conclusions and inferences which **have been drawn** from the evidence the Secretary of State has relied upon **are** simply not **justified** or **warranted** by that evidence.” (Page 11, lines 8-10).

The second example contains two finite verb phrases in the passive voice that belong to different clauses within the same sentence. Even though the first one, *have been drawn*, is not accompanied by the agent, from the context we learn that it is the Secretary of State. The second passive verb phrase, on the contrary, is followed by the agent “that evidence”.

In the end, unless the agent is well-known or important and cannot be omitted, the author will choose to include or avoid the agent in a passive construction, depending on what element of the sentence he wishes to emphasize (Farrell, 1997).

If we turned the previous example into the active voice, it would read as follows:

“The Secretary of State has drawn conclusions and inferences from the evidence he has relied upon. However, that evidence does not justify or warrant said conclusions and inferences.”

Passive constructions may sometimes make a text confusing and tedious, but they certainly help to avoid unnecessary repetitions (Quirk, 1997).

Now that we have analyzed the basic and most important characteristics of finite verb phrases, we will proceed to explain non-finite verb phrases or, as some authors call them, verbals.

Farrell (1997) describes **verbals** as non-finite forms of the verb which do not agree with the subject in terms of person and number, and can never function as the main verb phrase of an independent clause.

This major group includes: the *infinitive*, which is the basic form of the verb and is often preceded by the word *to*; the *gerund*, defined as “the verbal noun” ending in *-ing*; and finally the *participle* or “verbal adjective”, ending in *-ing* whenever it is in the present tense, and in *-ed* or *-n* whenever it is in the past tense (Farrell, 1997).

Examples of infinitives include the following:

“Issue IV is material to the legality of the decision of the Secretary of State **to adopt** section 28B. In my judgment it is sufficient **to result** in the decision being rendered unlawful.” (Page 11, lines 14-15).

“BASCA exists **to support** and **protect** the artistic, professional, commercial and copyright interests of music writers.” (Page 11, line 38).

“A large number of its members are either holders of performers’ property rights, or benefit from an income stream resulting from having assigned rights in their performances, or *hope to do* so in the future.” (Page 12, line 7).

Notice that, in the second sentence, instead of writing “*to support* and *to protect*”, the author chose not to repeat the word *to* before the second infinitive verb. As to the third example, we italicized the intransitive verb *hope* (which means “to expect something”) since it indicates that what follows must be a “*to infinitive*” construction. This is a fixed collocation (hope + to infinitive) (Oxford, 2003).

Among the many examples of participles that we found in the text, we chose the following:

“This is because the *conclusions and inferences* which have been drawn from the evidence the Secretary of State has relied upon are simply not **warranted** or **justified** by that evidence.” (Page 11, line 10).

“The Directive was adopted in the context of the provisions of the *Treaty providing* for the establishment of an internal market and the institution of a *system ensuring* that *competition* in that internal market is not **distorted**.” (Page 12, lines 35-37).

As we may notice, all the participles in these examples are acting as adjectives modifying different nouns in each sentence. The clearest ones are “the *Treaty providing*” and “a *system ensuring*”. In addition, three of the participles are part of a compound noun: “*are not warranted or justified*” and “*is not distorted*” (Farrell, 1997).

Concerning the gerund, the following are two particular examples that are worthy of discussion:

“[...] The Claimants contend that the Secretary of State *was so firmly committed to introducing* an exception without a compensation scheme that [...]” (Page 10, line 36).

“The Intellectual Property Office [...] *was responsible, in practical terms, for conducting* the consultative exercise which led to the introduction of section 28B CDPA 1988.” (Page 12, line 28).

Both of these gerunds are acting as *objects to the preposition*. This is a grammatical function inherent only to words which are preceded by a preposition and have pronominal or nominal function within the sentence, as

it is the case of these gerunds (Farrell, 1997). As we pointed out before when discussing infinitives, the gerunds in these examples form fixed collocations (be committed to + *-ing* form; be responsible for + *-ing* form) (Oxford, 2003).

Finally, the last grammatical aspect that we would like to explain as regards verbs is modality and modal verbs.

Lyons (1977) and Palmer (1990) describe modality as “a semantic-grammatical category expressed by modal verbs which is concerned with the *opinion* and *attitude* of the speaker.”

In English, the standard modal verbs are: ***will, shall, may, can, must and ought to***. Some of them have a past form (will/would, shall/should, may/might, can/could). Depending on the meaning each of them conveys, they may belong to the group of *epistemic modality*, which basically “makes judgments about the truth of the proposition”, or *deontic modality*, which “influences actions, states or events” (Palmer, 1990).

Epistemic and deontic modalities are often subjective. This is because the former conveys a deduction made by the speaker, whereas as regards the latter it is the speaker himself who obliges, permits or prohibits (Palmer, 1990).

We will now look at the different examples of modals that were found in the text.

“[...] The impact assessments record that the new exception ***will*** confer a benefit [...] on technology providers.” (Page 10, line 43).

The sense of *will* in this sentence conveys *predictability*, a sense which suits scientific and other similar kinds of statements (Quirk, 1997). The case of this modal verb is special, since it conveys the future tense and is therefore also used to express future time (Palmer, 1990).

“This is a conclusion I ***would*** arrive at on the basis of any test for judicial review [...]” (Page 11, line 10).

“If he does this then one possible outcome ***would*** be that the gap that I have identified is plugged and the present decision becomes justified.” (Page 11, line 19).

Judging by the context of the previous two sentences, we could conclude that *would* also conveys predictability in both cases. As Palmer (1990) points out, “with modals there is no clear ‘literal’ sense; any core meaning has to be deduced.”

“As authors, its members ***may*** own copyrights themselves. They ***may*** also have assigned those rights in exchange for contractual rights [...]” (Page 11, lines 38-39).



“Another outcome ***might*** be that following further investigation the gap in the evidence remains un-plugged [...]” (Page 11, line 21).

As regards the modals *may* and *might*, there are two possible meanings or senses that they may have: one is possibility and the other one is permission. Again, the context suggests that what these modal verbs are expressing is possibility, in which case they could be replaced for “it is possible that...” (Palmer, 1990).

“[...] there ***can*** be *no doubt* but that the questions of law are of wide significance both in this jurisdiction and in the EU and elsewhere.” (Page 11, line 26).

“[...] in which case the Secretary of State ***could*** either repeal section 28B or introduce a compensation scheme.” (Page 11, line 22).

“I therefore ***should*** consider the possibility that questions ***should*** be referred to the Court of Justice before making any final orders in this case.” (Page 11, lines 27-28).

*Should* is an isolated case, since it is regarded as an independent modal verb due to the fact that, technically, it has no past time form. However, it is considered to be the past tense of *shall*. *Should* is also used to replace *ought to* in more informal contexts, and they both express obligation (Palmer, 1990). As regards this particular sentence, the first *should* indicates that the speaker or writer places himself under the obligation to “consider the possibility.” Nevertheless, in reference to the second *should*, since the verb is in the passive voice it is not clear who is the person in charge of referring the questions to the Court of Justice: it could be the judge himself or another unspecified individual.

## ***THE USE OF PUNCTUATION MARKS***

Now that we have analyzed the most important grammatical aspects of the text to be translated, we will include a detailed analysis of the punctuation marks found in such part of the text.

In the words of Newmark (1988), “punctuation is an essential aspect of discourse analysis, since it gives a semantic indication of the relationship between sentences and clauses, which may vary according to languages.”

Our understanding of any text depends, to a large extent, on punctuation marks and whether these are used correctly. Their proper use avoids ambiguities by organizing the information in specific and accurate units (paragraphs, sections, etc.), and by determining the right intonation of the text (García Negroni, 2011).

We will begin with the uses of the **period (.)** that were identified in the text.

The period used to separate sentences and paragraphs (Partridge, 1990):

“20. However, I have decided Issue IV in favour of the Claimants: see section I below at paragraphs [232] - [273]. This is because the conclusions and inferences which have been drawn from the evidence [...]” (page 11, line 8).

“UK Music lobbies for the rights of its members and promotes their interest through campaigns and events. 27. The Intervener is the Incorporated Society of Musicians (“ISM”).” (page 12, line 14).

The period used in abbreviations (Partridge, 1990):

“19. In relation to the substantive issues (*i.e.* II-VI) I have decided Issues II, III, and VI in favour of the Secretary of State.” (page 11, line 5).

This abbreviation belongs to the explanatory Latin expression *id est*, which means *that is*. It explains what the author meant by referring to the *substantive issues*. In this case, the abbreviation is not capitalized due to the fact that the original and complete expression, which consists of two words, is not capitalized whenever it is used in the middle of a sentence (Oxford, 1989).

Another punctuation mark that is worthy of mention is the **colon (:)**, which “gives emphasis to what has already been said and calls attention to what is to follow an opening statement. It may introduce words, phrases, clauses, or any combination or series of these.” The colon denotes a briefer pause than that conveyed by the period (Alward, 1997). Here are the different uses of the colon that we could identify in the text.

The colon used to establish a relationship between what comes before it and what comes after it (Alward, 1997):

“Issue VI: Does the introduction of Section 28B constitute unlawful State aid within the meaning of Article 107 TFEU which was not notified to the Commission under Article 108(3) TFEU and so is unlawful: The impact assessments record that [...]” (page 10, lines 39-41).

“20. However, I have decided Issue IV in favour of the Claimants: see section I below at paragraphs [232]-[273].” (page 11, line 7).

This use of the colon is one of the most common. Its main purpose is to put emphasis on what comes after the punctuation mark (Alward, 1997).

As regards the **comma** (,), this is one of the most recurrent punctuation marks in English (Alward, 1997). Among its many uses, we could identify the following.

The comma used to separate items in an enumeration (Quirk, 1996):

“19. In relation to the substantive issues (i.e. II-VI) I have decided *Issues II, III, V, and VI* in favour of the Secretary of State.” (page 11, line 5).

“It represents all parts of the music industry including *songwriters, publishers, musicians, managers, record labels, producers, collecting societies and the live music industry.*” (page 12, lines 11-12).

Notice that in the first example, a comma is placed before the conjunction *and* which joins the series of items. This has always been a controversial subject among English writers and readers, some of whom believe that the comma placed before the conjunction is not necessary. However, the serial comma, as it is called when referring to this particular use, is sometimes placed before the conjunction introducing the last item of the list in an attempt to avoid incorrect readings.<sup>29</sup>

The comma used to enclose expressions appearing in the middle of a sentence or clause (Alward, 1997):

“The Claimants contend that the Secretary of State was so firmly committed to introducing an exception without a compensation scheme that his “pre-disposition” in truth was a “predetermination” which, *in law*, was unlawful.” (page 10, lines 37-38).

“28. The Defendant is the Secretary of State for Business, Innovation and Skills. He has responsibility for, *inter alia*, the reform of intellectual property.” (page 12, line 26).

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<sup>29</sup> Tips for Effective Punctuation in Legal Writing. (n.d.). Retrieved October 25, 2015, from <http://www.law.georgetown.edu/>

The comma used to separate introductory adverbs from the rest of the sentence or clause (Alward, 1997):

“20. *However*, I have decided Issue IV in favour of the Claimants [...]” (page 11, line 7).

The comma used to enclose non-defining relative clauses (Alward, 1997):

“24. The First Claimant is the British Academy of Songwriters, Composers and Authors Limited (“BASCA”), *which is a company limited by guarantee representing the interests of music writers of all genres*, [...]” (page 11, lines 35-36).

“25. The Second Claimant is the Musicians’ Union (“MU”), *which is an independent trade union*.” (page 12, line 1).

Those subordinate relative clauses introduced by *which* are mostly non-defining. This means that, if they were removed, the meaning of the noun they are modifying would not be altered. They are only intended to give additional information about a noun phrase or clause (Alward, 1997).

The comma used to separate from the rest of the sentence a verbal or non-finite phrase placed at the end of it (Alward, 1997):

“MU assists its members with various issues including the provision of legal advice, *understanding their rights and career advice*.” (page 12, line 4).

The comma used to separate every 1000 in figures and numbers (Duff, 1981):

“It represents over 30,000 musicians (mostly UK residents) ranging from major artists to self-employed and student musicians.” (page 12, line 2).

“Its membership includes in excess of 6,600 individual musicians and 148 organisations who are corporate members of ISM.” (page 12, line 20).

The comma used to separate correlative conjunctions such as *either/or* (Alward, 1997)

“A large number of its members *are either* holders of performers’ property rights, **or** *benefit from* an income stream resulting from having assigned rights in their performances, **or** *hope to do so in the future*.” (page 12, lines 5-7).

There is another punctuation mark which is similar to the comma, but it is actually less frequent. It is the **semicolon** (;), which according to Alward (1997) “is used specifically to coordinate elements of equal rank and with the same kind of structure.”

The following case is the only example of the use of the semicolon that could be identified in the text. Here, this punctuation mark was used to join two main ideas which could function perfectly as two separate sentences:

“This is a conclusion I would arrive at on the basis of any test for judicial review; it is not as such dependent upon the review being intensive or merits based.” (page 11, line 11).

Furthermore, another common punctuation mark found in the text is the **parentheses** ( ) or round brackets. The following are the main uses that we could identify in the text.

Parentheses used to include information that is related in some way to the main topic of the sentence (Alward, 1997):

“It represents over 30,000 musicians (*mostly UK residents*) ranging from [...]” (page 12, line 2).

“The Intellectual Property Office (“IPO”) (*an operating name of the Patent Office*) is an Executive Agency of the Defendant [...]” (page 12, line 27).

“25. The Second Claimant is the Musicians’ Union (“MU”) [...]” (page 12, line 1).

In the previous examples, the writer included explanations of the nouns mentioned in the sentences. These explanations have a “remote” relationship with those nouns and could easily be eliminated without altering the main and general meanings of the nouns.

In the first sentence, the writer used parentheses to enclose a side remark, while, in the second, he included an appositive in the subject of the sentence. In the third example, however, the writer places between brackets an explanation of how the *Musicians’ Union* will be referred to throughout the text, especially after having been mentioned fully for the first time (Alward, 1997).

Additionally, the writer uses **square brackets** [ ] in a couple of occasions to enclose explanatory information (Alward, 1997):

“20. However, I have decided Issue IV in favour of the Claimants: see section I below at paragraphs [232] - [273].” (page 11, line 8).

Furthermore, we identified some uses of the **hyphen** (-) in the text, which will be described below.

The hyphen used in constructions containing Roman numerals (Alward, 1997):

“19. In relation to the substantive issues (i.e. *II-VI*) I have decided Issues II, III, V, and VI in favour of the Secretary of State.” (page 11, line 5).

Here, the hyphen is used to make reference to a series of things. In this case, the author mentions the substantive issues and then explains to what specific issues he is referring.

The hyphen used in compound words (Alward, 1997):

“It is, in theory, possible for the Secretary of State to *re-investigate* the issue in order to address the evidential gap which now prevails.” (page 11, line 18).

“It represents over 30,000 musicians (mostly UK residents) ranging from major artists to *self-employed* and student musicians.” (page 12, line 3).

The hyphen is commonly placed between a prefix and a word, which, together, form a compound word. This use of the hyphen that connects a word to a particular prefix has a huge advantage: it eliminates the need of using additional phrases to describe what is already explained by the compound word itself (Duff, 1981).

As regards the **dash** (–), we decided to include the following example as it is the only use of this punctuation mark that can be identified in the text, even though we have not found this particular use described in the grammar books that we have consulted.

“20. However, I have decided Issue IV in favour of the Claimants: see section I below at paragraphs [232] – [273].” (page 11, line 8).

According to what we infer from our analysis of the text, this use of the dash could be regarded as similar to the first use of the hyphen that has been described above. The author makes reference to a series of paragraphs that can be found in a particular section of the text, and uses square brackets and a dash to clarify such a sequence. The meaning would be “see section I below from paragraph 232 to paragraph 273”.

In reference to **quotation marks** (“”), these are used in the text to “set off what has actually been said or what has previously been written” (Alward, 1997). We chose three different examples to show this particular use of quotation marks:

“[...] The Claimants contend that the Secretary of State was so firmly committed to introducing an exception without a compensation scheme that his “predisposition” in truth was a “predetermination” which, in law, was unlawful.” (page 10, line 37).

“It is submitted that this amounts to unnotified illegal aid granted “through State resources” contrary to Articles 107 and 108 TFEU.” (page 11, line 2).

“Its objects include “to promote and support the Art of Music” and “to promote and support the interests of persons working as professionals within the music profession”.” (page 12, lines 18-19).

“The First Claimant is the British Academy of Songwriters, Composers and Authors Limited (“BASCA”) [...]” (page 11, line 35).

In the last example, quotation marks were used by the author to enclose an abbreviation of the full name of one of the Claimants of the case. The objective is to show the reader that such an abbreviation will be subsequently used in every occasion in which the author refers to that Claimant. This is a highly recurrent use of quotation marks in the majority of legal texts and in our text as well, since there is a tendency to mention a large quantity of names of institutions, persons, legislation, etc. (Alward, 1997).

Moreover, *italics* were used once in the text to distinguish a foreign word (a Latin expression, in this case) from the rest of the sentence (Alward, 1997):

“He has responsibility for, *inter alia*, the reform of intellectual property.” (page 12, line 26).

The **apostrophe (’)** was also used in various occasions. We will provide a couple of examples along with the corresponding explanations.

The apostrophe used to show possession in plural nouns (Alward, 1997):

“25. The Second Claimant is the *Musicians’ Union* (“MU”), which is an independent trade union.” (page 12, line 1).

An exception to this rule, that of using the apostrophe in the case of nouns to mark possession, arises whenever we have a personal pronoun, for possession in the case of personal pronouns must never be marked with an apostrophe.<sup>30</sup> We chose the following example from the text with the aim of demonstrating this:

“MU assists **its** members with various issues including the provision of legal advice [...]” (page 12, line 3).

Finally, another use as regards punctuation marks which is worthy of discussion is the use of **capitalization** or **capitals letters**. Capital letters tend to emphasize the relevance of certain words in certain contexts (Merriam-Webster, 1998). The following are the most relevant uses that could be identified in the text:

Capital letters used to emphasize the first word of a sentence (Merriam-Webster, 1998):

“**I**n my judgment it is sufficient therefore to result in the decision being rendered unlawful. **H**owever, this has potentially complex implications for section 28B.” (page 11, line 16).

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<sup>30</sup> Stoker, K. (n.d.). Other Punctuation: Colons, Semicolons, Apostrophes, Quotes. Retrieved October 25, 2015, from <http://www.law.du.edu/>

The first word of a sentence, whether it is a sentence inside a whole paragraph or a sentence beginning a new paragraph, must always be capitalized (Merriam-Webster, 1998).

Capital letters were also used in the text to emphasize the first word of a lengthy sentence introduced by a colon (Merriam-Webster, 1998):

“Issue V: **Whether** the Secretary of State predetermined the outcome of the consultation:  
**The** Claimants content that [...]” (page 10, lines 34-35).

The previous example serves to demonstrate that the first word of a sentence which is introduced by a colon must always be capitalized whenever such sentence could function as an independent sentence or clause (Merriam-Webster, 1998).

The first word in an outline title or heading is also usually capitalized (Merriam-Webster, 1998):

“(iii) **C**onclusions” (page 11, line 4).

Furthermore, one should always capitalize the word or words that form a proper noun as well as the abbreviations of proper nouns (Merriam-Webster, 1998):

“The **I**ntervener is the **I**ncorporated **S**ociety of **M**usicians (“**ISM**”).” (page 12, line 15).

“25. The Second Claimant is the *Musicians’ Union* (“**MU**”), which is an independent trade union.” (page 12, line 1).

Capital letters are also employed as regards the full names of governmental, judicial, and political bodies (high courts), and of specific treaties, laws, and acts and their short forms (Merriam-Webster, 1998):

“I therefore should consider the possibility that questions should be referred to the **C**ourt of **J**ustice before making any final orders in this case.” (page 11, line 28).

“Issue VI: Does the introduction of **S**ection **28B** constitute unlawful State aid within the meaning of **A**rticle 107 TFEU which was not notified to the Commission [...]” (page 10, lines 29-31).

“The Directive was adopted in the context of the provisions of the **T**reaty [...]” (page 12, line 35).

Lastly, the full names of organizations or associations and the terms that derive from those names should also be capitalized (Merriam-Webster, 1998):

“The **I**ntellectual **P**roperty **O**ffice (“**IPO**”) (an operating name of the Patent Office) is an **E**xecutive **A**gency of the Defendant [...]” (page 12, lines 27-28).



“It is recognised that harmonisation of the laws of **Member States** on copyright and related rights contributes to the achievement of such objectives.” (page 12, lines 37-38).

*Member States* is capitalized because it refers to those States that are part of the Directive 2001/29 of the European Parliament and the Council dated May 22<sup>nd</sup> 2001.

## ***JARGON ANALYSIS***

This section concerns the thorough study of the different kinds of lexicon found in the part of the text to be translated. For this analysis to be well-organized, we will present it in the following manner.

The terms will be divided into three principal groups: general vocabulary, legal terminology, and Latin terminology. For each word, a definition or explanation in Spanish (or more than one) will be provided, along with the possible translations that may apply to the specific context of the judgment at issue. Finally, we will give the English definition of those tentative translations that we consider more adequate and accurate.

### **GENERAL VOCABULARY**

**Assessment:** estimation; evaluation (Oxford, 1989).

**Tentative translation:** evaluación (Oxford, 2003).

**Evaluación:** acción y efecto de evaluar; señalar, estimar el valor de algo (RAE, 2006).

**Consultation:** a discussion about something that is being decided.<sup>3</sup>

**Tentative translation:** consulta (Simon & Schuster, 1997).

**Consulta:** acción y efecto de consultar; examinar, tratar un asunto con una o varias personas; buscar documentación o datos sobre algún asunto o materia (RAE, 2006).

**Contend (v.):** to strive in argument or debate; to dispute keenly; to argue; to contest or dispute (an object) (Oxford, 1989).

**Tentative translations:** argüir; sostener (Oxford, 2003).

**Argüir:** aducir o alegar una razón o un argumento a favor o en contra de alguien o algo (RAE, 2006).

**Sostener:** sustentar, mantener firme algo (RAE, 2006).

### **European Union:**

- an association of European nations whose purpose is to achieve full economic unity (and eventual political union) by agreeing to eliminate barriers to the free movement of capital, goods, and labor among the member-nations. Its abbreviation is EU (Garner, 2009);
- efforts to transform the European Community into a complete integrated political and economic unit. The Union furthers economic integration and tackles social and political issues such as common foreign policy (Fox, 1997).

**Tentative translation:** Unión Europea (Oxford, 2003).

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<sup>3</sup> (n.d.). Retrieved September 14, 2015, from <http://www.merriam-webster.com/>

**Unión Europea:** La Unión Europea (UE) es una asociación económica y política, única en su género, de 28 países europeos que abarcan gran parte del continente. El origen de la UE se encuentra en el periodo posterior a la Segunda Guerra Mundial. Sus primeros pasos consistieron en impulsar la cooperación económica con la idea de que, a medida que aumentara la interdependencia económica entre los países, disminuirían las posibilidades de conflicto. En 1958 se creó, pues, la Comunidad Económica Europea (CEE), que en un principio establecía una cooperación económica cada vez más estrecha entre seis países: Alemania, Bélgica, Francia, Italia, Luxemburgo y los Países Bajos. Posteriormente, se creó un gran mercado único que sigue avanzando hacia el logro de todo su potencial. Y lo que comenzó como una unión meramente económica ha evolucionado hasta convertirse en una organización activa en todos los frentes políticos, desde la ayuda al desarrollo hasta el medio ambiente. En 1993, el cambio de nombre de CEE a UE no hacía sino reflejar esta transformación.

La UE se basa en el Estado de Derecho: todas sus actividades están fundadas en los tratados, acordados voluntaria y democráticamente por todos los países miembros. Estos acuerdos vinculantes establecen los objetivos de la UE en sus numerosos ámbitos de actividad.<sup>20</sup>

**Harmonisation:**

- the action or process of harmonising; reduction to harmony or agreement (Oxford, 1989);
- to bring into consonance or accord.<sup>3</sup>

**Tentative translation:** armonización (Oxford, 2003).<sup>24</sup>

**Armonización:** acción y efecto de armonizar (poner en armonía o hacer que no discuerden o se rechacen dos o más partes de un todo, o dos o más cosas que deben concurrir al mismo fin (RAE, 2006).

**Industry:**

- a particular form or branch of productive labor; an aggregate of enterprises employing similar production and marketing facilities to produce items having markedly similar characteristics (Garner, 2009);
- a particular type of industry, trade, or service (Longman, 2003).

**Tentative translation:** industria (Oxford, 2003).

**Industria:** suma o conjunto de las industrias (maña y destreza o artificio para hacer algo) de un mismo o varios géneros, de todo un país o de parte de él (RAE, 2006).

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<sup>3</sup> (n.d.). Retrieved September 14, 2015, from <http://www.merriam-webster.com/>

<sup>20</sup> The EU in brief. (n.d.). Retrieved January 29, 2016, from <http://europa.eu/about-eu/>

<sup>24</sup> DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. (n.d.). Retrieved January 29, 2016, from <http://eur-lex.europa.eu/>

**Intensive:** of, relating, or pertaining to intensity, or degree of intrinsic strength, depth, or fullness, of or pertaining to logical intension (Oxford, 1989).

**Tentative translation:** intensivo/a (Oxford, 2003).

**Intensivo:** más intenso que de costumbre (RAE, 2006).

**Material (adj.):**

- important or relevant (Collin, 1995);
- of such significance that it would affect a person's decision-making; significant; essential (Garner, 2009).

**Tentative translations:** esencial; fundamental; sustancial (Mazzucco, 2004).

**Esencial:**

- sustancial, principal, notable (RAE, 2006);
- de importancia tan grande que no se puede prescindir de ello (Moliner, 2000).

**Sustancial:**

- importante o esencial (RAE, 2006);
- tal que no se puede prescindir de ello o no puede faltar en la cosa de que se trata; fundamental (Moliner, 2000).

**Fundamental:**

- que sirve de fundamento o es lo principal en algo (RAE, 2006);
- se aplica a lo más importante, lo que influye más poderosamente o lo indispensable en alguna cosa (Moliner, 2000).

**Resident:**

- a person who lives or has a home in a particular place (Garner, 2009);
- a person living in a country (Collin, 1995).

**Tentative translation:** residente (Mazzucco, 2004) (Cabanellas, 2008).

**Residente:**

- poblador, habitante (Ossorio, 2001);
- se aplica al que reside en cierto sitio que se expresa (Moliner, 2000).

**Record (v.):**

- to recall, recite, set down in writing; make a written account or note of; furnish written evidence of (Merriam-Webster, 1986);
- to note or to report (Collin, 1995).

**Tentative translations:** indicar (Simon & Schuster, 1997).

**Indicar:** (con sujeto de cosa) servir para hacer saber o conocer cierta cosa (Moliner, 2000).

**State:**

- a group of people permanently occupying a fixed territory and having common laws, government, and capable of conducting international affairs. They may be SOVEREIGN, DEPENDENT, or a SUZERAINTY (Fox, 1997);
- the political system of a body of people who are politically organized; the system of rules by which jurisdiction and authority are exercised over such a body of people. A state is a community of persons living within certain limits of territory, under a permanent organization which aims to secure the prevalence of justice by self-imposed law. The organ of the state by which its relations with other states are managed is the government (Garner, 2009).

***Tentative translation:*** Estado (Mazzucco, 2004).

***Estado:*** es una organización social constituida en un territorio propio, con fuerzas para mantenerse en él e imponer dentro de él un poder supremo de ordenación y de imperio, poder ejercido por aquel elemento social que en cada momento asume la mayor fuerza política; grupo de individuos establecidos sobre un territorio determinado y sujetos a la autoridad de un mismo gobierno (Ossorio, 2001).

**Substantive (adj.):** formal dealing with things that are important or real (Longman, 2003).

***Tentative translation:*** “de fondo” (Mazzucco, 2004).

**“De fondo”:**

- esencia, principio, como opuesto a la *forma* (Ossorio, 2001);
- cuestión de derecho, por oposición a las de trámite (Moliner, 2000).

**LEGAL TERMINOLOGY**

**Agency:** branch of government; office or job representing another company in an area (Collin, 1995).

***Tentative translations:*** organismo; (of the government) ministerio (Simon & Schuster, 1997) (Oxford, 2003).

**Organismo:**

- conjunto de oficinas, dependencias o empleos que forman un cuerpo o institución (RAE, 2006);
- entidad compuesta de diversas ramas, dependencias u oficinas al servicio de una finalidad (Ossorio, 2001).

**Administrative Court:**

- tribunal or court which decides in cases where government regulations affect and harm the lives and property of individuals (Collin, 1995);
- the work of the Administrative Court is varied, consisting of the administrative law jurisdiction of England and Wales as well as a supervisory jurisdiction over inferior courts and tribunals.

***Tentative translation:*** “tribunal que entiende en causas de carácter administrativo en el Reino Unido, Inglaterra y Gales.”<sup>20</sup>

**Article:**

- section of a legal agreement (Collin, 1995);
- a separate and distinct part (as a clause or stipulation) of a writing, especially a contract, a statute, or constitution (Garner, 2009).

***Tentative translations:*** sección (Mazzucco, 2004); artículo (Cabanellas, 2008).

***Sección:*** cada una de las partes en las que se divide o considera dividido un objeto, un conjunto de objetos, una empresa, una organización, etc. (RAE, 2006).

***Artículo:*** una de las partes en que suelen dividirse los escritos; cada una de las disposiciones numeradas de un tratado, ley, reglamento, y es ésta una de las acepciones de mayor importancia jurídica (Ossorio, 2001).

**Assign:**

- to give or transfer (Collin, 1995);
- to convey; to transfer rights or property (Garner, 2009).

***Tentative translations:*** transferir; ceder (Mazzucco, 2004) (Cabanellas, 2008).

**Transferir:**

- ceder a otra persona el derecho, dominio o atribución que se tiene sobre algo (RAE, 2006);
- ceder; transmitir la propiedad o la posesión (Ossorio, 2001).

**Ceder:**

- dar, transferir, traspasar a otro, mediando precio o sin él, una cosa, acción o derecho (RAE, 2006) (Ossorio, 2001).

**Association:**

- an unincorporated organization that is not a legal entity separate from the persons who compose it (Garner, 2009);
- a group of people or of companies with the same interest (Collin, 1995).

***Tentative translations:*** asociación; sociedad (Mazzucco, 2004).

***Asociación:*** conjunto de los asociados para un mismo fin; persona jurídica por ellos formada (Ossorio, 2001).

***Sociedad:*** cualquier agrupación o reunión de personas o fuerzas sociales; agrupación natural o convencional de personas, con unidad distinta y superior a la de sus miembros individuales, que cumple, con la cooperación de sus integrantes, un fin general, de utilidad común (Ossorio, 2001).

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<sup>20</sup> The EU in brief. (n.d.). Retrieved January 29, 2016, from <http://europa.eu/>

**Case:**

- legal action or trial (Collin, 1995);
- a civil or criminal proceeding, action, suit, or controversy at law or in equity (Garner, 2009).

***Tentative translation:*** causa (Mazzucco, 2004).

**Causa:** en orden al Derecho Procesal, la palabra causa equivale a proceso, litigio o pleito (Ossorio, 2001).

**Claim:**

- assertion of a legal right (Collin, 1995);
- the aggregate of operative facts giving rise to a right enforceable by a court (Garner, 2009);
- the assertion of a right to money or property; the aggregate operative facts giving rise to a right enforceable by the courts (Barron's, 2003).

***Tentative translations:*** reclamación; acción (Mazzucco, 2004) (Cabanellas, 2008).

**Reclamación:** el hecho de acudir ante una autoridad para que reconozca a favor del reclamante o de terceros la existencia de un derecho (Ossorio, 2001).

**Acción:** derecho que se tiene a pedir alguna cosa en juicio, y modo legal de ejercitar el mismo derecho, pidiendo en justicia lo que es nuestro o se nos debe; el poder jurídico que tiene todo sujeto de derecho, consistente en la facultad de acudir ante los órganos de la jurisdicción, exponiendo sus pretensiones y formulando la petición que afirma como correspondiente a su derecho (Ossorio, 2001).

**Claimant:**

- a person who makes a claim in an administrative proceeding (Byrne, 1991);
- one who asserts a right or demand, especially formally (Garner, 2009);
- the party who asserts a right to money or property (Barron's, 2003).

***Tentative translation:*** “quien detenta, ejerce o plantea un derecho, acción o pretensión”; (parte) demandante (Cabanellas, 2008).

**Parte demandante:** sujeto activo (parte) en el proceso judicial (Garrone, 1986).

**Collecting society:** a type of *licensing body* [a broad term used to describe any organisation involved in rights management] which grants rights on behalf of multiple rights holders in a single ('blanket') licence for a single payment. Generally speaking, rights holders will join a collecting society as members and instruct it to license their rights. The collecting society charges a fee for the licence, from which it deducts an administrative charge before distributing the remainder as royalties. In the UK, collecting societies are regulated with codes of practice that require them to adhere to certain minimum standards when dealing with

their members and licensees. Their conduct is governed by the Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014.<sup>31</sup>

Collecting societies – also known as collective management organisations (CMOs) – are organisations in charge of administering statutory copyright law via collective rights management (CRM). Collecting societies license, gather and distribute royalties on behalf of the copyright owners they represent. They are complex institutions insofar as the rights they manage. Their tariffs and distribution structures are not always self-evident to the licensors (members) or licensees (users), nor often to regulatory bodies.<sup>31</sup>

***Tentative translation:*** sociedad de gestión colectiva.<sup>32</sup>

**Sociedad de gestión colectiva:** la sociedad de gestión colectiva es una creación de los autores para defender sus derechos que surge de la imposibilidad de la gestión individual de los derechos de autor. Las sociedades de gestión colectiva administran repertorios y tienen como contenido concreto las obras que administran.<sup>32</sup>

**(Compensation) scheme:** a systemic plan; a connected or orderly arrangement (Garner, 2009)

**Compensation:** a payment made by someone to cover the cost of damage or hardship which he has caused (Collin, 1995).

***Tentative translation:*** plan de indemnización (Mazzucco, 2004).

**Indemnización:** resarcimiento de un daño o perjuicio. En lo civil, quien por su culpa o negligencia causa un daño a otro está obligado a reparar el perjuicio causado (por ejemplo, aquel causado por el incumplimiento de las obligaciones legales, contractuales o extracontractuales), aun no existiendo ni culpa ni negligencia (Ossorio, 2001).

### **Copyright:**

- an author's legal right to publish his or her own work and not to have it copied (lasting fifty years after the author's death under the Berne Convention); similar right of an artist, film maker, or musician (Collin, 1995);
- the right to copy; specifically, a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works; motion pictures and other audiovisual works; and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work (Garner, 2009).

***Tentative translation:*** derecho de autor (Mazzucco, 2004) (Cabanellas, 2008).

**Derecho de autor:** el que tiene toda persona sobre la obra que produce y especialmente el que corresponde por razón de las obras literarias, artísticas, científicas o técnicas para disponer de ellas por todos los medios que las leyes autorizan (Ossorio, 2001).

<sup>31</sup> Collecting Societies Code of Conduct - Executive Summary. (n.d.). Retrieved November 20, 2015, from <https://www.gov.uk/>

<sup>32</sup> Ocampo, G. C. (n.d.). Gestión Colectiva de los Derechos. Retrieved January 31, 2016, from <http://www.cadra.org.ar/>



**Corporate (adj.):**

- belonging to a corporation (Black, 1990);
- of or belonging to a body politic, a corporation, or to a body of persons (Oxford, 1989);
- involved or associated with a corporation.<sup>3</sup>

*Tentative translation:* corporativo (Oxford, 2003).

**Corporativo:** perteneciente o relativo a una corporación (Moliner, 2000) (RAE, 2006).

**Defendant:**

- a person against whom an action, information, or other civil proceeding (other than a petition) is brought or against whom summary proceedings are brought, before magistrates and justices for the recovery of penalties (Byrne, 1991);
- a person who is sued in a civil case (Collin, 1995).

*Tentative translations:* demandado; parte demandada (Mazzucco, 2004).

**Demandado:**

- aquel contra el cual se pide algo en juicio civil o contencioso administrativo; la persona contra la cual se interpone la demanda. Se le denomina asimismo parte demandada (Cabanellas, 2000);
- aquel contra el que se dirige una demanda en lo procesal (Ossorio, 2001);
- sujeto pasivo (parte) en el proceso judicial (Garrone, 1986).

**Evidence:**

- something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact; the collective mass of things, especially testimony and exhibits, presented before a tribunal in a given dispute (Garner, 2009);
- written or spoken statement of facts which helps to prove something at a trial (Collin, 1995);
- means employed for the purpose of proving an unknown or disputed fact, and is either judicial or extra-judicial. Judicial evidence is that which is used on trials or inquiries before Courts, judges, commissioners, referees, etc., while extra-judicial evidence is that which is used to satisfy private persons as to facts requiring proof (Byrne, 1991).

*Tentative translation:* prueba/s (Mazzucco, 2004) (Cabanellas, 2008).

**Prueba:** demostración de la verdad de una afirmación, de la existencia de una cosa o de la realidad de un hecho; persuasión o convencimiento que se origina en otro, y especialmente en el juez o en quien haya de resolver sobre lo dudoso o discutido; razón, argumento declaración, documento u otro medio para patentizar la verdad o la falsedad de algo (Cabanellas, 2000).

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<sup>3</sup> (n.d.). Retrieved September 14, 2015, from <http://www.merriam-webster.com/>

**(Evidential) gap:** an unfulfilled space or interval; a blank or deficiency; a break in continuity. Also, a disparity, inequality or imbalance; a break in deductive continuity; a usually undesirable difference in development, condition, understanding, etc. (Oxford, 1989).

***Tentative translation:*** vacío (Oxford, 2003) (Cabanellas, 2008).

**Vacío:** falta, carencia o ausencia de alguna cosa; falta de contenido (RAE, 2006).

**Executive (adj.):** which puts decisions into action (Collin, 1995).

***Tentative translations:*** ejecutivo; directivo; administrativo (Simon & Schuster, 1997).

**Ejecutivo:** que ejecuta o hace algo; poner en obra algo (RAE, 2006).

**Administrativo:** perteneciente o relativo a la administración; dirigir una institución (RAE, 2006).

**Directivo:** perteneciente o relativo a la dirección; que tiene facultad o virtud de dirigir (RAE, 2006).

### **Hand down:**

- to announce or file (a judgment) in a case. The term was originally used in connection with an appellate-court opinion sent to the court below; it has later expanded to include any decision by a court on a case or point under consideration (Garner, 2009);
- to announce a verdict (Collin, 1995).

***Tentative translations:*** “emitir una sentencia judicial”; “dictar una sentencia judicial” (Cabanellas, 2008).

**Dictar:** pronunciar un fallo; expedir una resolución (Ossorio, 2001).

### **Hearing (n.):**

- case which is being heard by a committee, tribunal, or court of law (Collin, 1995);
- in administrative law, any setting in which an affected person presents arguments to a decision-maker (Garner, 2009).

***Tentative translation:*** audiencia (Mazzucco, 2004) (Cabanellas, 2008).

### **Audiencia:**

- significa el acto de oír un juez o tribunal a las partes, para decidir los pleitos y causas; cada una de las fechas dedicadas a una extensa causa ante el juez o sala que ha de sentenciar (Cabanellas, 2000);
- en derecho procesal, oportunidad que se otorga a las partes litigantes en un proceso, para que formulen sus pretensiones, aporten sus pruebas o bien se reconcilien ante el magistrado judicial (Garrone, 1986).

### **High Court of Justice:**

- that branch of the Supreme Court of Judicature which exercises (i) the original jurisdiction formerly exercised by the Court of Chancery, the Courts of the Queen’s Bench, Common Pleas and Exchequer, the Courts of Probate, Divorce and Admiralty, the London Court of Bankruptcy, the Court of

Common Pleas at Lancaster, the Court of Pleas at Durham, and the Courts of the judges or commissioners of assize, and (ii) the appellate jurisdiction of such of those Courts as heard appeals from inferior Courts. It is a Superior Court of record (Byrne, 1991);

- the superior civil court of England and Wales (Garner, 2009);
- main civil court in England and Wales which is divided into three divisions: the Queen's Bench, the Chancery, and the Family Divisions; the Court hears most civil claims where the value exceeds £5,000 (Collin, 1995).

**Tentative translations:** “Tribunal Superior de Justicia que entiende en causas civiles en Inglaterra y Gales”; “Tribunal Superior de Justicia Civil en Inglaterra y Gales”.

**Holder:** person who owns or keeps something (Collin, 1995).

**Tentative translation:** tenedor (Mazzucco, 2004) (Cabanellas, 2008).

**Tenedor:**

- quien tiene o posee materialmente una cosa, sin título o con él (Ossorio, 2001) (Cabanellas, 2000);
- se aplica al que tiene; poseedor (Moliner, 2000).

**Illegal:** forbidden by law; unlawful (Garner, 2009).

**Tentative translations:** ilícito; ilegal (Mazzucco, 2004) (Cabanellas, 2008).

**Illegal:** contrario a la ley; prohibido por ella; ilícito; ilegítimo (Ossorio, 2001).

**Ilícito:** lo prohibido por la ley a causa de oponerse a justicia, equidad, razón o buenas costumbres; ilegal; inmoral (Ossorio, 2001) (Cabanellas, 2000).

**(Independent) trade union:** a combination of workers of the same trade or of several allied trades, for the purpose of securing by united action the most favorable conditions regarding wages, hours of labor, etc., for its members (Black, 1990).

**Tentative translation:** sindicato (Mazzucco, 2004).

**Sindicato:** la agrupación formada para la defensa de los intereses económicos comunes a todos los asociados (Ossorio, 2001).

**Instruct:**

- (of a solicitor) to give a barrister all the details of a case which he will plead in court (Collin, 1995);
- to officially tell someone what to do (Longman, 2003).

**Tentative translation:** instruir (Mazzucco, 2004) (Cabanellas, 2008).

**Instruir:**

- adquisición o transmisión de conocimientos; enseñanza, doctrina (Cabanellas, 2000) (Ossorio, 2001);

- comunicar sistemáticamente ideas, conocimientos o doctrinas; dar a conocer a alguien el estado de algo, informarle de ello, o comunicarle avisos o reglas de conducta (RAE, 2006).

**Intellectual property:**

- ownership of something (such as a copyright, a patent, or a trademark) which is intangible (Collin, 1995);
- a category of intangible rights protecting commercially valuable products of the human intellect (Garner, 2009).

*Tentative translation:* “derecho de propiedad intelectual” (Mazzucco, 2004).

**Propiedad intelectual:**

- en lo científico, literario y artístico, lo mismo que derecho de autor (Cabanellas, 2000);
- la que el autor de una obra artística, científica o literaria tiene sobre ella y que la ley protege frente a terceros, concediéndole la facultad de disponer de ella, publicarla, ejecutarla, representarla y exponerla en público, así como de enajenarla, traducirla o autorizar su traducción y reproducción por otras personas. La protección alcanza a toda clase de escritos, obras dramáticas, musicales, cinematográficas, coreográficas y pantomímicas; dibujos, pinturas, esculturas, arquitectura, modelos y obras de arte para el comercio y la industria; impresos, planos, mapas, fotografías, grabados y discos fonográficos, plásticos, etc. (Ossorio, 2001).

**Interest:** the object of any human desire, especially advantages or profit of financial nature; any one right, privilege, power, or immunity (Garner, 2009).

*Tentative translation:* interés (Mazzucco, 2004) (Cabanellas, 2008).

**Interés:**

- provecho, beneficio, utilidad, ganancia (Cabanellas, 2000) (Ossorio, 2001);
- en sentido general, es la ventaja de orden pecuniario o moral que importa para una persona el ejercicio de un derecho o acción. El interés puede ser actual, eventual, material o moral (Garrone, 1986).

**Issue:**

- subject of a dispute (Collin, 1995);
- a point in dispute between two or more parties. In federal civil procedure, an issue is a single, certain, and material point arising out of the allegations and contentions of the parties; it is a matter affirmed on one side and denied on the other (Garner, 2009).

*Tentative translations:* controversia (Mazzucco, 2004); cuestión (Cabanellas, 2008) (Simon & Schuster, 1997).

**Cuestión:**

- asunto del que hay que ocuparse, que requiere una solución o una respuesta; cosa que constituye una dificultad, duda o problema (Moliner, 2000);
- materia dudosa; asunto discutible; oposición de razones o argumentos sobre un tema (Ossorio, 2001).

**Judgment:**

- legal or official decision of a court (Collin, 1995);
- a court's final determination of the rights and obligations of the parties in a case. It includes an equitable decree, and any order from which an appeal lies (Garner, 2009);
- the decision of a Court on the main question in a proceeding, or on one of the questions, if there are several (Byrne, 1991).

***Tentative translations:*** sentencia (Mazzucco, 2004) (Cabanellas, 2008); fallo (Cabanellas, 2008).

**Sentencia:**

- declaración del juicio y resolución del juez; decisión judicial que en la instancia pone fin al pleito civil o causa criminal, resolviendo respectivamente los derechos de cada litigante y la condena o absolución del procesado; resolución judicial en una causa y fallo en la cuestión principal del proceso (Ossorio, 2001);
- la sentencia (acto de juicio y resolución), cuando es definitiva, pone fin al proceso: es la forma normal de conclusión del proceso (Garrone, 1986).

**Fallo:** acción y efecto de fallar, de dictar sentencia, y ésta misma en asunto judicial (Ossorio, 2001).

**Judicial review:**

- review by a higher court of the actions of a lower court or of an administrative body (Collin, 1995);
- a court's review of a lower court's or of an administrative body's factual or legal findings (Garner, 2009);
- the review by a court of law of some act, or failure to act, by a government official or entity, or by some other legally appointed person or organized body (Barron's, 2003).

***Tentative translation:*** revisión judicial (Mazzucco, 2004).

**Revisión judicial:** control o revisión judicial de los actos de la administración pública (Cabanellas, 2008).

**Jurisdiction:**

- a geographic area within which political or judicial authority may be exercised; a political or judicial subdivision within such an area (Garner, 2009);
- the districts or geographical limits within which the judgments or orders of a Court can be enforced or executed. This is sometimes called territorial jurisdiction (Byrne, 1991).

***Tentative translations:*** jurisdicción; competencia (Cabanellas, 2008).

**Competencia:**

- la capacidad o aptitud que la ley reconoce a un juez o tribunal para ejercer sus funciones en relación con una determinada categoría de asuntos (Garrone, 1986);
- atribución legítima a un juez o a una autoridad para el conocimiento o resolución de un asunto. Couture la define como medida de la jurisdicción asignada a un órgano del Poder Judicial, a efectos de una determinación genérica de los asuntos en que es llamado a conocer por razón de la materia, de la cantidad y del lugar (Ossorio, 2001).

### **Jurisdicción:**

- la jurisdicción es un presupuesto subjetivo de la competencia, en tanto ésta significa el grado de aptitud que la ley confiere a un órgano jurisdiccional para el ejercicio de sus funciones (Garrone, 1986);
- acción de administrar el derecho. Es, pues, la función específica de los jueces. También, la extensión y límites del poder de juzgar, ya sea por razón de la materia, ya sea por razón del territorio, si se tiene en cuenta que cada tribunal no puede ejercer su función juzgadora sino dentro de un espacio determinado y del fuero atribuido (Ossorio, 2001).

### **Justice:**

- the judges of certain Courts are called justices (Byrne, 1991);
- a judge, especially of an appellate court or a court of last resort (Garner, 2009);
- a synonymous with *judge* (Barron's, 2003);
- "*Mr. Justice*" is the title given to a judge who is a member of the House of Lords (Collin, 1995).

***Tentative translation:*** juez (Mazzucco, 2004).

### **Juez:**

- en sentido amplio, llámese así a todo miembro integrante del Poder Judicial, encargado de juzgar los asuntos sometidos a su jurisdicción. En sentido restringido, suele denominarse *juez* quien actúa unipersonalmente, a diferencia de los que actúan colegiadamente y que suelen llamarse ministros, vocales, camaristas o magistrados (Ossorio, 2001);
- juez es una persona que está investida por el Estado de la potestad de administrar justicia. Desde otro punto de vista, es un servidor público que desempeña una de las funciones del Estado moderno (Garrone, 1986).

**Law:** the aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; esp., the body of rules, standards, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them; the set of rules or principles dealing with a specific area of a legal system (Garner, 2009).

***Tentative translations:*** derecho; ley (Mazzucco, 2004) (Cabanellas, 2008).

### **Derecho:**

- conjunto de reglas de conducta cuyo cumplimiento es obligatorio y cuya observancia puede ser impuesta coactivamente por la autoridad legítima; conjunto de normas según las cuales la coacción es ejercida en un Estado (Ossorio, 2001);
- conjunto de principios y normas, expresivos de una idea de justicia y de orden, que regulan relaciones humanas en toda sociedad y cuya observancia puede ser impuesta de manera coactiva (RAE, 2006).

**Ley:**

- una de las fuentes, tal vez la principal, del derecho; toda norma jurídica reguladora de los actos y de las relaciones humanas, aplicable en determinados tiempo y lugar. Dentro de esa idea, sería ley todo precepto dictado por autoridad competente, mandando o prohibiendo una cosa en consonancia con la justicia y para el bien de los gobernados (Ossorio, 2001);
- legislación (conjunto de leyes) (RAE, 2006).

**Legal advice:** advice given by a lawyer as regards a problem in law (Collin, 1995).

**Tentative translation:** consejo o asesoramiento jurídico (Cabanellas, 2008).

**Asesoramiento jurídico:** consejo u orientación en los asuntos judiciales o extrajudiciales y en los derechos y obligaciones que le asisten o que debe cumplir respectivamente la persona asesorada (Garrone, 1986).

**Legislation:**

- laws or written rules which are passed by Parliament and implemented by the Courts (Collin, 1995);
- the process of making and enacting a positive law in written form, according to some type of formal procedure, by a branch of government constituted to perform this process; the law so enacted (Garner, 2009).

**Tentative translations:** ley; legislación (Mazzucco, 2004).

**Ley:**

- en el vocabulario jurídico, una de las Fuentes del derecho, y por lo tanto uno de los modos -sin duda el más importante- en que se manifiestan las normas que regulan con carácter obligatorio la convivencia humana. En un sentido *formal*, solo son leyes las disposiciones obligatorias que emanan del órgano legislativo del Estado (Garrone, 1986);
- una de las fuentes, tal vez la principal, del Derecho. En sentido amplio, toda norma jurídica reguladora de los actos y de las relaciones humanas, aplicable en determinados tiempo y lugar. Dentro de esta idea, sería *ley* todo precepto dictado por autoridad competente, mandando o prohibiendo una cosa en consonancia con la justicia y para el bien de los gobernadores (Ossorio, 2001).

**Legislación:**

- en sentido etimológico, conjunto de leyes de un país (Garrone, 1986);
- conjunto o cuerpo de leyes por las cuales se gobierna un Estado o se regula una materia determinada (Ossorio, 2001).

**Merits:**

- the elements or grounds of a claim or defense; the substantive considerations to be taken into account in deciding a case, as opposed to extraneous or technical points, especially of procedure (Garner, 2009);
- a person is said to have a good cause of action or defence on the merits when his claim or defence is based on the real matters in question, and not on any technical ground (Byrne, 1991);
- the substance of a litigants claim or refutation of a claim; the various elements that enter into or qualify plaintiff's right to the relief sought, or defendant's right to prevail in his defense; the totality of the elements of a party's claims that tend to establish or refute the validity or credibility of his cause; the grounds of an action or defense (Barron's, 2003);
- main question which is at issue in an action (Collin, 1995).

***Tentative translations:*** derecho de las partes; méritos de la causa (Mazzucco, 2004); derechos sustantivos (Cabanellas, 2008).

***Méritos del proceso:*** la sustancia o esencia de la cuestión debatida; conjunto de pruebas y razones que resultan de él y que sirven al juez para dictar su fallo (Ossorio, 2001).

**Notify:** to inform (a person or group) in writing or by any method that is understood; to give notice of, to make known (Garner, 2009).

***Tentative translations:*** notificar; informar (Mazzucco, 2004); comunicar (Cabanellas, 2008).

**Notificar:**

- hacer saber, a un litigante o parte interesada en un juicio, cualquiera que sea su índole, o a sus representantes y defensores, una resolución judicial u otro acto del procedimiento (Ossorio, 2001);
- dar noticia de algo o hacerlo saber con propósito cierto; comunicar formalmente a su destinatario una resolución administrativa o judicial (RAE, 2006).

***Informar:*** enterar o dar noticia de algo (RAE, 2006).

***Comunicar:*** descubrir, manifestar o hacer saber a alguien algo (RAE, 2006).

**Order (n.):**

- a written direction or command delivered by a court or judge (Garner, 2009);
- command (which has no bearing on the final in a case) made by a court for someone to do something (Collin, 1995).

***Tentative translations:*** decisión judicial; orden judicial; resolución judicial (Mazzucco, 2004).

***Decisión:*** resolución o determinación en materia dudosa; sentencia o fallo en cualquier pleito o causa (Ossorio, 2001).

***Orden:*** mandamiento expedido por un tribunal (Ossorio, 2001).

***Resolución:*** decisión, actitud; medida para un caso (Ossorio, 2001).



**Organization:** a body of persons (such as a union or corporation) formed for a common purpose (Garner, 2009).

*Tentative translation:* organización (Mazzucco, 2004) (Cabanellas, 2008).

**Organización:**

- asociación de personas regulada por un conjunto de normas en función de determinados fines (RAE, 2006);
- empresa sin finalidad lucrativa (Ossorio, 2001);
- conjunto organizado de personas con cierta actividad (Moliner, 2000).

**Patent office:** government office which grants patents and supervises them (Collin, 1995).

*Tentative translation:* Oficina de Patentes (Mazzucco, 2004) (Cabanellas, 2008).

**Property right:** a right to specific property, whether tangible or intangible (Garner, 2009).

*Tentative translation:* derecho de autor (Mazzucco, 2004).

**Derecho de autor:**

- el que tiene toda persona sobre la obra que produce y especialmente el que corresponde por razón de las obras literarias, artísticas, científicas o técnicas para disponer de ellas por todos los medios que las leyes autorizan (Ossorio, 2001);
- se dice genéricamente de la retribución o beneficio pecuniario que puede resultar de la explotación de creaciones originales (Garrone, 1986).

**Provision:** a clause in a statute, contract or other legal instrument (Garner, 2009).

*Tentative translations:* disposición (Mazzucco, 2004); norma (Cabanellas, 2008).

**Disposición:** artículo, precepto de una ley o reglamento (Ossorio, 2001).

**Norma:** precepto; ley (Ossorio, 2001).

**QC:**

- abbreviation for Queen’s Counsel. It is written after the surname of the lawyer. Its plural is QCs (Collin, 1995);
- in the United Kingdom, Canada, and territories that have retained the rank, an elite, senior-level barrister or advocate (Garner, 2009).

*Tentative translation:* “nombre de los miembros del *King’s Counsel* cuando reina una mujer; en Gran Bretaña, abogados de la corona” (Cabanellas, 2008).

**Queen’s Bench Division:**

- one of the main divisions of the High Court (Collin, 1995);

- the English court, formerly known as the Queen's Bench or King's Bench, that presides over tort and contract actions, applications for judicial review, and some magistrate-court appeals (Garner, 2009);
- the highest English common law Court, both civil and criminal, so called because the king or queen formerly presided; now known as the Queen's Bench Division of the High Court of Justice, embracing the jurisdiction of the former Courts of Exchequer and Courts of Common Pleas (Barron's, 2003).

***Tentative translation:*** “tribunal superior que forma parte del *High Court of Justice* en Inglaterra y Gales” (Cabanellas, 2008); “sala del tribunal superior de justicia en Inglaterra y Gales”.

Es una de las salas del *High Court of Justice*. Su competencia es principalmente de primera instancia en lo civil en materia de hechos ilícitos civiles e incumplimiento de contratos. En ejercicio de esta clase de competencia, el tribunal está compuesto por un solo juez siendo en la actualidad poco frecuente la intervención de un jurado en acciones civiles (Mazzucco, 2004).

#### **Recitals:**

- introduction to a deed or conveyance which sets out the main purpose and the parties to it (Collin, 1995);
- a preliminary statement in a contract or deed explaining the reasons for entering into it or the background of the transaction, or showing the existence of particular facts (Garner, 2009).

***Tentative translations:*** disposiciones; consideraciones previas (Mazzucco, 2004); preámbulo; consideraciones preliminares (Cabanellas, 2008).

***Disposiciones:*** artículos, preceptos de una ley o reglamento (Ossorio, 2001).

#### **Preámbulo:**

- explicación o advertencia que se hace antes de un escrito o un discurso acerca de lo que se va a decir; exordio, introducción, prólogo (Moliner, 2000);
- según la Academia, exordio, prefación, aquello que se dice antes de dar principio a lo que se trata de narrar, probar, mandar, pedir (Ossorio, 2001).

#### **Reform (n.):**

- change made to something to make it better (Collin, 1995);
- amendment of what is vicious, defective, corrupt or depraved (Merriam-Webster, 1986).

***Tentative translations:*** reformación; reforma; corrección (Simon & Schuster, 1997); reforma (Cabanellas, 2008).

#### **Reforma:**

- acción y efecto de reformar (Moliner, 2000);
- forma nueva, cambio, modificación (Ossorio, 2001).

**Repeal:**

- abolish, rescind, annul by legislative act (Barron's, 2003);
- the abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated, or which contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force; to revoke, abolish, annul, to rescind or abrogate by authority (Black, 1990).

***Tentative translations:*** anular; dejar sin efecto (Mazzucco, 2004).

**Anular:** dejar sin efecto una norma, un acto o un contrato (RAE, 2006).

**Royal Courts of Justice:** the statutory description of the Law Courts in the Strand (Judicature (Officers) Act, 1879, s. 28) (Byrne, 1991).

***Tentative translation:*** “el Tribunal Superior de Justicia y el Tribunal de Apelaciones en Inglaterra y Gales.”

**Secretary of State:** in Great Britain, a member of the government in charge of a department; the head of a department, usually a Cabinet Minister (Collin, 1995).

***Tentative translations:*** Secretario de Estado; ministro (Mazzucco, 2004) (Cabanellas, 2008).

**Secretario de Estado:** frecuentemente se denomina así, especialmente en América, el titular de un departamento ministerial. En Argentina se ha producido una nueva modalidad, que ha extendido la designación de secretario de estado a funcionarios que tienen a su cargo ciertas dependencias, pero que no son independientes, sino que se hallan subordinados a un ministerio (Ossorio, 2001).

**Ministro:** el jefe de cada uno de los departamentos en que se divide la gobernación del Estado y que, en el régimen constitucional, es responsable de todo lo que en su respectivo ramo se ordena (Ossorio, 2001).

**Section:**

- a distinct part of or division of a writing, especially of a legal instrument (Garner, 2009);
- part of an Act of Parliament or bylaw (Collin, 1995).

***Tentative translation:*** artículo (Mazzucco, 2004) (Cabanellas, 2008).

**Artículo:**

- una de las partes en las que suelen dividirse los escritos; cada una de las disposiciones numeradas de un tratado, ley, reglamento, y es ésta una de las acepciones de mayor importancia jurídica (Ossorio, 2001);
- fragmento numerado que compone una ley, reglamento, resolución, etcétera.; estipulaciones convenidas en los tratados de paz, armisticios, convenciones o pactos internacionales (Garrone, 1986).

**Strike down:** annul, nullify; especially, to declare a law illegal and unenforceable.<sup>3</sup>

***Tentative translations:*** revocar (Oxford, 2003); anular; declarar ilegal o inválido (Cabanellas, 2008).

**Revocar:** dejar sin efecto un acto jurídico cuando lo admita la ley (Ossorio, 2001).

**Anular:** dejar sin efecto una norma, un acto o un contrato (RAE, 2006).

**Submit:**

- to put something forward to be examined; to plead an argument in court (Collin, 1995);
- to yield to the will of another; in mediation procedures, committing to the discretion of another or presenting for determination (Barron's, 2003).

***Tentative translations:*** “someter a consideración o aprobación del tribunal” (Mazzucco, 2004); someter; proponer (Cabanellas, 2008).

**Someter:** exponer o mostrar a alguien una cosa, por ejemplo un plan, para que dé su opinión y la apruebe o desaprobe; encomendar a alguien la resolución de un litigio o desacuerdo (Moliner, 2000).

**Proponer:**

- articular las razones u objeciones de un asunto (Ossorio, 2001);
- enunciar un problema para que alguien lo resuelva; aspirar a conseguir cierta cosa, proponiendo los medios conducentes a ello (Moliner, 2000).

**Submission:**

- pleading an argument in court (Collin, 1995);
- a yielding, or readiness to yield, to the authority or will of another (Garner, 2009).

***Tentative translations:*** presentación; propuesta (Simon & Schuster, 1997).

**Presentación:**

- petición (Ossorio, 2001);
- acción de presentar (Moliner, 2000).

**Propuesta:** proyecto presentado a una autoridad, un consejo, junta, etcétera. para que lo examine y vea si procede su aprobación (Moliner, 2000).

**Treaty:**

- formal agreement entered into between states in order to define or modify their mutual duties and obligations. Although there are no technical rules in international law as to treaty form, generally a treaty consists of a preamble, the body, final clauses, and concludes with a testimonium and signatures. Ratification by each of the signatory states is usually required (Fox, 1997);
- an agreement formally signed, ratified, or adhered to between two nations or sovereigns; an international agreement concluded between two or more states in written form and governed by international law (Garner, 2009);
- a written legal agreement between countries (Collin, 1995).

***Tentative translations:*** tratado (Mazzucco, 2004) (Cabanellas, 2008); acuerdo internacional (Cabanellas, 2008).

***Tratado:*** convenio o tratado; más en especial, nombre de las estipulaciones entre dos o más Estados, sobre cualquier materia o acerca de un complejo de cuestiones (Ossorio, 2001).

***Acuerdo internacional:*** el que tiene como finalidad crear, desenvolver o modificar alguna norma positiva de Derecho Internacional, mediante la concurrencia de las voluntades de los diversos Estados que lo adoptan o suscriben o que se adhieren posteriormente (Ossorio, 2001).

#### **Unlawful:**

- (act) which is against the law (Collin, 1995);
- not authorized by law; illegal (Garner, 2009).

***Tentative translations:*** ilícito; ilegal (Mazzucco, 2004) (Cabanellas, 2008).

#### ***Ilícito:***

- contrario a la ley, prohibido por ella (Ossorio, 2001);
- no permitido, por ilegal o por inmoral (Moliner, 2000).

#### ***Ilegal:***

- lo prohibido por la ley a causa de oponerse a justicia, equidad, razón o buenas costumbres (Ossorio, 2001);
- no legal o contrario a la legalidad (Moliner, 2000).

**Warrant (v.):** to justify (Garner, 2009).

***Tentative translation:*** justificar (Simon & Schuster, 1997).

***Justificar:*** ser una cosa la causa, motivo o explicación que hace que otra no sea o parezca extraña, inadecuada, inoportuna, censurable o culpable (Moliner, 2000).

#### ***LATIN TERMINOLOGY***

**i.e. (id est):** that is.<sup>3</sup>

***Tentative translations:*** es decir; esto quiere decir que (Lega, 1998).

**Inter alia:** among other things.<sup>3</sup>

***Tentative translations:*** entre otros (Lega, 1998).

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<sup>3</sup> (n.d.). Retrieved September 14, 2015, from <http://www.merriam-webster.com/>

## **COMMENTS AND OPINIONS ON THE TRANSLATION**

Having analyzed the text fully from many different perspectives, which allowed us to approach the translation process in a more fluid and accurate way, we will now proceed to make the comments that we consider pertinent as regards the special features of the resulting translation and the difficulties that we encountered along the way. We will be mainly dealing with matters of formality and terminology.

As we mentioned earlier in this work, our translation had to be made according to the formalities established by the *Colegio de Traductores Públicos de la Ciudad de Buenos Aires (CTPCBA)* (Association of Certified Legal Translators of the City of Buenos Aires, Argentina). Such formalities are enumerated in the rules of certification provided by the *CTPCBA*, and we will discuss them below.

To begin with, it is important to say that, by certifying a specified translation, the *CTPCBA* guarantees the legal certainty of the target text or document (the translation itself). When carrying out the certification procedure, the *CTPCBA*'s task is to compare the signature and seal of the certified legal translator with those registered at the institution, to prove that the registration of such translator is up to date, and to control that the target document complies with all the necessary formalities. The *CTPCBA* does not certify the content of a translation.<sup>1</sup>

We will now enumerate those formalities required by the *CTPCBA* that we had to follow when doing our translation.

To start with, the translation must always be preceded by the original source document, or otherwise a certified copy of it. The text of the translation must also be preceded by the heading “*TRADUCCIÓN PÚBLICA*” in the national language (in this case, Spanish), preferably in capital letters.<sup>1</sup>

Moreover, at the end of any certified legal translation, we must include a closing phrase or expression (called “*fórmula de cierre*” in Spanish) which includes the following information: the target language and source language, the place in which the rendering was made, and the date on which the translation was made. If the certified legal translator translates only certain parts of the source text, he must explain this in the closing phrase or expression, stating the exact parts that he was required to translate.<sup>1</sup>

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<sup>1</sup> CTPCBA - Colegio de Traductores Públicos de la Ciudad de Buenos Aires. (n.d.). Retrieved September 14, 2015, from <http://www.traductores.org.ar>

As to those translations that are made into a foreign language, these must include two closing phrases: the first one must be in the target language and the second one must be in the source language. The certified legal translator may include between these two closing phrases an explanation stating that the second phrase (that in the national or source language) is included for certification purposes only. Finally, it is also important that the closing phrase or phrases be put immediately after the text of the translation and on the same page. In the event that there were some blank spaces left throughout the text, these should be filled in with dashed lines.<sup>1</sup>

When it comes to the signature and seal of the certified legal translator, these must be placed after the closing phrase or phrases, and no space must be left in between. The certified legal translator must also affix his seal on every page of the original document and of the translation.<sup>1</sup>

In reference to the content of that seal, we should mention that the seal of any certified legal translator must include or show the following information: translator's name and surname, the languages in which the translator is certified, translator's license number, and translator's registration number (that which is given when the translator registers with the *CTPCBA*).<sup>1</sup> Regarding these last two points, we must say that, as we do not yet have a license number or a registration number, these were replaced with fictitious numbers.

We will now comment on the choices made while translating that we think are worthy of mention and discussion. These choices are based on what we have learned throughout our course of study and on the theory provided by the trustworthy sources which we have consulted.

We will start with the formalities of our translation. First of all, we decided to include the page numbers of the source document, mostly because we did not translate the entire document. Therefore, in case the reader wants to compare any part of our translation with the source text, he has to be able to find the specific part easily. We also chose to include an explanation, or, where possible, a tentative translation of other elements that appeared in the text, such as badges, seals, and the like. It is important to mention that all the explanations which do not belong to the source text and which are added by the translator have to be written between brackets. In our case, we chose square brackets since parentheses had already been used throughout the source text.

When it comes to the general layout of our translation, we chose to keep the layout of the source text. Accordingly, we wrote the titles in bold and we underlined some of them, just as they are written in the source text.

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<sup>1</sup> CTPCBA - Colegio de Traductores Públicos de la Ciudad de Buenos Aires. (n.d.). Retrieved September 14, 2015, from <http://www.traductores.org.ar>

Furthermore, as regards the use of punctuation marks, most of the times we adhered to the source text due to the fact that, in general, it was well written and organized. We only changed a few structures in order to make the Spanish rendering more natural and fluid.

Now, the subject that requires a more detailed and extensive discussion is that related to terminology. As regards the first page of the source document, we left most of the terms and names in English, providing brief explanations or tentative translations between square brackets. As this particular page contains all the information and formalities related to the case (the names of the parties involved, the name of the case, and the names of the courts that heard the case, among other relevant data), and as this is supposed to be a certified legal translation that may be used for serious legal purposes, the original terms must be maintained and explained for the reader to understand them.

However, in reference to the terms “Queen’s Counsel” and “Treasury Solicitor”, which are also part of the first page of the source document, we decided that it would be wise to include their definitions or explanations at the end of our rendering in the form of two translator’s notes. Although both terms were also kept in English, we considered that if we included the explanations immediately next to each term, as it was done with all the other terms mentioned earlier, the reading would become less fluid. Besides, we consider that the understanding of these terms is not essential to the understanding of the content and context of the source text.

Regarding the international instruments and laws that are mentioned throughout the text, these were left in English and a tentative translation was provided next to each of the terms. In the case of international treaties or conventions, these have already been officially translated into Spanish. Therefore, we decided to use those official renderings in our translation. In the event that the reader wants to search for one of those instruments, he will be able to do so by using such official translations.

The only case in which we directly translated the name of an international instrument was that in which the instrument had already been mentioned in the same paragraph (*i.e.* there was a very close reference) and when the name was not provided fully. The original text read as follows:

“(i) **Directive 2001/29**: the origin of the personal use exception to copyright emanates from Article 5(2)(b) of the *Directive*. To put that provision into context it is necessary to set out certain other recitals and provisions of the *Directive*.” (Page 12, lines 31-34).

Our translation is as follows:

“(i) *Directive 2001/29* [**Directiva 2001/29**]: la excepción de uso personal privado proviene del *Article 5(2)(b)* [Artículo 5(2)(b)] de la **Directiva**. A fin de contextualizar dicha disposición, es necesario explicar otras disposiciones específicas de la **Directiva**.”



Notice that we provided the official translation of the Directive the first time it appeared in the title of the section. However, when it was mentioned again in others parts of the paragraph we decided that it would be clear enough to translate it directly, since we were only translating a part of the full name.

Another terminological choice that is worthy of mention is that related to the description of each of the parties involved in the case. In particular, as there are no exact equivalents in Spanish for the types of organization of each of the Claimants, we decided to provide explanations that define them as accurately as possible, focusing on the essence, main purpose and function of each of them. Thus, “company limited by guarantee” was translated as “*asociación sin fines de lucro*”, while “independent trade union” was translated as “*asociación independiente*”. On the whole, all the Claimants are non-profit associations that represent different kinds of professionals within the music industry.

Finally, we wanted to comment on two particular legal terms whose translation proved to be quite challenging. In the source text, the judge refers to the judicial review as “intensive or merits based”. After performing a thorough search, we discovered that these two terms have the exact same meaning. They both describe a type of judicial review of government’s or public bodies’ policies or decisions that “covers matters of substance (or the merits) and therefore differs from a legality review” (Fisher, 2013). Still, we decided to include both terms in our translation because we considered that the judge might have wanted to emphasize this particular kind of judicial review.

All things considered, we hope that our translation represents the content of the source text as accurately as possible and that the comments in this section help to clarify any doubt that the reader may have had when reading our rendering.

## **CONCLUSION**

Having carried out an exhaustive analysis of the document at issue in terms of its content, context, grammar and terminology, and having completed the translation of those parts that we were required to translate, we can only say that the experience that we got out of this work could not be more positive and enriching.

Most importantly, we learned how to prepare and organize a piece of work that is the closest thing to a real translation that we may be required to do in our professional lives. Not only we had to follow the rules given by our tutor, but we also had to learn how to manage our time in an attempt to comply with the delivery date.

On the whole, we are satisfied with the general outcome of our work, although, for instance, we would have liked the grammatical analysis to include a more complete study of all the parts of speech available in English. However, we understand that it is always better to define from the beginning the specific subjects or topics that one will deal with in a research work of this kind in an attempt to focus and expand on those subjects in depth.

As it could be expected, there were several difficulties that we had to overcome throughout this challenging process. Most of them had to do with the search for trustworthy sources for the grammatical analysis and for the jargon analysis, the understanding of some aspects inherent to the case, and the making of decisions during the translation process. Nevertheless, we have tried to solve those difficulties as best as we could.

In conclusion, this linguistic work proved to be an all-encompassing effort, since in order to fulfill the analysis and approach the translation process we had to review and apply all the techniques, topics and concepts that we have been taught during our course of study.

We would like to thank our tutor and the University for providing us with the necessary tools to accomplish this work. Our greatest expectation is that this work reflects our effort and dedication and that it complies with all the necessary requirements.

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TRADUCCIÓN PÚBLICA -----

[Página uno]-----

[En el margen superior aparece el escudo del *Royal Courts of Justice*, el Tribunal Superior de Justicia Civil y el Tribunal de Apelaciones en Inglaterra y Gales]-----

Neutral Citation Number [Número de Archivo del Tribunal]: [2015] EWHC 1723-----  
(Admin.)-----

Causa N°: CO/5444/2014-----

**EN EL HIGH COURT OF JUSTICE** [Tribunal Superior de Justicia Civil en Inglaterra y Gales]-----

**QUEEN’S BENCH DIVISION** [sala del Tribunal Superior de Justicia Civil en Inglaterra y Gales]-----

**ADMINISTRATIVE COURT** [tribunal que entiende en causas de carácter administrativo en Inglaterra y Gales]-----

*Royal Courts of Justice*-----

*Strand, London, WC2A 2LL*-----

Fecha: 19/06/2015-----

**Before:**-----

**MR JUSTICE GREEN**-----

**Between:**-----

**THE QUEEN on the application of**-----

**(1) BRITISH ACADEMY OF SONGWRITERS, COMPOSERS AND AUTHORS**-----

**(2) MUSICIANS’ UNION**-----

**(3) UK MUSIC 2009 LIMITED**-----

**Claimants**-----

**-and-**-----

**SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS**-----

**Defendant**-----

**-and-**-----

**THE INCORPORATED SOCIETY OF MUSICIANS**-----

**Intervener**-----

[Ante el **Sr. Juez Green**; entre: **el Estado** por la solicitud de **(1) la Academia Británica de Compositores y Autores**, **(2) el Sindicato de Músicos** y **(3) la Asociación UK 2009 Music Limited (la Parte Demandante)**, **el Ministro de Negocios, Innovación y Destrezas (la Parte Demandada)** y **la Asociación de Músicos (la Parte Interviniente)** **Ian Mill QC<sup>1</sup>**, **Tom de la Mare QC** y **Tom Cleaver** (instruidos por **Olswang**) en representación de la **Parte Demandante**.

**Pushpinder Saini QC**, **Nicholas Saunders** y **Sarah Ford** (instruidos por **Treasury Solicitor<sup>2</sup>**) en representación de la **Parte Demandada**.

**Brian Kennelly** y **Tom Richards** (instruidos por la **Asociación de Músicos**) en representación de la **Parte Interviniente**.

Fechas de audiencia: 27, 28 y 29 de abril de 2015.

**Sentencia aprobada** -----

(...)

[Página diez] -----

[En el margen superior de todas las hojas del documento se lee *Judgment Approved by the court for handing down* y *BASCA v SoSBIS & Others*:] “Sentencia aprobada por el tribunal y su notificación a las partes” y “BASCA c/ SoSBIS y otros” [el segundo corresponde al nombre de la causa]

Controversia V: ¿La Parte Demandada predeterminó el resultado de la consulta? La Parte Demandante sostiene que la Parte Demandada se obligó con tanta firmeza a implementar una excepción carente de un plan de indemnización que, en realidad, su “predisposición” resultó ser una “predeterminación”, lo cual se considera contrario a la ley.

Controversia VI: Conforme a lo dispuesto por el *Article 107 TFEU* [Artículo 107 del Tratado de Funcionamiento de la Unión Europea] ¿la implementación del *Section 28B* [Artículo 28B] constituye la ayuda ilegal otorgada por el Estado? Debido a que no se informó a la Comisión respecto de dicho otorgamiento, tal como lo prevé el *Article 108(3) TFEU* [Artículo 108(3) del Tratado de Funcionamiento de la Unión Europea],

el mismo se considera ilegal. Las evaluaciones de impacto indican que la nueva-----  
 excepción les otorgará a los proveedores de tecnologías un beneficio de-----  
 aproximadamente £258 millones [libras esterlinas] a lo largo de diez años. Se sostiene -----  
 que esto equivale a la ayuda ilegal no informada otorgada “mediante fondos estatales”, -----  
 lo cual es contrario a los *Articles 107 and 108 TFEU* [Artículos 107 y 108 del Tratado -----  
 de Funcionamiento de la Unión Europea]. -----

[Página once]-----

**(iii) Conclusiones** -----

19. En referencia a las cuestiones de fondo (es decir, las controversias II-VI), en lo que -----  
 respecta a las Controversias II, III, V y VI, he decidido en favor de la Parte Demandada  
 [el Ministro de Negocios, Innovación y Destrezas del Reino Unido].-----

20. Sin embargo, en lo que respecta a la Controversia IV, he decidido en favor de la -----  
 Parte Demandante (véase la sección I más abajo, párrafos [232] - [273], ya que las -----  
 pruebas en las cuales se apoyó la Parte Demandada no garantizan ni justifican las -----  
 conclusiones y deducciones que infirió la misma. Ésta es una conclusión a la que yo -----  
 llegaría independientemente del tipo de revisión judicial que decida aplicar; es por ello-----  
 que no depende de si la revisión debe ser intensiva o debe basarse en los méritos de la-----  
 decisión tomada por la Parte Demandada.-----

**(iv) Consecuencias** -----

21. La Controversia IV es fundamental para determinar la legalidad de la decisión de la-----  
 Parte Demandada [el Ministro de Negocios, Innovación y Destrezas en el Reino Unido] -----  
 de implementar el *Section 28B* [Artículo 28B]. Por consiguiente, éste es, en mi opinión, -----  
 motivo suficiente para que la decisión se considere ilegal. Sin embargo, esto conlleva -----  
 consecuencias complejas en lo que respecta al *Section 28B* [Artículo 28B]. Esto no -----  
 necesariamente significa que dicho artículo debe dejarse sin efecto. En teoría, la Parte-----  
 Demandada tiene la posibilidad de volver a investigar la cuestión a fin de tratar el vacío -----  
 en la prueba que prevalece en este momento. De hacer esto, un posible resultado-----  
 podría ser que se elimine el vacío que he identificado y que se justifique la presente-----  
 decisión. Otro resultado podría ser que, luego de haber realizado nuevas investigaciones, -----

no sea posible eliminar dicho vacío, en cuyo caso la Parte Demandada podrá dejar sin-----  
efecto el *Section 28B* [Artículo 28B] o implementar un plan de indemnización. La Parte -----  
Demandada tiene una tercera posibilidad: la de directamente implementar un plan de -----  
indemnización.-----

22. La segunda cuestión que se presenta tiene que ver con que, a pesar de que he -----  
llegado a ciertas conclusiones en lo que respecta a las cuestiones legales centrales, no -----  
hay duda de que las cuestiones de derecho son de gran importancia tanto en esta -----  
jurisdicción como en la Unión Europea y en demás jurisdicciones. Por consiguiente,-----  
tendré que considerar la posibilidad de remitir las cuestiones a la *Court of Justice* -----  
[Tribunal de Justicia de la Unión Europea] antes de adoptar las resoluciones finales en -----  
lo que respecta a esta causa.-----

23. El resultado final de mis conclusiones es que, en principio, se hace lugar a la-----  
solicitud que tiene como fin la revisión judicial y que la próxima fase consiste en que-----  
las partes planteen los pasos a seguir.-----

**B. Partes**-----

24. La primera Demandante es la *British Academy of Songwriters, Composers and*-----  
*Authors Limited* (“*BASCA*”) [la Academia Británica de Compositores y Autores], una -----  
asociación sin fines de lucro que representa los intereses de los compositores de todos-----  
los géneros, desde los nuevos talentos hasta los compositores reconocidos. Esta-----  
asociación tiene como objetivo apoyar y proteger los intereses artísticos, profesionales, -----  
comerciales y los relativos a los derechos de autor de los compositores. Al ser autores, -----  
puede que los miembros de la asociación posean derechos de autor o que los hayan -----  
cedido a cambio de derechos contractuales que les proporcionen un interés económico -----  
continuo por el valor de los derechos.-----

[Página doce]-----

25. La segunda Demandante es la *Musicians Union* (“*MU*”) [el Sindicato de Músicos], una-----  
asociación independiente que representa a aproximadamente 30.000 músicos (residentes-----  
del Reino Unido en su mayoría) que son artistas reconocidos, músicos autónomos o -----  
estudiantes de música. El Sindicato les provee a sus miembros asesoramiento jurídico y-----

profesional y asesoramiento en lo que respecta a la comprensión de sus derechos. -----  
 Muchos de los miembros del Sindicato poseen derechos de autor por ser intérpretes, -----  
 ingresos por haber cedido sus derechos en sus interpretaciones o esperan poder -----  
 obtenerlos en un futuro. Muchos de los miembros del Sindicato también son -----  
 compositores.-----

26. La tercera Demandante es la *UK Music 2009 Limited* (“*UK Music*”) [la Asociación -----  
*UK Music 2009 Limited*], una asociación que representa los intereses colectivos de la -----  
 industria de la música comercial del Reino Unido. Representa todas las áreas de la -----  
 industria de la música, las cuales incluyen a los compositores, los productores, los -----  
 músicos, los representantes, las compañías discográficas, las sociedades de gestión -----  
 colectiva y la industria de la música en vivo. Esta asociación ejerce presión para que se -----  
 respeten los derechos de sus miembros y promueve los intereses de estos a través de -----  
 campañas y eventos. -----

27. La Parte Interviniente es la *Incorporated Society of Musicians* (“*ISM*”) [la Asociación ---  
 de Músicos]. Ésta es una asociación sin fines de lucro, fundada en 1882 en el Reino -----  
 Unido, que representa a los músicos profesionales. Sus objetivos incluyen “promover y -----  
 apoyar el Arte de la Música” así como también “promover y apoyar los intereses de las -----  
 personas que trabajan como profesionales dentro de la profesión musical”. Dentro de los ----  
 miembros de esta asociación se distinguen más de 6.600 músicos independiente y 148 -----  
 organizaciones que son miembros corporativos de la asociación. Tradicionalmente, sus -----  
 miembros siempre han pertenecido al área de la música clásica, aunque actualmente -----  
 forman parte de una amplia variedad de géneros, tales como el jazz, el teatro musical, -----  
 el rock y el pop.-----

28. La Parte Demandada es el *Secretary of State for Business, Innovation and Skills* -----  
 [el Ministro de Negocios, Innovaciones y Destrezas en el Reino Unido], cuya -----  
 responsabilidad es la reforma de la propiedad intelectual, entre otras. La *Intellectual*-----  
*Property Office* (“*IPO*”) [la Oficina de la Propiedad Intelectual] (el nombre operativo-----  
 de la *Patent Office* [Oficina de Patentes]) es un organismo administrativo a cargo de la-----  
 Parte Demandada que fue responsable, en términos prácticos, de llevar a cabo las-----

consultas que condujeron a la incorporación del *Section 28B* [Artículo 28B] a la *CDPA* -----  
1988 [en el Reino Unido, Ley de Derechos de Autor, Diseños y Patentes de 1988].-----

**C. Disposiciones legales**-----

**(i) Directive 2001/29 [Directiva 2001/29]**-----

29. La excepción de uso personal privado proviene del *Article 5(2)(b)* [Artículo-----  
5(2)(b)] de la Directiva. A fin de contextualizar dicha disposición, es necesario explicar -----  
otras disposiciones específicas de la Directiva. La Directiva fue adoptada en el contexto -----  
de las disposiciones del Tratado que prevé el establecimiento de un mercado interior y -----  
de un sistema que asegure que la competencia dentro de dicho mercado no se distorsione. ----  
Se reconoce que la armonización de las leyes de los Estados Miembros relativas a los -----  
derechos de autor y a los derechos afines a estos contribuye a que se alcancen dichos -----  
objetivos.-----

(...)-----

**Notas del Traductor:**-----

1. La abreviatura de “*Queen’s Counsel*”, nombre que les corresponde a los abogados -----  
de la corona en Gran Bretaña.-----

2. El *Treasury Solicitor* hace referencia al *Treasury Solicitor Department*, el cual, a-----  
partir del 1 de abril de 2015, se conoce como ***Government Legal Department***. Se trata-----  
de una agencia que provee asesoramiento jurídico al gobierno respecto del desarrollo,-----  
diseño e implementación de políticas y decisiones. Además, representa al gobierno en-----  
causas judiciales. -----

Es traducción fiel al español de las partes pertinentes de la fotocopia del documento -----  
original en inglés (*desde “Issue V” en la página 10 hasta “the achievement of such-----  
objectives” en la página 12*) que he tenido a la vista y que adjunto a la presente. -----  
Buenos Aires, 4 de marzo de 2016.-----



# Trabajo de Investigación Final

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BASCA v SoSBIS & Others

**Florencia Coianis**

04/03/2016

# **TRANSLATOR'S LOGBOOK**

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## **INTRODUCTION**

This linguistic work consists of the analysis of a legal document issued in Buenos Aires, Argentina and of the translation into English of the pertinent parts of such document (from page 18 “*Así, si bien cierto es que...*” to page 21 “*arts. 1, 2, 3, 5, 11 y ccdtes., ley 26.061; etc.*”).

The proposed study will be divided into a general analysis of the content and context of the source text and a detailed grammatical and terminological analysis of not only the parts to be translated, but also of the resulting translation. For this purpose, we will consult works written and published by well-known authors and additional judgments related to the case at issue.

Due to the fact that our target readers may be students in general, academics, teachers and professors, among others, our work will be written in academic language. Our aim is that any person interested in the subject may be able to understand and learn from this work, regardless of their level of knowledge in the subject.

In reference to the layout of our work, we intend to organize it in the following manner.

Firstly, we will explain the most distinct characteristics of legal texts and of judgments in particular and how they are written in Argentina.

Secondly, we will provide a general description of how the judiciary works in Argentina and in the Province of Buenos Aires and an executive summary of the case in question, explaining where and when the document was issued, the parties involved in the case, and the nature and outcome of the case. Additionally, we will include and discuss any pertinent codes or acts mentioned throughout the document.

Thirdly, we will analyze the part of the text to be translated in detail, studying the source text fully in terms of grammar and terminology as well as all matters that may or may not limit the understanding of the text. We will discuss many aspects, such as the layout of the text, its grammatical particularities (verbs, passive voice and the use of punctuation marks), and the different kinds of terminology it contains.

Lastly, we will explain all matters related to the outcome of the translation process, highlighting any difficulties that may have arisen and any other issue or matter that serves to explain the decisions made throughout such process.

Once the analysis is complete, we will present our translation together with all the formalities required for a certified legal translation according to the *Colegio de Traductores Públicos de la Ciudad de Buenos Aires (CTPCBA)* (Association of Certified Legal Translators of the City of Buenos Aires, Argentina).

## ***THE ROLE OF CERTIFIED LEGAL TRANSLATORS***

As our research work involves, and is based on, a certified legal translation of a specific part of a legal document, before we begin with the analysis of the case at issue, it is important to state what a certified translator is and which his main duties are.

In general terms, “a translator operates on the verbal record of an act of communication between source language writer and readers and seeks to relay perceived meaning values to a (group of) target language receiver(s) as a separate act of communication” (Hatim & Manson, 1997).

We could define the translation process and profession in many ways. Robinson (2012), for example, states that translation is “an operation performed on language through the advanced knowledge of same, which aims at the production of a text”.

Such knowledge is primarily acquired through constant and thorough practice, and this is the only way in which translators can achieve good results as regards their work. This is what Robinson (2012) calls “practical experience” and it is what we incorporate during our course of studies at university, school or training courses. Practical experience is what gives us, translators, the ability to be “fully aware of the analytical problems and their possible solutions” (Robinson, 2012).

Translators need to be able to analyze fully and slowly the grammatical properties of a text whenever the circumstances require it. However, clients –or “users” as Robinson (2012) calls them– demand most of the times that translation works be finished quickly. This is why an efficient, reliable, and responsible translator must also possess the ability to shift from a slow and profound analysis to a swifter one, always maintaining the good quality of his renderings (Robinson, 2012).

For a translator to be reliable he must make sure he pays close attention to all the relevant aspects of the source text (grammatical features, context, content, and jargon, among others); take into account the client’s needs by, for instance, following the client’s instructions as regards the type of translation he desires and finishing the work on time; know how to use computer programs and all the technological tools necessary to perform his work well; and never stop studying and acquiring new skills and knowledge regarding the profession (Robinson, 2012).

Now, concerning the translation process itself and the “steps” that a translator takes to achieve the desired result, we can identify the following stages: (1) first attempt towards translating the text; (2) proofreading of what has been achieved in the first step; and (3) enhancement of the resulting text plus internalization of the work done for later use (Robinson, 2012).

Moreover, every translator from all the countries in which the art of translation is considered a serious profession has “authorities” to turn to in case he needs assistance. These authorities, as Robinson (2012) points out, may be entities, legislation, or even trustworthy books, dictionaries and glossaries.

In Argentina, for example, the *Ley 20305* is the act that governs the profession of certified legal translators. This act states that certified legal translators are university graduates qualified to translate any document written in a given foreign language.<sup>1</sup>

As all other translators, certified legal translators need to be professionally responsible and to have a high level of specialization and studies. The difference with translators in general lies in the fact that, through his signature, a certified legal translator ratifies what he has translated and becomes, therefore, legally responsible for his work. Accordingly, a translation is certified whenever it requires the signature and the seal of a translator certified in the languages involved and whenever it complies with the requirements established by the *CTPCBA*. If these requirements are fulfilled, the *CTPCBA* will authenticate the signature and seal of the professional.<sup>33</sup>

Apart from the *Ley 20305*, in Argentina, the profession of certified legal translators is protected by different public legal entities. As we have mentioned earlier, the association protecting certified legal translators who have established domicile in the *Ciudad Autónoma de Buenos Aires* (Autonomous City of Buenos Aires) is the *CTPCBA*, which was established by the above mentioned act. The *CTPCBA* has a professional code of ethics that further states what certified legal translators should and should not do as regards their profession, including the consequences they will suffer if they fail to comply with the pertinent rules.<sup>1</sup>

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<sup>33</sup> CTPCBA - Colegio de Traductores Públicos de la Ciudad de Buenos Aires. (n.d.). Retrieved September 14, 2015, from <http://www.traductores.org.ar>

## GENERAL ANALYSIS

Having provided a general panorama of the essence and intended outcome of this work, we will proceed to the general analysis of the document.

In this section of our work we will discuss all matters related to the case at issue. In the first place, we will introduce the most important characteristics of legal texts. In the second place, we will explain in general terms the structure of the judiciary in Argentina and, specifically, in the Province of Buenos Aires. In the third place, we will turn to the nature and classification of the judicial process itself. Finally, we will provide an executive summary stating the most important facts of the case.

### ***A GENERAL VIEW OF LEGAL TEXTS***

As the document that we are dealing with is a legal document (and a judgment, specifically), and taking into account the fact that legal texts are so singular, we will provide a general description of the main and most distinct characteristics of the legal language and of legal texts, together with examples taken from our document. The aim is not only to define and explain each aspect, but also to illustrate everything with real examples.

As pointed out by academics and linguists in papers and articles on the subject (one helpful example is the work done by Ríos [2005] in the University of Murcia), the legal language is the specific and technical language used by all those bodies or authorities that represent the administration of justice. These bodies and authorities employ the legal language whenever they have to establish a relationship with individuals or entities from the general public (the citizens, as Ríos [2005] mentions in his work).<sup>34</sup>

Therefore, it is said that the legal language is a result of the process of institutionalization to which the law (as a system) and the administration of justice submit those individuals or entities that constitute the society. This type of language defines the place that individuals occupy in society, and the relationships among them.<sup>2</sup>

When we talk about a particular language, we are referring to a **communication process** in which we can identify the following components: as regards the parties involved in such process, a **sender** and a **receiver**; then, a **message** and an **intention** to be transmitted; and finally, a **channel** through which said message is communicated.<sup>2</sup>

In the case of judgments, the sender is always one judge, or more than one, who is the authority that renders them. In our case in particular, the judges who decide are three, but only the opinion and analysis of the judge who voted first is shown throughout the text (the other two support the first judge's opinion). The

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<sup>34</sup> Ríos, J. T. (2005, June). Las sentencias judiciales: Estudio y análisis sociolingüístico. Retrieved February 06, 2016, from <https://www.um.es/>

sender almost always seeks to remain anonymous and to hold a position of control over the receiver. On the other hand, the receiver, subordinate to the authority that prepares the document, is a citizen or, more specifically, a party to the case in particular.<sup>2</sup>

Regarding the message to be communicated, whenever we are referring to a legal judgment, the aim of the text is generally to induce, inform, or order the receiver to do something specific. Notice that, in those cases in which the sender is the citizen (or the party to the case), the intention would change completely to one of requesting or claiming something to the authority, who would thus become the receiver. As to the channel of communication, a judgment is written on an official paper which shall be properly dated and signed by the intervening and competent authorities.<sup>2</sup>

Before mentioning the general characteristics of legal texts, it is essential for us to understand how a text is organized. All texts have a superstructure which is in general terms defined as “the part of a structure that is above the lowest part”.<sup>35</sup> Although this is a generic definition given by Merriam-Webster’s dictionary which applies to many fields, it gives us an idea of what this term refers to. In specific terms, what we call “*superestructura*” in Spanish is the formal and global structure that characterizes a type of text. It does not depend on the content or linguistic structures of the text. Instead, it determines the order (*i.e.* the organization) of the global parts of a text and represents the body of the text (Van Dijk, 1997).

The superstructure of a text organizes the sequence of phrases and provides these phrases with a specific communicative function. As regards judgments, these have the following common (super)structure: an introduction that specifies the most important matters regarding the formalities of the case, such as place, date, and information about the intervening parties and authorities; a body that contains the facts argued by the parties, the observance (or nonobservance) of the law, and all the arguments and legal grounds used by the defendant; and finally, the decision that has been adopted by the court. This information is divided into well-organized paragraphs and is accompanied by all the pertinent laws or previous cases that the parties wish to cite.<sup>2</sup>

The way the information is organized and displayed in the legal document at issue proves the previous description. This judgment in particular consists of 31 pages, which are not numbered. The initial page particularly contains the following: the badge of the *Poder Judicial de la Provincia de Buenos Aires* (the Judicial Branch of the Province of Buenos Aires); a bar code; the name and index number of the case; the name of the trial court; the docket number and folio number; a brief introduction to the proceedings that took place in the appellate court; the name of the parties involved and of the three appellate judges (including the order in which they will vote); and the two most important matters to be determined by the Court.

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<sup>2</sup> Ríos, J. T. (2005, June). Las sentencias judiciales: Estudio y análisis sociolingüístico. Retrieved February 06, 2016, from <https://www.um.es/>

<sup>35</sup> (n.d.). Retrieved September 14, 2015, from <http://www.merriam-webster.com/>

As regards the body of the judgment, this one is divided into sections. The main and longest one addresses the vote of one of the judges as to the two main questions to be solved (in both matters, the remaining judges agree with the vote of the first judge), and includes the following “subsections”: the records of the trial proceedings; a brief summary of Plaintiff’s personal and family records since the date the minor was born until she decided that she wanted to change her surname; and an analogous case and decision adopted by a higher court in Argentina used by the judge to support his opinion. The text concludes with the judgment rendered by the Appellate Court.

The paragraphs in each of the sections are of reasonable length. They tend to be short, except for the extracts taken as a reference from the judgment rendered by the higher court.

Moreover, inside the superstructure of all texts it is possible to identify both a macrostructure and a microstructure. If we apply this to legal documents and to judgments in particular, we could say that the macrostructure of a judgment indicates the nature of the case and of the particular dispute on which the court rules. The case at issue, for example, is of civil nature because it is based on “*private* rights and remedies that are sought by action or suit” (Garner, 2009). The concrete matter on which the court rules is plaintiff’s request for change of name.<sup>2</sup>

As for the microstructure, this includes all the linguistic characteristics of a text. We will follow the description provided by Zorrilla (2014), who analyzes how Argentinian legal texts are written and how their peculiar writing could be improved.<sup>2</sup>

As we have mentioned earlier in this section, legal language is a technical, autonomous and distinctive language. It is professional because it is employed by jurists, and it is also an academic type of language, since it is taught and learned at university or school (Zorrilla, 2014).

Some of its most common characteristics are its complex, confusing and often incorrect syntax, which obscures the grammar of the text and makes it difficult for the reader to understand its meaning. Endless sentences and paragraphs which lack the necessary punctuation marks make legal language almost inaccessible (Zorrilla, 2014).

In an attempt to prove what we have just mentioned, we will discuss the most distinctive and typical grammatical and syntactical features of the legal language by looking into the judgment at issue and by providing examples taken from it.

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<sup>2</sup> Ríos, J. T. (2005, June). Las sentencias judiciales: Estudio y análisis sociolingüístico. Retrieved February 06, 2016, from <https://www.um.es/>

To begin with, we will discuss one of the three impersonal or non-finite forms of the verb: the gerund (or the “legal gerund”, as Zorrilla [2014] describes it). Gerunds are non-finite forms of verbs that can be simple (gerunds ending in *-ando* or *-endo*) or compound (gerunds preceded by the verb *haber*). In Spanish, gerunds are used correctly only when they express a simultaneous or a previous action (García Negroni, 2011). The following are three concrete examples of incorrect uses of the gerund:

“[...] se procedió a practicar la *desinsaculación* prescripta por los arts. [...], **resultando** de ella que debían votar en el siguiente orden [...]” (page 1, line 12).

“[...] en consonancia con lo que ha señalado muy prestigiosa *doctrina* **comentando** el art. 27 inc. ‘c’ de la ley 26061 [...]” (page 7, line 3).

“En dicho marco, E. se presenta hoy y se identifica con el apellido R. [...] Así *la* conocen desde siempre en su familia, en la escuela (**concurriendo** actualmente al primer año del segundo ciclo) [...]” (page 21, line 13).

In the first example, the gerund *resultando* makes reference to an action that occurred after the action enunciated by the verb of the main clause (the main clause states that a selection at random was made to decide the order in which the three judges had to vote, and the gerund is used to indicate the results of such a selection). As the use of the gerund which refers to a subsequent action is not correct, it should have been avoided in this particular sentence (Zorrilla, 2014). This mistake could be corrected by removing the gerund and by adding a brief explanation:

“[...] se procedió a practicar la desinsaculación prescripta por los arts. [...], y *el resultado fue que* debían votar en el siguiente orden [...]”

As to the second example, the gerund *comentando* is describing something about the noun *doctrina*, therefore acting as an adjective of such noun. However, this is another incorrect use of the gerund: the *gerundio especificativo* (defining gerund) which acts as a defining complement of a noun (García Negroni, 2011). Again, we could correct and enhance this sentence as follows:

“[...] en consonancia con lo que ha señalado muy prestigiosa *doctrina que comenta* el art. 27 inc. ‘c’ de la ley 26061 [...]”

The third and last sentence is another example of the above mentioned *gerundio especificativo*. In this case, the gerund *concurriendo* makes reference to the person named at the beginning of the paragraph (whose name is abbreviated). A correct version of this paragraph could be the following:

“En dicho marco, E. se presenta hoy y se identifica con el apellido R. [...] Así *la* conocen desde siempre en su familia, en la escuela (*concorre* actualmente al primer año del segundo ciclo) [...]”

We simply chose to replace the gerund with the verb *concurrir* in the present tense of the indicative mood: *concorre*.

All things considered, we have seen that the excessive and often incorrect use of the gerund makes the style of the text tedious and confusing, and that there are ways to avoid making these grammatical mistakes and to produce a text that is correct and easy to read and to understand (Zorrilla, 2014).

Another distinctive characteristic of legal texts is the tendency to nominalize. This refers to a single word, such as a verb, which has been converted into a noun or a nominal construction. Nominal constructions often include a verb preceding the noun, known as “*verbo hueco*” (empty verb), which does not contribute in any way to the meaning of the noun it precedes (Zorrilla, 2014). These are some of the examples of nominalizations that we found in the text:

“¿Qué **pronunciamento** corresponde dictar?” (page 1, line 17).

“[...] lo cierto es que la profundidad del análisis efectuado me lleva a propiciar adoptar tales conclusiones, por compartirlas en un todo, para **dar respuesta** al primer interrogante planteado.” (Page 24, lines 2-3).

“En consecuencia, encuentro elementos legales y motivos reales y razonables para **hacer lugar** al deseo manifestado por la joven niña.” (Page 16, line 20).

The first example corresponds to a single noun, *pronunciamento* (pronouncement). Even though this is a technical legal term that abounds in judgments specifically, it could be replaced by the verb *pronunciar* (pronounce) in order to avoid rendering the writing tedious and complicated. The new sentence would read as follows:

“¿Qué corresponde **pronunciar**?”

As regards the last two examples, these contain the typical nominal constructions that can be found in all kinds of legal texts and which are unsuccessfully used by jurists in an attempt to make the writing look more formal (Zorrilla, 2014).

However, the writing (and, therefore, the reading) would be much simpler if these nominal constructions were replaced by verbs. Accordingly, “*dar respuesta*”, which means “to provide an answer to”, could be replaced by the verb *responder* (to answer), and “*hacer lugar*”, which under the Spanish legal jargon means “to sustain or to approve” (Mazzucco, 2004), could be replaced by the verb *admitir*.

Moreover, another grammatical aspect of legal texts is the abundant use of anaphora. According to the Oxford English Dictionary (1989), anaphora is “the use of a word which refers to, or is a substitute for, a preceding word or group of words.” The use of anaphora will always be correct and even advisable as long



as we can clearly identify the antecedent (Zorrilla, 2014). Here are some examples taken from the text, in which we have italicized each of the antecedents:

“Concluye aseverando que *su hija* tiene ‘justos motivos’ para exigir el cambio de apellido [...], dado que **la misma** nunca tuvo contacto con su progenitor [...]” (page 2, line 26).

“A fs. 61 se recibió a *la menor* en el juzgado a fin de tomar contacto personal con **la misma** [...]” (page 3, line 9).

“[...] no es ocioso observar cómo se regula la cuestión en *el nuevo Código Civil y Comercial de la Nación* [...]. Ello es así pues si bien **el mismo** aún no se encuentra vigente, recoge en buena medida los criterios doctrinarios y jurisprudenciales [...]” (page 8, line 14).

“[...] es importante tener en cuenta la frase final del dictamen emitido por la perito [...], en el que se afirma que ‘...no surgen *indicadores de psicopatología* en la actualidad...’, lo cual sugiere que **las mismas** podrían producirse en el futuro [...]” (page 27, line 14).

The problem with the use of anaphora in legal texts arises when, as in the last example, the sentences are so long and contain so many nouns which could function as antecedents that even the author ends up making serious mistakes. The fourth example serves as proof of what we have just mentioned. We assume that “*las mismas*” makes reference to “*indicadores de psicopatología*”, but this is a pure deduction since, for instance, there is no correspondence in terms of gender between the antecedent and the anaphoric words “*las mismas*”. If the antecedent is *indicadores*, which is a masculine noun, then the replacing word or words should be masculine as well, *i.e.* “*los mismos*”.

Spanish legal language shares some characteristics with the English legal language. Two of the most common ones include the use of Latin terms or words with Latin origins and the use of passive constructions (Zorrilla, 2014).

When it comes to the use of Latin terms, Zorrilla (2014) points out that whenever jurists or even translators use Latin words in their renderings these should be accompanied by their corresponding translation or explanation, otherwise the reading will not be fluid, and the reader (who will be a layperson most of the times) will find it hard to understand the general meaning of the text.

“En efecto, podemos afirmar que la identidad es lo que hace que algo sea lo que es y no otra cosa, derivando etimológicamente del latín ‘*idem*’: el mismo o lo mismo, y habiendo sido tomado del latín tardío *identitas*, formado según el modelo de ‘*ens*’: ser y ‘*entitas*’: entidad [...]” (Page 18, lines 23-24).

“[...] el Asesor de Menores hace notar que el Sr. Agente Fiscal actuó en tal condición y no como tutor ‘*ad litem*’ de la menor [...]” (Page 4, line 21).

“En primer término, y como ya fuera señalado *‘ut supra’*, hemos de recordar que [...]” (Page 6, line 2).

In the first paragraph, all the Latin words that were used are briefly explained. This is because the main topic of the paragraph is the identity of persons in general, hence the etymology of the word *identidad* is provided.

As to the remaining examples, the Latin terms *“ad litem”* and *“ut supra”* are used very frequently in legal texts, and most of all in those legal texts that belong to procedural law, as it is the case of the judgment at issue (White, 1999). The first one is used “for a lawsuit or action and it is especially applied to a guardian appointed for such a purpose”, while *“ut supra”* makes reference to what has been previously mentioned in the text (Oxford, 1989).

Now, turning to the use of the passive voice, we must say that Spanish legal texts are full of passive constructions. According to Zorrilla (2014), the use of the passive voice is not incorrect, but we should always try to avoid it because it makes the reading difficult. Instead, we should employ impersonal passive constructions introduced by *“se”*, known in Spanish as *“pasiva con se”* or *“pasiva refleja”*.

“El presente proceso **es iniciado** por la Sra. Á. E. R., quien actúa en representación de [...]” (page 1, line 22).

“Después de asentados en la partida de nacimiento el nombre y el apellido, **no podrán ser cambiados ni modificados** sino por resolución judicial, cuando mediaren justos motivos” (page 7, line 29).

“A fs. 32 **se imprimió** al proceso el trámite del juicio sumario y **se confirmó** traslado al Sr. P. D.B., el que fielmente **se notificó** por cédula [...]. Ante la incomparecencia del demandado a fs. 48 se decretó su rebeldía [...]” (page 2, lines 30-31; page 3, lines 1-2).

The last paragraph serves as an example of the *“pasiva refleja”*. Whenever we use this kind of construction, the doer of the action (the *“complemento agente”* in Spanish), if known, must not be included. This is not the case of common passive voice constructions, where the agent, if it is known and important, should always be included (Zorrilla, 2014).

To conclude this part of our analysis, we would like to mention the fact that several movements have been initiated in many countries in favor of the simplicity of this type of legal language that we call **legalese** (Zorrilla, 2014).

In the 1970s, a movement in favor of **plain English**, known as the Plain English Campaign, was initiated in the United Kingdom. Its main purpose was, and still is, to provide individuals with direct access to clear and concise writings and documents.<sup>36</sup>

In 1999, the English courts had already introduced new rules of civil procedure, eliminating some traditional and archaic legal terms for good and replacing them with more modern equivalents.<sup>4</sup>

Peter Butt (2001) describes plain English as the language intended to directly reach its recipients, the people for which such language is written. Since texts written in Modern or Standard English are prepared in a way that satisfies the needs of the reader and not those of their writers, readers should be able to understand them easily.<sup>37</sup>

Furthermore, in contrast with legalese, which has a tendency to hide ambiguities and mistakes due to its dense and complicated prose, this kind of legal writing helps to identify errors.<sup>5</sup>

Nevertheless, Butt (2001) insists on the fact that lawyers are reluctant to abandon legalese and turn to plain English due to two factors. Firstly, at law school they are taught the style of legalese and encouraged to use it in their future professional lives. Secondly, according to Butt (2001), lawyers are afraid of using a simpler form of legal language because they believe the documents will contain flaws and will be criticized by their “loophole-seeking opponents”.<sup>5</sup>

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<sup>36</sup> Plain English Campaign. (n.d.). Retrieved January 9, 2016, from <http://www.plainenglish.co.uk/about-us.html>

<sup>37</sup> Butt, P. (2001, June). Legalese versus plain language. Retrieved February 06, 2016, from <http://sas-space.sas.ac.uk/>

## ***THE JUDICIARY IN ARGENTINA AND IN THE PROVINCE OF BUENOS AIRES***

The document at issue is a legal text that illustrates a final judgment rendered by an appellate court with jurisdiction over family matters in the Province of Buenos Aires, Argentina. In general terms, a judgment is “a court's final determination and binding adjudication that establishes the rights, obligations, and other legal relations of the parties in a case” (Garner, 2009).

To start with, as the document (and hence the judgment) that we are analyzing belongs to the civil area of the law, we cannot go into this topic in any depth unless we discuss the scope of this particular area of the law. Civil procedural law studies those cases or proceedings whose subject matter is a claim or a simple request belonging to private law. The civil process, in particular, focuses on determining the rights and duties of individuals or entities as between each other (Palacio, 2010).

Following the thorough description provided by Palacio (2010), we are able to state that the process itself (whose outcome is the judgment subject matter of this work) can be classified from different perspectives.

As regards the nature of the intervening body, which is the *Cámara de Apelaciones Departamental -Sala I-* (District Appellate Court -Courtroom I-), the persons hearing the case are the three judges that we have mentioned earlier and, thus, we can conclude that this process in particular is a judicial process (Palacio, 2010).

In addition, the fact that the subject matter of this judicial process, which is the Plaintiff's petition, is not contentious makes it a voluntary process, in which the intervening judicial bodies decide on the effectiveness of certain private legal relationships. In this kind of judicial process, the decision of the court is not made against third parties, but actually in favor of the requesting party (Palacio, 2010).

Furthermore, this process is also a declaratory process. This means that at the end of the process, the intervening judicial body must clarify and decide on the content and the scope of the existing legal situation. A declaration or pronouncement by the court can only be achieved after having discussed the facts presented by the parties and by applying the relevant legal rules. As regards the case at issue, the judgment rendered by the court consists of a statement of certainty as to the existence (or non-existence) of the rights claimed by the requesting party or the plaintiff (Palacio, 2010).

As to the structure of the process, the provisions of *Artículo 319* (Section 319) of the *Código Procesal Civil y Comercial de la Nación* (Argentinian Code of Civil and Commercial Procedure) state that this process can be considered an ordinary process because it does not consist of any special proceedings (Palacio, 2010).

Having mentioned in general terms the most important characteristics of the kind of judicial process that we are dealing with, we will now turn to the subject of the judiciary in Argentina and particularly in the Province of Buenos Aires.

To begin with, the origins of the legal system in Argentina are the Roman law that originated in Italy and later spread across Europe. Roman law can be easily contrasted with the common law system of the Anglo-Saxon countries due to the fact that the latter is based primarily on relevant court-decisions, while the former is a codified legal system with the written laws as its primary source of law (Palacio, 2010).

As regards the judiciary in Argentina, which is based on the Constitution of the United States of America of 1787, it is important to mention that the administration of justice is considered to be a double system. Firstly, there is a federal judicial branch (the *Poder Judicial de la Nación*) that exercises its jurisdiction over the whole territory of the country. Secondly, there is an ordinary or provincial judicial branch (known as the *Poder Judicial Provincial*) that has control over each of the provinces of the country. The provincial judicial branches exercise their power through the judicial bodies that they create and organize, all of which follow their own procedural rules. There are as many provincial judicial branches as there are provinces, and they are all independent of the federal or central government (Palacio, 2010).

On the one hand, the federal judicial branch is headed by the *Corte Suprema de Justicia de la Nación* (the Supreme Court of Argentina), which is the ultimate appellate court as regards national cases. The *Corte Suprema de Justicia de la Nación* is located at the *Capital Federal* (Federal Capital of the City of Buenos Aires) and is made up of five judges. This court of last resort is preceded by lower courts that also have federal jurisdiction (Palacio, 2010).

On the other hand, the judicial branch of the Province of Buenos Aires is headed by the *Suprema Corte de Justicia* [the Supreme Court of the Province of Buenos Aires], which is made up of seven judges. This judicial branch also includes the appellate and trial courts of the province (Palacio, 2010).

Moreover, the judicial branch of the Province of Buenos Aires is subject to a significant sub-division: the *Poder Judicial Provincial* (the Judicial Branch of the Province of Buenos Aires) and the *Poder Judicial de la Ciudad Autónoma de Buenos Aires* (Judicial Branch of the Autonomous City of Buenos Aires).<sup>38</sup>

This distinction is significant due to the fact that, as we will subsequently explain, the case at issue was brought before an appellate court with jurisdiction over Azul, a city located in the Province of Buenos Aires.

In reference to civil and commercial cases in the Province of Buenos Aires, appeals of decisions made by lower courts are heard by the *Cámaras de Apelaciones* (appellate courts) of the province. There is one appellate court for each *Departamento* (district) that composes the Province of Buenos Aires. The appellate court that heard the case at issue is called *Cámara de Apelaciones Departamental -Sala I-* (District Appellate Court -Courtroom I-) and has jurisdiction over the whole *Departamento de Azul* (District of Azul). The Courtroom is made up of three judges.<sup>39</sup>

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<sup>38</sup> Organización del Poder Judicial. (n.d.). Retrieved January 12, 2016, from <http://www.cij.gov.ar/>

<sup>39</sup> Organización Judicial Argentina. (n.d.). Retrieved September 11, 2015, from <http://biblio.juridicas.unam.mx/>

## ***EXECUTIVE SUMMARY***

Now that we have provided a general description of the most distinct characteristics of legal texts and of the way in which the judiciary in Argentina works, we will discuss the case at issue.

The case is entitled *R. A. E. C/ B. P. D. S/CAMBIO DE NOMBRE* (R. A. E. V B. P. D., ON CHANGE OF NAME). It was brought before the *Cámara de Apelaciones Departamental -Sala I-* by the Plaintiff, an underage girl who was legally represented by her mother, against the Defendant, her abandoning father. The Plaintiff originally requested that her biological surname be changed to her mother's surname, due to the emotional damage caused by having her abandoning father's surname. At first, Plaintiff's claim was rejected by the lower court, the *Juzgado de Familia N° 1* (a trial court having jurisdiction over family law matters). Thus, she resorted to the *Cámara de Apelaciones Departamental* so that the decision adopted by the lower court could be reviewed.

After considering all the matters that had been debated and decided in first instance and all the pertinent facts of the case, the three judges representing the *Cámara de Apelaciones Departamental* unanimously decided to set aside the judgment rendered by the lower court and to rule in favor of the Plaintiff, ordering the change from her biological father's surname to her biological mother's surname. The Court based its decision on the abandonment that the minor had suffered. In addition, as a result of a report issued by an expert who examined the minor during the course of the trial, the Court further decided that the minor had to attend therapy sessions in an attempt to solve or sort out those issues that might be difficult or unknown to her.

Before starting with the grammatical analysis, we will explain in general terms the legislative background of the case at issue, including the most relevant international instruments and some national or domestic acts that are mentioned throughout the text.

As regards the international instruments on which the court based its decision, we must say that most of them deal with human rights and, in particular, children's rights since, as we previously mentioned, the case at issue concerns the request of an underage girl.

When it comes to the rights of the child, one instrument that is worthy of mention is the **(International) Convention on the Rights of the Child**, which was adopted by the General Assembly of the United Nations on November 20<sup>th</sup>, 1989 and entered into force on September 2<sup>nd</sup>, 1990. "The Convention changed the way children are viewed and treated – *i.e.*, as human beings with a distinct set of rights instead of as passive objects of care and charity."<sup>40</sup>

The rest of the international instruments that are referred to throughout the text are the following:

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<sup>40</sup> Convention on the Rights of the Child. (n.d.). Retrieved January 31, 2016, from <http://www.unicef.org/crc/>

On the one hand, the **American Declaration of the Rights and Duties of Man**, which was adopted in 1948 and constitutes the first-ever international agreement on human rights. Argentina, along with other countries that belong to the Organization of American States (OAS), considers this convention to have constitutional status.<sup>41</sup>

Likewise, another important instrument that concerns the American continent is the **American Convention on Human Rights**, also known as Pact of San José, Costa Rica, which was adopted on November 22<sup>nd</sup>, 1969 at the Inter-American Specialized Conference on Human Rights. Although it entered into force in 1978, Argentina signed it in 1984. This convention had the main purpose of establishing a judicial system that could enforce human rights throughout the continent.<sup>42</sup>

In connection with other international instruments of which Argentina is also a signatory, we must mention the **Universal Declaration of Human Rights**, which was adopted by the General Assembly of the United Nations in 1948 in the aftermath of the Second World War. This is also regarded as a historical document, since it turned out to be a very significant step with regard to human rights as it provided for the first time a set of fundamental rights that were to be enforced and protected worldwide.<sup>43</sup>

Furthermore, the **International Covenant on Civil and Political Rights** was also adopted by the General Assembly of the United Nations in 1966 and entered into force in 1976. This international multilateral treaty establishes that the rights to freedom, justice and peace “derive from the inherent dignity of the human person” and that “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”.<sup>44</sup>

Lastly, the **International Convention on Economic, Social and Cultural Rights** was also adopted by the General Assembly of the United Nations in 1966 and came into effect the same year as the International Covenant on Civil and Political Rights. Together with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, it constitutes the International Bill of Human Rights. Some of the many rights that this convention defines are related to the areas of housing, education, labor, environment, health, culture (which encompasses religion and language), and self-determination.<sup>45</sup>

Concerning domestic law, the *Constitución de la Nación Argentina* (the Argentinian Constitution) and the *Constitución de la Provincia de Buenos Aires* (the Constitution of the Province of Buenos Aires) are the basis of the decision made by the court. As to the Argentinian Constitution, this one was drafted for the first

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<sup>41</sup> Declaración Americana sobre los Derechos y Deberes del Hombre. (n.d.). Retrieved January 31, 2016, from <http://www.oas.org/>

<sup>42</sup> Convención Americana sobre los Derechos Humanos. (n.d.). Retrieved January 31, 2016, from <http://www.bcnbib.gob.ar/>

<sup>43</sup> The Universal Declaration of Human Rights. (n.d.). Retrieved January 31, 2016, from <http://www.un.org/>

<sup>44</sup> International Covenant on Civil and Political Rights. (n.d.). Retrieved January 31, 2016, from <http://www.cirp.org/>

<sup>45</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR). (n.d.). Retrieved January 31, 2016, from <http://www.hrichina.org/>

time in 1853 and was amended several times, the 1994 version being the last amendment and the one currently in force. This constitution, together with the international treaties that have constitutional status, represents the supreme law of the country. This means that all the laws and regulations of the country, including the constitutions of the 23 provinces and of the *Ciudad Autónoma de Buenos Aires*, must adhere to it.<sup>46</sup>

The constitution of 1853 established, among other things, the creation of a federal, representative and republican system of government, the division of such government into three branches (the executive, the legislative and the judicial), and the acknowledgement of individual rights for the citizens and of civil rights for foreigners who lived in the country. The amendment of 1994 maintained the principal provisions of the first constitution and recognized several international human rights treaties (such as the ones that we have mentioned above) as having constitutional status.<sup>14</sup>

Moreover, there are several acts that are mentioned throughout the text. One is **Ley 26061** “*de Protección Integral de los Derechos de las Niñas, Niños y Adolescentes*”. This Argentinian act was enacted in 2005. It provides for the full protection of the rights of all the children and adolescents that are within the Argentinian territory, and it states that in the event that such rights were not respected by a governmental body, all citizens would have the right to initiate legal and administrative proceedings in an attempt to demand that such rights be enforced.<sup>47</sup>

Another Argentinian act that looks after the interests of children and adolescents is **Ley 13298** “*Ley de la Promoción y Protección Integral de los Derechos de los Niños*”. Unlike the act discussed above, this one was enacted in the Province of Buenos Aires and it guarantees the effective and permanent exercise and enjoyment of the rights of all the children and/or adolescents that are under the age of 18. Its principal objective is the protection of the child within the family unit.<sup>48</sup>

Furthermore, in reference to the rights and qualities of natural persons in general, two acts must be mentioned. One is **Ley 18248** “*del Nombre de las Personas*”. It basically states that all individuals are entitled and have the duty to have and use their corresponding name and surname, which must be given according to the provisions of the act. This act is very important as regards the case at issue because, as we have discussed earlier, this case deals with the request for change of name of a minor.<sup>49</sup>

The other act that we are referring to is **Ley 26413** “*Registro del Estado Civil y Capacidad de las Personas*”. This one states that all the acts that give rise to, modify or alter the legal status or capacity of natural persons

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<sup>46</sup> Constitución Nacional. (n.d.). Retrieved January 31, 2016, from <http://www.argentina.gob.ar/>

<sup>47</sup> Información Legislativa. (n.d.). Retrieved January 31, 2016, from <http://infoleg.mecon.gov.ar/>

<sup>48</sup> Ley de la Promoción y Protección Integral de los Derechos de los Niños. (n.d.). Retrieved January 31, 2016, from <http://www.gob.gba.gov.ar/>

<sup>15</sup> Información Legislativa. (n.d.). Retrieved January 31, 2016, from <http://infoleg.mecon.gov.ar/>

<sup>49</sup> Ley N° 18248: Nombre de las personas naturales. (n.d.). Retrieved January 31, 2016, from <http://www.sdh.gba.gov.ar/>



must be registered with the corresponding registries of any of the provinces or of the *Ciudad Autónoma de Buenos Aires*.<sup>15</sup>

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<sup>15</sup> Información Legislativa. (n.d.). Retrieved January 31, 2016, from <http://infoleg.mecon.gov.ar/>

## **DETAILED ANALYSIS OF THE PART OF THE TEXT TO BE TRANSLATED**

In this section of our work we will mainly analyze the part of the text to be translated in terms of grammar. All the explanations will be accompanied by examples taken from the text, together with the page and the line in which they can be found.

We will address this section's analysis by studying the subject of verb phrases particularly and by focusing on those classifications that we consider relevant and useful. At the end of this section we will include a thorough analysis of the punctuation marks used in the text and of the jargon that we consider pertinent for its understanding. We preferred to present these two parts or "subsections" separately because, in general, they are not considered part of the grammatical analysis found in the majority of the traditional grammar books that we have consulted (the jargon analysis, for instance, would actually belong to a semantic analysis).

However, we cannot begin our study without first defining **grammar**. Several authors including Farrell (1997), Quirk (1997), and Yule (2006) refer to grammar as the set of rules that govern how words and phrases are structured and how we arrange and use words to convey our ideas. Grammar includes *syntax* which, according to the Oxford English Dictionary (1989), examines the way in which words are arranged in an attempt to form phrases, clauses and finally sentences, and *morphology*, which deals with "the study and description of how words are formed in language" (Quirk, 1997).

### ***THE VERB PHRASE***

Turning to the subject of verb phrases, we must say that they can be divided into two major groups: finite verb phrases and non-finite verb phrases. We will start with the first group as it requires a more extensive classification and description.

In general terms, a verb is a type of word with lexical meaning which organizes the structure of a sentence. It is the central and core word of the predicate of the sentence. From a morphological point of view, the categories of time, tense, mood and aspect are inherent to any finite verb (García Negroni, 2011). These categories will be the focus of this section's analysis.

We will begin with a basic classification of finite verbs. In Spanish, verbs can be classified into two major groups: regular and irregular verbs. On the one hand, *regular verbs* are those that coincide completely with the model verbs (*amar, temer, partir*). The conjugation of the Spanish verb *cantar* (to sing), for example, coincides with that of the model verb *amar*. However, this is not the case of the verb *cabere*, for instance. Therefore, the latter would be an *irregular verb* (García Negroni, 2011).

As regards the complements that verbs may need in order to be complete, verbs may be intransitive, transitive or bi-transitive. *Intransitive verbs* do not require any objects or complements, only a subject that performs the action expressed by such verb. *Transitive verbs*, however, require at least a direct object to convey their meaning fully. Finally, *bi-transitive* verbs are those that require both a direct and an indirect object (García Negroni, 2011).

We will include a couple of examples of the text with the aim of illustrating what we have just mentioned.

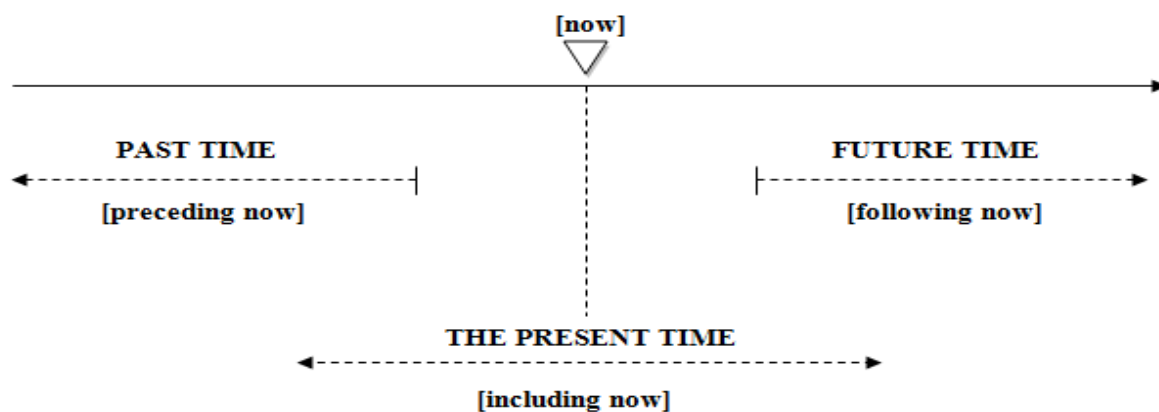
“Partiendo de esta realidad, es posible reconocer que la identidad del individuo **abarca** *diversas dimensiones* [...]” (Page 19, line 12).

“El individuo **nace**, **crece**, **se desarrolla** y **muere** a través de una secuencia de hechos y actos que delimitan como un buril implacable su identidad.” (Page 19, line 31 and page 20, line 1).

The first sentence contains the verb *abarca* which is clearly a transitive verb, its direct object being “*diversas dimensiones*”. The verbs highlighted in the second example, on the contrary, are intransitive verbs. They may be accompanied by other adverbial complements (such as an adverbial of time or place), but at least in the context of this sentence they certainly do not require a direct object.

Moreover, verb phrases may be classified into finite or non-finite. As we mentioned earlier, finite verb phrases vary according to the morphological categories of time, tense, mood, aspect, number and person (García Negroni, 2011). We will now look at each of these categories in more depth.

When it comes to **time**, this could be explained as a line on which the event described by the verb is placed at a specific moment. Generally, the present time is always the point of reference, with the past time before it and the future time following it (Quirk, 1997). The diagram below illustrates this explanation in a clear way:



Source: (Quirk, 1997, p.47)

In the case of **tense**, this category particularly refers to *verb inflection*. As Farrell (1997) points out, the word *tense* has its origins in the Latin word *tempus* and in the French word *temps*, meaning *time*. Tense tells us “when something happened, how long it lasted, or whether it is completed” (Farrell, 1997), and it also establishes a temporal relationship between the event expressed by the verb and the point of reference which can be situated in the past, in the present, or in the future (García Negroni, 2011).

García Negroni (2011) distinguishes three different types of tenses: *tiempos absolutos*, whose point of reference is the moment of enunciation; *tiempos relativos*, whose point of reference is distinct from the moment of enunciation; *tiempos simples*, which are made up of the word base and the particular ending given by time, mood, person, and number inflections; and *tiempos compuestos*, which are those tenses formed with the auxiliary verb *haber*.

Now, in reference to **mood**, this is described as the attitude that the speaker adopts when speaking or writing as regards the event, process or state expressed by the verb. In Spanish, three different moods can be distinguished: the *modo indicativo* (indicative mood), the *modo subjuntivo* (subjunctive mood), and the *modo imperativo* (imperative mood) (García Negroni 2011). We will discuss the three of them individually by using their English counterparts for the sake of simplicity, and we will particularly focus on the uses identified in the text and on their corresponding examples.

As García Negroni (2011) explains, the *indicative mood* is mainly used for making factual assertions. Accordingly, to use a verb in the indicative mood, there has to be a high degree of certainty as regards the happening of the event expressed by the verb.

Among the different tenses that correspond to the indicative mood in Spanish, the following are the ones that can be identified in the text.

The first one we would like to discuss is the *presente simple*. This tense is commonly used to express actual and current events that coincide totally or partially with the moment of enunciation (García Negroni, 2011).

Among its various uses, the *presente simple* includes the *presente habitual*, which is used with events that occur regularly or cyclically (García Negroni, 2011):

“Ésta, en consecuencia, va a estar dada por la ‘persistencia de un individuo como unidad viviente distinta y diversa de los demás a través de las modificaciones que **se producen** en el curso de la vida.’” (Page 20, line 6).

The *presente gnómico*, another of the typical uses or meanings of the *presente simple* of the indicative mood, expresses absolute and atemporal truths (García Negroni, 2011).

“Así pues, al lado de la realidad biológica **existe** otra verdad, sociológica, cultural, social, afectiva, que también **hace** a la identidad de una persona humana y **es** de recibo por el derecho [...]” (Page 20, lines 17-18).

“El individuo **nace**, **crece**, **se desarrolla** y **muere** a través de una secuencia de hechos y actos que **delinean** como un buril implacable su identidad.” (Page 19, line 31 and page 20, lines 1-2).

Finally, we found an example of the *presente descriptivo*, another use of the *presente simple* of the indicative mood which is used to describe and characterize situations or things (García Negroni, 2011).

“En efecto, tanto la identidad de origen como la dinámica, que hoy **designa** e **individualiza** al sujeto con nombre y apellido [...]” (Page 20, lines 22-23).

A second tense that belongs to the indicative mood is the *condicional simple*. Verbs in the *condicional simple* express events or situations with future meaning (García Negroni, 2011). The example below is the only case of *condicional simple* in the text:

“[...] el impacto que una solución contraria **podría provocar** en su persona.” (Page 18, line 17).

Lastly, there is another tense of the indicative mood that must be mentioned: the *pretérito perfecto compuesto*. This one is used mainly in academic discourse, whether written or oral, to express past events related to the present moment (the moment of enunciation). We could say that the *pretérito perfecto compuesto* is similar to the present perfect in English (García Negroni, 2011). The following sentence is the only example of the *pretérito perfecto compuesto* that can be found in the text:

“El derecho a la identidad personal, **se ha dicho** ‘es el presupuesto de la persona [...]’” (Page 19, line 1).

As regards the *subjunctive mood*, this one expresses events, states or processes whose happening or existence is uncertain. This is why it is opposed to the indicative mood. In Spanish, the subjunctive mood may denote possibility, uncertainty, desire and fear, among others. In addition, this mood is generally a dependent mood, *i.e.* it is greatly influenced by the main verb of the sentence (García Negroni, 2011).

The only tense of the subjunctive mood that we could identify in the text is the *presente simple*, which may only refer to a present or to a future event. One of the most common uses of the *presente simple* is that in which the verb expresses an event that does not coincide with the moment of enunciation, therefore having a prospective or future sense. This use is called *presente prospectivo* (García Negroni, 2011). The following examples illustrate the previous explanation:

“[...] el mantenimiento del apellido con el que la niña es públicamente conocida desde su nacimiento, aún cuando **sea inscripta** con filiación materna establecida [...]” (Page 18, line 12).

“En efecto, podemos afirmar que la identidad es lo que hace que algo **sea** lo que es y no otra cosa [...]” (Page 18, line 22).

Another use of the *presente simple* found in the text is the *presente de contingencia*, which refers to an event that might or might not take place, an eventuality on which the happening of a second event depends (García Negroni, 2011).

“El derecho a la identidad personal, se ha dicho, ‘es el presupuesto de la persona que se refiere a sus orígenes como ser humano y a su pertenencia [...]’, incluyendo sus atributos, calidades y pensamientos, *en tanto se traduzcan* en comportamientos efectivos [...]” (Page 19, line 8).

The previous sentence basically defines the right to personal identity, mentioning that it includes the qualities and thoughts of a person. However, the adverbial modifier “*en tanto*” (which could be translated as “as long as”) indicates that those qualities and thoughts are included in the concept of the right to personal identity only if these represent effective ways of behavior. Hence, this could be regarded as a condition for such inclusion.

Finally, we would like to comment on a particular example of the use of the subjunctive mood in the text.

“[...] si bien asumimos que el origen es el punto de partida, principio, raíz y causa de una persona, es inexacto *predicar* que la identidad de origen **desplace** en importancia a la identidad que confiere el curso de la vida [...]” (Page 19, line 17).

In this particular case, the use of the verb *desplazar* in the subjunctive mood is not correct, because the verb *predicar* was used earlier in the same sentence in relation to the verb in question. The problem is that *predicar* means “to support or argue for” (Oxford, 1989), and this meaning does not coincide with the “possible” or “eventual” sense expressed by verbs in the subjunctive mood. Thus, the verb *desplazar* should be in the indicative mood:

“Es inexacto *predicar* que la identidad de origen **desplaza** en importancia a la identidad que confiere el curso de la vida.”

Now that we have discussed the uses of the moods found in the text, we will move on to the last of the categories related to verb inflection.

According to García Negroni (2011), **aspect** is related to the internal time of the event denoted by the verb and to its specific internal structure. In Spanish, there are two aspects: *perfectivo* and *imperfectivo*.

Whenever a verb has *aspecto perfectivo*, the event it expresses is seen or regarded as finished or complete. For example: *Juan estudió*. On the contrary, the *aspecto imperfectivo* of a verb focuses mainly on the development of the event expressed by such verb: *Juan estudiaba*. Thus, in the latter case we will not know if the event is finished or not unless there is an adverbial complement in the sentence that clarifies this, for instance: *De joven, Juan estudiaba* (García Negroni, 2011).

The three sentences provided above are basic examples of the difference between these aspects. If we look at the first one, *Juan estudió*, even though we do not know the specific time or period of time in which the subject performed the action of studying, we are certain of the fact that today such action is concluded. As regards the verb in the second sentence, *estudiaba*, we cannot be sure that it is finished, unless we know that the person performing the action used to do it at a specific moment of his life.

Before turning to the subject of non-finite verb phrases, it is important to mention that verbs which belong to finite verb phrases always have to agree in person, number and gender with the subject of the sentence (García Negroni, 2011).

Even though, in Spanish, the subject of a sentence may be implicit (this is called *sujeto tácito*) because finite verbs alone express person and number, there has to be full subject-verb agreement (García Negroni, 2011). The following chart illustrates the basic verb conjugation in Spanish in terms of person and number (we added what would be the counterparts in English):

Person	Singular	Plural
1	yo amo ( <i>I love</i> )	nosotros amamos ( <i>we love</i> )
2	vos amás ( <i>you love</i> )	ustedes aman ( <i>you love</i> )
3	él/ella ama ( <i>he/she loves</i> )	ellos/ellas aman ( <i>they love</i> )

Source: (Farrell, 1997, p.80).

We will see the previous explanation applied to an example of the text:

“[...] si bien **asumimos** que *el origen es* el punto de partida, principio, raíz y causa de una persona [...]” (Page 19, line 15).

The sentence above contains two different finite verbs: the first one is *asumimos* and the second one, *es*. On the one hand, although the subject of the first verb is implicit, we know that it is a plural first-person subject because the verb itself indicates this to us. Therefore, the subject of *asumimos* would be *nosotros* (we). On

the other hand, the verb *es*, which is a singular third-person verb, belongs to the singular common noun *origen*. As we may see, this sentence has a perfect subject-verb agreement.

Now, having analyzed the basic and most important characteristics of finite verb phrases, we will proceed to explain non-finite verb phrases.

García Negroni (2011) describes non-finite verbs as invariable verb forms which include the infinitive, the gerund and the participle. In Spanish, these are sometimes referred to as *verboides* (verbals in English). We will explain each of them and give examples chosen from the text.

**Infinitives** are the basic form of verbs. They have two different forms: the *simple* form (*amar, temer, partir*) and the *compound* form. The first one expresses a continuous event with imperfective sense that occurs in the present, while the second one consists of the auxiliary verb *haber* and expresses events that are already finished. In addition, infinitives are neuter, which means that they generally do not present any variation in person, number or gender (García Negroni, 2011).

The following examples serve to illustrate what we have just mentioned. The first two show infinitives as part of finite verb phrases, both of them in the indicative mood. The last two sentences, on the other hand, contain a kind of infinitive called *infinitivo sustantivado*, which basically consists of an infinitive acting as a noun (García Negroni, 2011).

“En efecto, *podemos **afirmar*** que la identidad es lo que hace que algo sea lo que es y no otra cosa [...]” (Page 18, line 21).

“[...] el impacto que una solución contraria *podría **provocar*** en su persona [...]” (Page 18, line 17).

“La identidad genética conforma, junto con la que forja ***el devenir*** histórico de un individuo, un bloque fundante macizo [...]” (Page 19, line 20).

“Como podemos afirmar, la identidad personal resulta de ***un devenir***.” (Page 20, line 4).

In reference to **gerunds**, these focus on the development of the events they denote, and have a simple and a compound form, just like infinitives. As regards the main verb of the sentence, the *simple* form (*amando, temiendo, partiendo*) may express an event taking place at the same time or before the happening of the main verb. However, *compound* gerunds (*habiendo amado, habiendo temido, habiendo partido*) do not express simultaneity (García Negroni, 2011).

As we will see in the examples below, gerunds also lack variations in person, number and gender, and they may or may not coincide with the subject of the sentence (García Negroni, 2011). Firstly, we will discuss the



examples that contain correct uses of the gerund, and then we will explain the incorrect uses that were found in the text.

“En efecto, podemos afirmar que la *identidad* es lo que hace que algo sea lo que es y no otra cosa, derivando etimológicamente del latín ‘ídem’: el mismo o lo mismo, y **habiendo sido tomado** del latín tardío *identitas* [...]” (Page 18, lines 22-23).

Regarding the previous paragraph, we will mainly focus on the second gerund *habiendo sido tomado*. This is a compound gerund that expresses an event that takes place before the event denoted by the main verb of the sentence. This is a case in which the subject of the gerund is the same as that of the sentence (in this case, *identidad*) (García Negroni, 2011).

“[...] su origen biológico no puede confundirse con la identidad misma [...], **resultando** tan esenciales como aquél *el posterior crecimiento, desarrollo y muerte* a los efectos de conformar esa impronta personal [...]” (Page 19, line 28).

The example given above includes another use of the gerund that García Negroni (2011) regards as correct: the gerund as part of an adverbial phrase of cause.

“**Partiendo** de esta realidad, es posible reconocer que la identidad del individuo abarca diversas dimensiones [...]” (Page 19, line 11).

In the previous case, the gerund *partiendo* is the head of an adverbial phrase of condition and shares the subject with the main verb of the sentence. This is another use of the gerund that is considered correct (García Negroni, 2011).

“En efecto, podemos afirmar que la *identidad* es lo que hace que algo sea lo que es y no otra cosa, **derivando** etimológicamente del latín ‘ídem’: el mismo o lo mismo, y *habiendo sido* del latín tardío *identitas* [...]” (Page 18, lines 22-23).

“El *derecho a la identidad personal*, se ha dicho ‘es el presupuesto de la persona que se refiere a sus orígenes como ser humano y a su pertenencia, **abarcando** su nombre, filiación [...], **incluyendo** sus atributos, calidades y pensamientos, en tanto se traduzcan en *comportamientos efectivos* **adquiriendo** proyección social [...]” (Page 19, lines 3-8).

The gerund used as a defining complement is one of the most common and recurrent uses of this verbal, and the two paragraphs provided above are examples of this. However, this use is grammatically incorrect. As García Negroni (2011) points out, gerunds can only be used as complements of a noun whenever they have an explanatory function.

According to García Negroni (2011), another use that should be avoided is that of the gerund preceded by the preposition *como*.

“Conforme a la psicología tradicional, podemos identificarnos a *nosotros mismos* mediante el acto por el cual nos reconocemos *como **siendo*** los mismos [...]” (Page 18, line 28).

The last verbal that we will discuss is the **participle**. Unlike the infinitive and the gerund, the events expressed by participles are seen as finished. According to Seco (1996), participles function as verbs and as adjectives (*cantado, obtenido, construido*), in which case they vary in terms of gender and number in order to agree with the subject of the sentence.

The following paragraph is a clear example of two participles that have a different gender than that of the subject to which they refer. The paragraph particularly defines the concept of *identidad* (identity) and gives a brief etymology of the word. There seems to be no agreement between this subject and the two participles because the latter have masculine gender, while the word *identidad* is actually a feminine noun.

“[...] la identidad es lo que hace que algo sea lo que es y no otra cosa, derivando etimológicamente del latín ‘ídem’: el mismo o lo mismo, y habiendo sido **tomado** del latín tardío *identitas*, **formado** según el modelo de [...]” (Page 18, lines 22-24).

In an attempt to avoid such mistake, the author could have used the word *término* (term) to refer to the subject “*la identidad*”. This would be a suitable alternative, not only because it fits the context, but also because *término* is a masculine noun.

“La identidad es lo que hace que algo sea lo que es y no otra cosa. *Este término* deriva etimológicamente del latín ‘ídem’: el mismo o lo mismo, habiendo sido tomado del latín tardío *identitas*, **formado** según el modelo de [...]”

The following are examples of *perífrasis de pasivo*, a passive construction that is made up of a conjugated form of the verbs *estar* or *ser* and a participle. A periphrasis is “a figure of speech which consists in expressing the meaning of a word, phrase, etc. by many or several words instead of by a few or one” (Oxford, 1989). We underlined the antecedents of each of the participles in an attempt to show that this kind of participle also agrees in number and gender with the subject.

“[...] (conf. nuestro artículo ‘La identidad del niño ¿*está* solo **referida** a su origen?’ [...]).” (Page 20, line 16).

“[...] el mantenimiento del apellido con el que la niña *es* públicamente **conocida** desde su nacimiento, aún cuando *sea* **inscripta** con filiación materna establecida y sin filiación paterna conocida [...]” (Page 18, line 12).

“Ésta, en consecuencia, va a *estar* **dada** por la ‘persistencia de un individuo como unidad viviente distinta y diversa de los demás [...]’” (Page 20, line 4).

Now that we have mentioned and analyzed the most important grammatical aspects of verb phrases, we will finally discuss the use of passive voice in the text.

Verb phrases are in the *active voice* whenever the subject of the clause is performing the action expressed by the verb. They may also be expressed in the *passive voice*, in which case the subject of the clause is “acted upon by an agent” (García Negroni, 2011).

However, a significant detail that cannot be ignored is that, in an attempt to express a finite verb phrase in the passive voice, the verb must be *transitive*. As we explained earlier in this section, transitive verbs require an object in order to convey their meaning completely (García Negroni, 2011).

In Spanish, there are two different types of passive constructions: the *pasiva perifrástica* and the *pasiva refleja* or *pasiva con “se”*. The former consists of a conjugated form of the verb *ser* followed by the past participle form of the verb in the active voice, whereas the latter consists of the third person pronoun *se* and the verb in the active voice (conjugated in the third person singular or plural) (García Negroni, 2011).

Furthermore, the *pasiva perifrástica* may be followed by an agent introduced by the preposition *por*. In Spanish, this is called *complemento agente* and, unless it is essential to the meaning of the sentence, it can be omitted. In a sentence in the active voice, the agent functions as the subject (García Negroni, 2011).

However, in the case of the *pasiva con “se”* there is no agent following the verb. Instead, this kind of passive construction has an explicit subject that agrees with the verb (García Negroni, 2011).

We will now look at some examples taken from the text. The first paragraph contains examples of the *pasiva perifrástica*, and the remaining two sentences are examples of the *pasiva con “se”*. We have italicized the subjects of the verbs in the passive voice to show that in all the cases there is full subject-verb agreement.

“[...] el mantenimiento del apellido con el que *la niña* **es** públicamente **conocida** desde su nacimiento, aún cuando **sea inscripta** con filiación materna establecida y sin filiación paterna conocida [...]” (Page 18, lines 11-12).

“Así, si bien cierto es que de ordinario aparece deseable una correspondencia entre la filiación, el nombre y los documentos o papeles con los que **se identifica** una persona [...]” (Page 18, line 5).

“*La identidad*, pues, **se construye** todos los días. **Se relaciona** con todos y cada uno de los episodios vividos por una persona a lo largo de su existencia.” (Page 20, lines 9-10).

All things considered, several authors, including García Negroni (2011) and Seco (1996), suggest that the passive voice should be avoided whenever possible in an attempt to make the text more fluid and clearer. However, the *pasiva con “se”* is always preferred over the *pasiva perifrástica* since it is more natural in terms of style.

## ***THE USE OF PUNCTUATION MARKS***

Now that we have analyzed the most important grammatical aspects of the text to be translated, we will include a detailed analysis of the punctuation marks found in such part of the text.

According to García Negroni (2011), our understanding of texts depends, to a large extent, on punctuation marks and whether these are used appropriately. The correct use of punctuation marks avoids ambiguities by organizing the information in specific and accurate units (paragraphs, sections, etcetera), and by determining the right intonation of the text. These are the main reasons why we consider it is important to include the study of punctuation marks in our analysis.

We will begin with the uses of **quotation marks** (“”) which, in the words of Alward (1997), “set off what has actually been said or what has previously been written.”

In Spanish, there are three types of quotation marks available: *angular quotation marks* (< >) (characteristic of the Spanish language), *double quotation marks* (“”), and *single quotation marks* (‘’). Whenever we want to use quotation marks in a text which contains words or phrases that are also placed within quotation marks, the following pattern should be followed: firstly, we should use angular quotation marks; secondly, double quotation marks; and lastly, single quotation marks (García Negroni, 2011). In the following example this sequence is followed, although the author did not use angular quotation marks.

“El derecho a la identidad personal, se ha dicho “es el presupuesto de la persona que se refiere a sus orígenes como ser humano y a su pertenencia, abarcando su nombre, filiación [...] y demás elementos componentes de su propio ‘ser’”[...]” (page 19, lines 1-5).

Even though it would have been better if the author had used angular quotation marks at the beginning and at the end of the paragraph instead of using double quotation marks twice, as we can observe, the word *ser* is put in single quotation marks due to the fact that it is placed inside a sentence and a paragraph that are already within double quotation marks.

Another common use of quotation marks in Spanish is the addition of titles of books (as well as chapters or sections of books), articles, and the like (García Negroni, 2011). The following sentences serve as examples of this use:

“[...] (Corominas, Joan; “Diccionario Crítico Etimológico Castellano e Hispánico”, Ed. Gredos, Madrid, 1980, tº III, p. 437).” (page 18, line 25).

“[...] (conf. nuestro artículo “La identidad del niño ¿está sólo referida a su origen?”, JA 1998-III-1006).”

Moreover, we may make use of quotation marks to include words or terms belonging to foreign languages in a sentence. However, if the text is written in Roman type, foreign terms should be placed in italics (García Negroni, 2011).

As the part of the text that we are analyzing is made up of extracts from another case (the precedent), the author uses italics throughout in an attempt to state the difference between the text that belongs to the case at issue and the precedent. This is the example that we chose from the text:

“En efecto, podemos afirmar que la identidad es lo que hace que algo sea lo que es y no otra cosa, derivando etimológicamente del latín “*ídem*”: el mismo o lo mismo, y habiendo sido tomado del latín tardío *identitas*, formado según el modelo de “*ens*”: ser y “*entitas*”: entidad [...]” (page 18, lines 23-24).

It is curious that the author chose to leave one Latin term alone while the other three are placed in quotation marks. We cannot know whether this was done deliberately or not. Nevertheless, the term *identitas* should have been placed in quotation marks just like the other terms were. Not only it is important to follow the rules in order to avoid serious grammatical mistakes, but it is also essential to be consistent so that a good stylistic result can be achieved.

Another use that can be identified in the text is the use of *italics*. According to Alward (1997), italics have the function of underscoring or giving emphasis to certain words, sentences, or entire paragraphs. As we have mentioned earlier, the part of the text that we are analyzing in this section consists of extracts taken from another judgment, therefore italics were used throughout in an attempt to differentiate between these extracts and the rest of the text.

As regards the **comma** (,), this punctuation mark indicates the existence of brief pauses in the statements in which it is placed. Commas are mainly used to separate elements in the sentence (García Negroni, 2011). These elements may be words or numbers that are part of an enumeration, as in the following examples:

“El derecho a la identidad personal, se ha dicho “es el presupuesto de la persona que se refiere a sus orígenes como ser humano y a su pertenencia, abarcando *su nombre, filiación, nacionalidad, idioma, costumbre, cultura propia y demás elementos* [...]” (page 19, lines 3-4).

“[...] (arts. 7 y 8, Convención sobre los Derechos del Niño; *1, 33, 75 inc. 22 y ccdtes*, Const. nacional [...])” (page 18, line 7).

In addition, the comma is used to separate connectives and linking words or expressions from the rest of the sentence (García Negroni, 2011):

“Así, si bien es cierto que de ordinario aparece deseable una correspondencia entre [...]” (page 18, line 3).

“*En efecto*, podemos afirmar que la identidad es lo que hace que algo sea lo que es y no otra cosa [...]” (page 18, line 21).

“La identidad, *pues*, se construye todos los días.” (page 19, line 9).

As we may notice in the third example, the linking word *pues* was placed between commas because of its position in the middle of the sentence.

The comma is also used with coordinated adversative structures. In sentences introduced by *sino*, a comma always precedes this word (García Negroni, 2011):

“No se trata de manifestaciones excluyentes, *sino* por el contrario, complementarias.” (page 19, line 19).

Moreover, commas are used with reversed elements or terms in bibliographic citations (García Negroni, 2011):

“[...] (“Gran Enciclopedia Rialp [Ger]”, Ed. Rialp, Madrid, 1981, tº XII, Voz “identificación”, por C. Monedero Gil, p. 337).” (page 19, lines 29-30).

Additionally, the use of the comma is always needed when, in compound sentences, an adverbial clause of time, condition, or concession precedes the main clause (García Negroni, 2011):

“Así, *si bien* cierto es que de ordinario aparece deseable una correspondencia entre la filiación, el nombre y los documentos con los que se identifica una persona, como aspectos inherentes a su personalidad [...], en este caso, sin embargo, el mantenimiento del apellido [...] se justifica desde la perspectiva de su superior interés [...]” (page 18, line 10).

In this case, the comma separates an adverbial clause of concession, which is introduced by *si bien* (equivalent to *although*), from the main clause.

Other uses of the comma in the text include the following:

“[...] (arts. 7 y 8, Convención sobre los Derechos del Niño [...])” (page 19, line 7).

In this particular case, the comma was used to indicate that the articles mentioned belong to this specific convention (the Convention on the Rights of the Child). As regards this use in particular, the author again does not seem to be consistent, since in other parts of the text he chose to replace the comma by words or he simply did not use any punctuation mark at all. The following sentence is a clear example of what we have just mentioned:

“[...] (arts. 75 incs. 22 y 23 Constitución nacional; 7 y 8 *de la* Convención sobre los Derechos del Niño [...])” (page 20, line 26).

This is practically the same sentence as the one provided before. As we may notice, the comma separating the articles from the convention to which they belong was replaced by the preposition *de* and the article *la*, while the comma that had been previously placed between the article numbers and the Constitution was directly omitted.

“El derecho a la identidad personal, se ha dicho “es el presupuesto de la persona que se refiere a sus orígenes como ser humano [...])” (page 19, line 1).

In this last case, the comma was placed between the subject and the predicate of the sentence. This is definitely an incorrect use of this punctuation mark, for the comma should never separate the subject from the predicate (García Negroni, 2011). If we chose to leave the comma where it was placed by the author, we should also place another comma before the quote:

“El derecho a la identidad personal, *se ha dicho*, “es el presupuesto de la persona [...])”.

Now that we have analyzed in detail the uses of the comma, we will look at the uses of the **semicolon (;)**. “The semicolon is used specifically to coordinate elements of equal rank and with the same kind of structure” (Alward, 1997).

In the text, the semicolon was used to separate elements of an enumeration in complex structures that already had commas (García Negroni, 2011). This one is the only clear use of the semicolon that we could identify in the text, and we chose the following examples to illustrate it:

“[...] (arts. 7 y 8, Convención sobre los Derecho del Niño; 1, 33, 75 inc. 22 y ccdtes, Const. nacional; 18, Convención Americana de Derechos Humanos [...])” (page 18, lines 6-7).

“[...] (mi voto en C. 85.363, sent. del 27-III-2008; entre otras)” (page 19, line 22).

Now, we will discuss the uses of another highly recurrent punctuation mark: the **period** or **full stop (.)**. We will name each of the uses that we found in the text and provide examples to illustrate them.

The use of the period to separate sentences within the same paragraph (García Negroni, 2011):

“No se trata de manifestaciones excluyentes, sino por el contrario, complementarias. La identidad genérica conforma, junto con la que forja el devenir histórico de un individuo, un bloque fundante macizo [...])” (page 19, line 19).

In Spanish, this type of period is called *punto y seguido*. One of the characteristics of this text (and of legal texts in general) is that the period is used in few occasions. This tends to make sentences long, and, therefore,



difficult to understand. Inevitably, the results will be paragraphs which are endless and confusing. Notice that the first letter of the word that immediately follows the period is capitalized. This is an essential rule that must not be omitted, otherwise we would incur in a serious grammatical mistake.

The use of the period to separate paragraphs (García Negroni, 2011):

“El individuo nace, crece, se desarrolla y muere a través de una secuencia de hechos y actos que delinean como un buril implacable su identidad. Como podemos advertir, la identidad personal resulta de un devenir.” (page 20, lines 2-3).

This kind of period, on the other hand, indicates that there is a change of subject or idea, or that the same idea will be addressed from a different perspective. In Spanish, this is called *punto y aparte*. Before starting to write the new paragraph, we must leave a blank space (an indentation), and the initial letter of the first word of the new paragraph must be capitalized as well (García Negroni, 2011).

The use of the period with abbreviations (García Negroni, 2011):

“[...] (arts. 7 y 8, Convención sobre los Derechos del Niño; 1, 33, 75 inc. 22 y ccdtes., Const. nacional [...])” (page 18, lines 6-8).

In the case of *Const. nacional* (the Argentinian Constitution), the author chose to abbreviate the word, while, in other parts of the text in which this constitution is also mentioned (for instance, in page 18, line 19), the author, on the contrary, chose to leave the word in its complete form. This, again, demonstrates inconsistency on the part of the author.

The use of the period in bibliographical references (García Negroni, 2011):

“[...] (“Gran Enciclopedia Rialp [Ger]”, Ed. Rialp, Madrid. 1981, tº XII, Voz “identificación”, por C. Monedero Gil, p. 337).” (page 18, line 29).

“[...] (D’Antonio, Daniel Hugo, “Derecho a la Identidad, Reforma Constitucional y Acciones de Estado”. Revista Jurisprudencia Provincial, Año I, nº4, p. 328) [...]” (page 19, line 6).

Another punctuation mark that must be explained is the **colon (:)**. “The colon gives emphasis to what has already been said and calls attention to what is to follow an opening statement. It may introduce words, phrases, clauses, or any combination or series of these” (Alward, 1997).

Furthermore, the colon denotes a briefer pause than that represented by the period (García Negroni, 2011).

The following example taken from the text is the only use of the colon that can be identified therein. It represents one of the most common uses of the colon, which establishes a relationship between what comes before the punctuation mark and what comes after it. It is used with the aim of putting emphasis on what comes after the colon (Alward, 1997).

“[...] derivando etimológicamente del latín “*idem*”: el mismo o lo mismo, y habiendo sido tomado del latín tardío *identitas*, formado según el modelo de “*ens*”: ser y “*entitas*”: entidad [...]” (page 18, line 23-24).

Furthermore, we have noticed a couple of uses of **parentheses ( )** and **square brackets [ ]** in the text at issue. The following are the examples that can be found in the text:

“[...] (“Gran Enciclopedia Rialp [Ger]”, Ed. Rialp, Madrid. 1981, tº XII, Voz “identificación”, por C. Monedero Gil, p. 337)” (page 18, lines 29-30).

“[...] (art. 75 inc. 22, Const. nacional)” (page 20, line 21).

Finally, we will discuss the uses of **capitalization** or **capital letters** that were identified in the text. By using this punctuation mark, one can mainly emphasize the relevance of certain words in particular contexts (García Negroni, 2011).

Capitalization of the initial letter of the first word of a sentence to indicate the beginning of the sentence (García Negroni, 2011):

“**A**sí, si bien cierto es que de ordinario aparece deseable una correspondencia entre [...]” (page 18, line 1).

“**L**a identidad, pues, se construye todos los días. **S**e relaciona con todos y cada uno de los episodios vividos por una persona a lo largo de su existencia.” (page 20, lines 9-10).

In both cases, the initial letter of the first word of each sentence is capitalized. This rule applies to sentences that are part of the same paragraph and to sentences in the beginning of new paragraphs. This will be indicated by the use of the appropriate punctuation marks, as we previously explained when discussing the *punto y seguido* and the *punto y aparte* (García Negroni, 2011).

Capitalization of proper names in general (García Negroni, 2011):

“[...] (arts. 7 y 8, Convención sobre los **D**erechos del Niño [...])” (page 18, line 7).

“[...] (Corominas, **J**oan; **D**iccionario **C**rítico **E**timológico **C**astellano e **H**ispánico”, **E**d. **G**redos, **M**adrid, 1980, tº III, p. 437).” (page 18, lines 25-26).

The first case contains an example of an international agreement: the **Convention on the Rights of the Child**. According to García Negroni (2011), this kind of proper name must always be capitalized, with the exception of prepositions and articles that are also part of the name.

The second example, on the contrary, is that of the name of a dictionary, the name of its author, the name of the publisher, and the name of the city in which the book was published. All of them are proper names and, therefore, must be capitalized.

Capitalization of names of specific legislation (García Negroni, 2011):

“[...] (arts. [...] 11 y 12, ley 26.061; ley 18.248; ley 26.413; ley provincial 14.078; etc.) [...]”  
(page 18, line 10).

Even though it does not comply with the rule we have just mentioned, we chose this example to show that the writer did not capitalize any of the acts mentioned throughout the text.

Capitalization of abbreviations of words or names that, when fully written, are capitalized (García Negroni, 2011):

“[...] (conf. nuestro artículo “La identidad del niño ¿está sólo referida a su origen?”, **JA** 1998-III-1006).” (page 20, line 16).

“[...] (estática, dinámica y cultural – conf. Lorenzetti Ricardo L., “Constitucionalización del Derecho Civil y Derecho a la Identidad Personal en la Doctrina de la Corte Suprema”, **LL** 1993-D-678-) [...]” (page 19, line 15).

In the first example, **JA** is the abbreviation for “*Jurisprudencia Argentina*”, and, together with the whole numerical reference that comes after it, it constitutes a way in which judgments and precedents in general are cited according to Argentinian law. Likewise, in the second example we find the abbreviation **LL** which means “*La Ley*”. This is the way in which judicial precedents in Argentina are mentioned in documents. Its function is to facilitate the access to such precedents.<sup>50</sup>

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<sup>50</sup> Búsqueda de Jurisprudencia y Doctrina en obras impresas. (n.d.). Retrieved October 7, 2015, from <http://www.derecho.uba.ar/>

## ***JARGON ANALYSIS***

This section concerns the thorough study of the different kinds of lexicon found in the part of the text to be translated. For this section to be well-organized, we will present it in the following manner.

The terms will be divided into three principal groups: general vocabulary (most of the terms belong to the areas of psychology, psychoanalysis and pedagogy), legal terminology, and Latin terminology. For each word, a definition or explanation in Spanish (or more than one) will be provided, along with the possible translations that may apply to the specific context of the judgment at issue. Finally, we will give the English definition of those tentative translations that we consider more adequate and accurate.

### **GENERAL VOCABULARY**

#### **Atributo:**

- cada una de las cualidades o propiedades de un ser (RAE, 2006);
- cualidad o facultad que existe en cierto género de personas o de cosas, bien por su naturaleza, bien porque se les asigne o atribuya (Moliner, 2000).

***Tentative translations:*** quality (Oxford, 2003); attribute (Simon & Schuster, 1997).

**Quality:** something that people may have as part of their character; something that is typical of someone and makes it different from others (Longman, 2003).

**Attribute:** a quality or feature, especially one that is considered to be good or useful (Longman, 2003).

**Calidad:** modo de ser; carácter, genio, índole (Ossorio, 2001) (RAE, 2006).

***Tentative translations:*** character; quality (Simon & Schuster, 1997).

**Character:** the particular combination of qualities that makes someone a particular kind of person (Longman, 2003).

**Quality:** something that people may have as part of their character; something that is typical of someone and makes it different from others (Longman, 2003).

#### **Conciencia:**

- término empleado en psicología y fisiología para designar, por una parte, el pensamiento en sí y la intuición que tiene la mente de sus actos y de sus estados y, por el otro lado, el conocimiento que tiene el sujeto de su estado y de su relación con el mundo y consigo mismo. Por extensión, la conciencia es también la propiedad que tiene la mente humana de generar juicios espontáneos (Roudinesco, 2003);
- estado de vigilia que permite al individuo procesar la información con lucidez, de acuerdo con una serie de capacidades (focalización, organización, orientación, apercepción, introspección y control intencional). La conciencia depende de la integridad de tres unidades fundamentales: la unidad para

regular el tono (vigilia), la unidad para obtener y procesar información y la unidad para programar, regular y verificar la actividad mental (Farré Martí, 2004);

- en sentido descriptivo, cualidad momentánea que caracteriza las percepciones externas e internas dentro del conjunto de los fenómenos psíquicos (Laplanche, 2004).

***Tentative translations:*** conscience (Roudinesco, 2003); consciousness (Laplanche, 2004).

**Conscience:** the part of your mind that tells you whether what you are doing is morally right or wrong (Longman, 2003).

**Consciousness:** your mind and your thoughts (Longman, 2003).

### **Identidad:**

- término tomado del latín tardío *identitas*, derivado artificial de *idem*, formado según el modelo de *ens* “ser” y *entitas* “entidad” (Corominas, 1992);
- [lat. *identitas* = carácter de lo que es lo mismo]. Se refiere al carácter de lo que es idéntico o lo mismo (Merani, 1983);
- sin duda, cuestión de nombre. Podríamos, entonces, afirmar que la identidad es lo que permite nombrar y nombrarnos; es, al mismo tiempo que una firma, una búsqueda, un resto, un hallazgo, un encuentro, una combinatoria que toman forma de capacidad para describirse. Es lo que deviene, curiosa y contradictoriamente, de un azar (una contingencia), de una necesidad (deseo de ser reconocido), un imposible (nunca se cristaliza ni se logra del todo definitivamente). Lejos de entenderse como “lo dado”, la identidad es el nombre de un trabajo psíquico y social de construcción ética de la cultura y del sujeto que en cada caso soy. Si la comprendemos como aquello que se agrega como un “plus” al genoma humano, a la inscripción natural en un lazo familiar, que excede a una cuestión de sangre y cromosomas, la identidad deviene para el sujeto algo más que una cuestión de palabras entendidas como la reproducción de un sonido al que respondemos. La identidad se plantea al sujeto como la manera en que tramita, elabora, resuelve múltiples identificaciones parciales, en las que no están ausentes las series intergeneracionales (Frigerio, 2002);
- conjunto de atributos físicos e intelectuales que cada individuo instala en su conciencia para reconocerse como persona y para identificarse con su familia y con su sujeto. Desde que toma conciencia de sus atributos físicos e intelectuales cuando niño, comienza una sumatoria de piezas que va encajando a lo largo de su desarrollo, como un rompecabezas dinámico que puede cambiar parte de sus componentes cuando el sujeto atraviesa las diversas crisis de crecimiento en su adolescencia y adultez. No solo están disponibles los atributos que les presentan su medio familiar y los modelos que ha encontrado en sus mayores. El medio cultural y social circundante, con las consiguientes aprobaciones y discriminaciones, influye en las decisiones que hace el sujeto para forjar quién quiere ser y parecer, para asemejarse o diferenciarse del resto (Perrone, 2007);

- conjunto de actitudes, pautas de conducta y atributos físicos determinados por el sujeto, condicionados por la sociedad en la que se desarrolla, y a menudo relacionados con conceptos de masculinidad y feminidad (Farré Martí, 2004).

***Tentative translation:*** identity (Simon and Schuster, 1997).

***Identity:*** someone's identity is their name or who they are (Longman, 2003).

### **Identificación:**

- término empleado en psicoanálisis para designar el proceso central mediante el cual el sujeto se constituye y se transforma asimilando o apropiándose, en momentos clave de su evolución, de aspectos, atributos o rasgos de los seres humanos de su entorno (Roudinesco, 2003);
- concepto según el cual cuando dos hechos se funden en una unidad se produce un contenido psíquico nuevo. Así, por ejemplo, las observaciones distintas que captan el ojo derecho y el izquierdo de un mismo campo visual que se funde en una única percepción (Farré Martí, 2004);
- proceso psicológico mediante el cual un sujeto asimila un aspecto, una propiedad, un atributo de otro y se transforma, total o parcialmente, sobre el modelo de éste. La personalidad se constituye y se diferencia mediante una serie de identificaciones. En el sentido de identificar, la acción de identificar, es decir, de reconocer como idéntico, ya sea numéricamente, en su naturaleza o cuando se reconoce una clase de hechos asimilable a otra. En el sentido de identificarse, reúne en su empleo corriente toda una serie de conceptos psicológicos, tales como la imitación, la empatía, la simpatía, el contagio mental, la proyección, etc. (Laplanche, 2004).

***Tentative translation:*** identification (Roudinesco, 2003) (Valls, 2008).

### ***Identification:***

- the becoming or making oneself one with another, in feeling, interest or action; in psychology, the frequently unconscious adaptation of one's ideas or behavior to fit in with those of a person or group seen as a model (Oxford, 1989);
- a strong feeling of sympathy with someone that makes you able to share their feelings (Longman, 2003).

**Identidad personal:** [lat. *identitas* = carácter de lo que es lo mismo + persona = máscara del actor]. Persistencia de un individuo como unidad viviente distinta y diversa de las demás a través de las modificaciones que se producen en el curso de la vida (Merani, 1983).

***Tentative translation:*** personal identity.<sup>51</sup>

***Personal identity:*** *personal identity* usually refers to certain properties to which a person feels a special sense of attachment or ownership. Someone's personal identity in this sense consists of those features she takes to "define her as a person" or "make her the person she is."<sup>19</sup>

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<sup>51</sup> Olson, E. (n.d.). Personal Identity. Retrieved October 19, 2015, from <http://plato.stanford.edu/>

**Impronta:**

- huella indeleble que se adquiere en épocas muy tempranas y que permanece de forma estable, conformando una serie de hábitos y conductas para el resto de la vida. Actualmente es un concepto fundamental de la psicología moderna, puesto que designa un mecanismo que se supone se encuentra en la base de todos los procesos psicológicos dirigidos al aprendizaje social, psicobiológico y de los procesos primordiales (Farré Martí, 2004);
- marca o huella que, en el orden moral, deja una cosa en otra (RAE, 2006).

**Tentative translation:** mark (Oxford, 2003).

**Mark:** a distinguishing trait or quality.<sup>3</sup>

**Pedagogía**

- [gr. *paidagógia* = educación]. Conocimiento destinado a instituir los modos de acción que constituyen un sistema de educación. Es un conocimiento que asienta fundamentalmente sobre datos biológicos, sociológicos y psicológicos (Merani, 1983);
- un proceso sostenido mediante el que alguien adquiere nuevas formas de conducta, conocimiento, práctica y criterios, o desarrolla las ya adquiridas, tomándolas de alguien o de algo que se considera un transmisor y evaluador adecuado, desde el punto de vista del adquirente, desde el punto de vista de otros o de ambos (Bernstein, 1998);
- arte o ciencia de enseñar y educar niños; se aplica también, impropriamente, a cualquier enseñanza (Moliner, 2000);
- ciencia que se ocupa de la educación y la enseñanza; en general, lo que enseña y educa por doctrina o ejemplos (RAE, 2006).

**Tentative translation:** pedagogy (Oxford, 2003) (Simon and Schuster, 1997).

**Pedagogy:** the function, profession, or practice of a pedagogue; the work or occupation of teaching; the art or science of teaching (Longman, 2003) (Oxford, 1989).

**Personalidad:** organización más o menos estable y duradera del carácter, temperamento, intelecto y físico de una persona, que determina su adaptación única al ambiente. Patrón de pensamiento, sentimiento y comportamiento profundamente incorporado y que persiste por largos períodos de tiempo (Farré Martí, 2004).

**Tentative translation:** personality (Simon & Schuster, 1997) (Oxford, 2003).

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<sup>3</sup> (n.d.). Retrieved September 14, 2015, from <http://www.merriam-webster.com/>

**Personality:**

- the quality or assemblage of qualities which makes a person what he is, as distinct from other persons; distinctive personal or individual character, especially when a marked or notable kind (Oxford, 1989);
- someone's character, especially how they behave towards other people (Longman, 2003).

**Proyección:**

- término utilizado por Sigmund Freud a partir de 1895, esencialmente para definir el mecanismo de la paranoia, pero retomado más tarde por el conjunto de las escuelas psicoanalíticas como designación de un modo de defensa primaria, común a la psicosis, la neurosis y la perversión, mediante el cual el sujeto proyecta sobre otro sujeto o sobre un objeto algunos deseos que provienen de él pero cuyo origen él mismo desconoce y atribuye a una alteridad exterior (Roudinesco, 2003);
- según el psicoanálisis, se trata del desplazamiento inconsciente de procesos internos de la persona, como impulsos, sentimientos de culpa u odios, hacia otras personas, situaciones u objetos (Farré Martí, 2004);
- en sentido propiamente psicoanalítico, operación por medio de la cual el sujeto expulsa de sí y localiza en el otro (persona o cosa) cualidades, sentimientos, deseos, incluso "objetos", que no reconoce o que rechaza en sí mismo (Laplanche, 2004);
- resonancia o alcance de un hecho o de las cualidades de una persona (RAE, 2006).

***Tentative translation:*** projection (Roudinesco, 2003).

**Projection:** the unconscious process or fact of projecting one's fears, feelings, desires or fantasies on to other persons, things or situations in order to avoid recognizing them as one's own and so as to justify one's behavior (Oxford, 1989).

**Ser:** la idea sobre el ser en la obra de Freud tiene un carácter técnico-teórico y está referido a una categoría de funcionamiento primitiva del yo del aparato psíquico, opuesta en términos generales a otra que va surgiendo en la evolución posterior del mismo, que es la del tener. La categoría del ser es la que predomina en los inicios del funcionamiento mental, en esencia respecto de la pulsión sexual, en especial relacionada con el yo placer purificado, por la que el objeto de placer no es conocido como tal sino como "siendo" una parte del yo. El niño tiende a expresar en el vínculo de objeto mediante la identificación: "yo soy el objeto" (Valls, 2008).

***Tentative translation:*** being (Valls, 2008).

**Being:** a human being, a person (Oxford, 1989).



LEGAL TERMINOLOGY**Acto:**

- manifestación de voluntad o de fuerza; hecho o acción de lo acorde con la voluntad humana; hecho, a diferencia de la palabra, y más aún del pensamiento (Ossorio, 2001);
- acción (ejercicio de la posibilidad de hacer; resultado de hacer) (RAE, 2006);
- acción momentánea. Se emplea lo mismo que <<acción>>, para oponerla a <<palabras, intenciones, promesas>>, etc. (Moliner, 2000).

***Tentative translations:*** act; action (Mazzucco, 2004) (Cabanellas, 2008).

**Act:** the process of doing or performing; an occurrence that results from a person's will being exerted on the external world; action; something done or performed, especially voluntarily (Garner, 2009).

**Action:** a thing done; act; the process of doing something, conduct or behavior (Garner, 2009).

**Artículo:**

- cada una de las disposiciones numeradas de un tratado, ley, reglamento, y es ésta una de las acepciones de mayor importancia jurídica (Ossorio, 2001);
- cada una de las partes o puntos en que se divide una ley, un derecho, un libro (Cabanellas, 2008).

***Tentative translation:*** section (Mazzucco, 2004).

**Section:** a distinct part or division of a writing, especially a legal instrument (Garner, 2009).

**Buena fe:** convencimiento, en quien realiza un acto o hecho jurídico, de que éste es verdadero, lícito y justo (Ossorio, 2001).

***Tentative translation:*** good faith (Mazzucco, 2004) (Cabanellas, 2008).

**Good faith:** a state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage (Garner, 2009).

**Causa:** en orden del Derecho Procesal, la palabra *causa* equivale a proceso, litigio o pleito (Ossorio, 2001).

***Tentative translation:*** case (Mazzucco, 2004) (Cabanellas, 2008).

**Case:** a civil or criminal proceeding, action, suit, or controversy at law or in equity (Garner, 2009).

**Concordante:** dicho de una norma: que completa, aclara o interpreta a otra (RAE, 2006).

***Tentative translation:*** Pertinent (Mazzucco, 2004).

**Pertinent:** pertaining to the issue at hand; relevant (Garner, 2009).

**Constitucional (adj.):** perteneciente a la *Constitución* de un Estado. Es *constitucional* todo aquello que se ajusta o es conforme a las normas que la Constitución establece, como es *inconstitucional* cuanto se aparte

de ella o la vulnera. Representa una cuestión vinculada con la supremacía de la Constitución; o sea, con un ordenamiento jurídico por el cual la sociedad, constituida políticamente, subordina a ella todos los demás actos de los poderes públicos, así como las normas legales, que carecen de validez en cuanto las desconozcan o contradigan (Ossorio, 2001).

***Tentative translation:*** constitutional (Mazzucco, 2004) (Cabanellas, 2008).

***Constitutional:*** of or relating to a constitution; proper and valid under a constitution (Garner, 2009).

**Derecho Civil:** desde el punto de vista legislativo, el que está contenido en el Código Civil y en sus leyes accesorias y complementarias. Haciendo una descripción de su contenido actual, es el que comprende el régimen de los bienes (derechos reales), de las obligaciones y contratos, de la familia y de las sucesiones, además de cierto número de nociones generales y comunes a todas esas instituciones especiales (Ossorio, 2001).

***Tentative translation:*** Civil Law (Mazzucco, 2004) (Cabanellas, 2008).

***Civil Law:***

- the law of civil or private rights, as opposed to criminal law or administrative law (Garner, 2009);
- laws relating to people's rights, and agreements between individuals (Collin, 1995).

**Doctrina:** conjunto de tesis y opiniones de los tratadistas y estudiosos del Derecho que explican y fijan el sentido de las leyes o sugieren soluciones para cuestiones aún no legisladas. Tiene importancia como fuente mediata del Derecho, ya que el prestigio y la autoridad de los destacados juristas influyen a menudo sobre la labor del legislador e incluso en la interpretación judicial de los textos vigentes (Ossorio, 2001).

***Tentative translations:*** “legal textbooks and opinions of authors”; jurisprudence (Mazzucco, 2004).

***Jurisprudence:*** study of the law and the legal system (Collin, 1995).

**Ejercicio:** práctica o desempeño de una profesión, oficio o arte; uso de una atribución; en lo que respecta al ejercicio de derechos o acciones, la realidad, actuación o uso de aquéllos o de éstas (Ossorio, 2001).

***Tentative translation:*** exercise (Cabanellas, 2008).

***Exercise:*** to make use of; to put into action (Garner, 2009).

## **Filiación**

- [lat. *filiatio, filius* = hijo]. Conjunto de la descendencia directa, por la sucesión ininterrumpida de generaciones en una misma familia (Merani, 1983);
- vínculo existente entre padres e hijos (Ossorio, 2001);
- este término es común al derecho, la antropología y el psicoanálisis. Designa la regla en virtud de la cual un individuo adquiere su identidad social y se inscribe en un proceso de transmisión de tipo patrilíneo o matrilíneo. El debate sobre la naturaleza de la filiación coincide con los desarrollados

sobre el patriarcado y el matriarcado. En cuanto a la filiación en sí, es uno de los objetos del estudio del sistema de parentesco (Roudinesco, 2003).

***Tentative translation:*** filiation (Mazzucco, 2004) (Cabanellas, 2008).

***Filiation:*** the fact or condition of being a son or daughter; relationship of a child to a parent (Garner, 2009).

### **Filiación materna**

***Tentative translation:*** maternal filiation (Cabanellas, 2008).

***Maternal:*** of or pertaining to a mother or mothers; inherited or derived from a mother; related through a mother or on the mother's side (Oxford, 1989) (Longman, 2003).

### **Filiación paterna**

***Tentative translation:*** paternal filiation (Cabanellas, 2008).

***Paternal:*** of or pertaining to a father or fathers; inherited or derived from a father; related through a father or on the father's side (Oxford, 1989).

***Garantía:*** protección frente a un peligro o riesgo. Las garantías constitucionales son las ofrecidas por ésta, en el sentido de que se cumplirán y respetarán los derechos que ésta consagra, tanto en lo que se refiere al ejercicio de los de carácter privado como al de los de índole pública (Ossorio 2001).

***Tentative translation:*** (constitutional) right (Mazzucco, 2004) (Cabanellas, 2008).

***Right:*** a power, privilege, or immunity secured to a person by law (Garner, 2009).

***Hecho:*** como concepto amplio está representado por toda acción material de las personas, y por sucesos independientes de ellas, generalmente los fenómenos de la naturaleza. En sentido civil y penal, los hechos ofrecen trascendental importancia por cuanto originan no solo derechos y obligaciones, sino también responsabilidades de toda índole. En sentido procesal, el concepto se usa como oposición a derecho, pues, mientras el punto de hecho pone en juego qué ha de ser probado, el punto de derecho tiene por objeto saber la regla de Derecho aplicable al hecho, una vez probado éste (Ossorio, 2001).

***Tentative translation:*** event (Mazzucco, 2004) (Cabanellas, 2008).

***Event:*** anything that happens or is contemplated as happening; an incident, occurrence (Oxford, 1989).

***Inciso:*** cortado, dicho del estilo: cada uno de los miembros que, en los períodos, encierra un sentido parcial (Ossorio, 2001).

***Tentative translation:*** subsection (Mazzucco, 2004) (Cabanellas, 2008).

**Subsection:**

- a division of a section (Oxford, 1989);
- a part of a section especially of a legal document.<sup>3</sup>

**Inscripción:** acción y efecto de inscribir o inscribirse; tomar razón, en algún registro, de los documentos o las declaraciones que han de asentarse en él según las leyes. Con relación a algunos actos, la inscripción es obligatoria, ya que sin ella carecen de efecto, por lo menos frente a terceros (Ossorio, 2001).

**Tentative translations:** registration (Mazzucco, 2004); filing (Cabanellas, 2008).

**Registration:** the act of recording or enrolling (Garner, 2009).

**Instrumento internacional:** escritura, papel o documento con que se justifica o prueba alguna cosa; todo lo que sirve para instruir una causa, todo cuanto da luz sobre la existencia de un hecho o convenio (Ossorio, 2001).

**Tentative translation:** (international) instrument (Cabanellas, 2008).

**Instrument:** a written legal document that defines rights, duties, entitlements, or liabilities (Garner, 2009).

**Interés:** conveniencia o necesidad en el orden moral o material; la conveniencia individual de una persona frente a otra (Ossorio, 2001).

**Tentative translation:** interest (Mazzucco, 2004) (Cabanellas, 2008).

**Interest:** the object of any human desire (Garner, 2009).

**Interés superior:** se entiende por interés superior del niño la máxima satisfacción integral y simultánea de sus derechos en un marco de libertad, respeto y dignidad, para lograr el desenvolvimiento de sus potencialidades, y el despliegue integral y armónico de su personalidad. Para determinar el interés superior del niño, en una situación concreta, se debe apreciar: la condición específica de los niños como sujetos de derecho; la opinión de los niños de acuerdo a su desarrollo psicofísico; la necesidad de equilibrio entre los derechos y garantías de los niños, y sus deberes; la necesidad de equilibrio entre los derechos y garantías de los niños, y las exigencias de una sociedad justa y democrática.<sup>16</sup>

**Tentative translations:** superior interest<sup>52</sup>; best interest.<sup>53</sup>

<sup>3</sup> (n.d.). Retrieved September 14, 2015, from <http://www.merriam-webster.com/>

<sup>16</sup> Ley de la Promoción y Protección Integral de los Derechos de los Niños. (n.d.). Retrieved January 31, 2016, from <http://www.gob.gba.gov.ar/>

<sup>52</sup> Right to Protection: Understanding Children's Right to Protection. (n.d.). Retrieved January 31, 2016, from <http://www.humanium.org/>

<sup>53</sup> UNHCR Guidelines on Determining the Best Interests of the Child. (n.d.). Retrieved January 31, 2016, from <http://www.unhcr.org/>

**Superior interest:** the principle of the superior interest of children is also tied to the necessity to protect children. This principle involves two important rules: all the decisions regarding children have to be taken *in the exclusive interest of each child* to ensure their immediate and future well being; and all the decisions and acts must imperatively guarantee the child's rights. The superior interest of children is subordinated to a protection of the child and targets the well being of each child. This principle has the goal of promoting and guaranteeing the well being of all children, on several aspects: *physical well being* (ensuring good health and proper development of the child); *mental well being* (providing the child the opportunity to develop intellectually; and *social well being* (ensuring to the child the opportunity to flourish socially and spiritually);<sup>20</sup>

**Best interest:** the term "best interests" broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, and the child's environment and experiences. Its interpretation and application must conform with the Convention on the Rights of the Child (CRC) and other international legal norms, as well as with the guidance provided by the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin. The CRC stipulates that the best interests must be the determining factor for specific actions, notably adoption and separation of a child from parents against their will, and must be a primary (but not the sole) consideration for all other actions affecting children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.<sup>21</sup>

**Jurisprudencia:** ciencia del Derecho; la interpretación que de la ley hacen los tribunales para aplicarla a los casos sometidos a su jurisdicción. Así, pues, la jurisprudencia está formada por el conjunto de sentencias dictadas por los miembros del Poder Judicial sobre una materia determinada (Ossorio, 2001).

**Tentative translation:** judicial precedent (Mazzucco, 2004).

**Judicial precedent:** a decided case that furnishes a basis for determining later cases involving similar facts or issues; the making of law by a court in recognizing and applying new rules while administering justice (Garner, 2009).

**Juzgado:** tribunal de un solo juez (Ossorio, 2001).

**Tentative translation:** court (Cabanellas, 2008).

**Court:** a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice (Garner, 2009).

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<sup>20</sup> Right to Protection: Understanding Children's Right to Protection. (n.d.). Retrieved January 31, 2016, from <http://www.humanium.org/>

<sup>21</sup> UNHCR Guidelines on Determining the Best Interests of the Child. (n.d.). Retrieved January 31, 2016, from <http://www.unhcr.org/>

**Ley (de fondo/substantiva/sustantiva):** constituye la *ley* una de las fuentes, tal vez la principal, del Derecho. En sentido amplio, se entiende por *ley* toda norma jurídica reguladora de los actos y de las relaciones humanas, aplicable en determinados tiempo y lugar. La *ley substantiva* o *de fondo* es la que regula los derechos y las obligaciones o define y sanciona los delitos, a diferencia de la *ley adjetiva*, que establece las normas para la aplicación de la substantiva (Ossorio, 2001).

***Tentative translation:*** substantive law (Cabanellas, 2008).

**Substantive law:** the part of the law that creates, defines, and regulates the rights, duties, and powers of parties (Garner, 2009).

**Orden social:** la totalidad de las relaciones humanas de convivencia en lugar y tiempo determinados; funcionalmente, la universal necesidad de coordinación interna, el desenvolvimiento pacífico o normal de la sociedad, dentro del orden de valores predominantes en moral, Derecho, cultura, arte y otras manifestaciones del pensamiento y de la acción (Ossorio, 2001).

***Tentative translation:*** social order (Cabanellas, 2008)

**Social order:** the totality of structured human interrelationships in a society or a part of it.<sup>3</sup>

### **Reglamentar**

- sujetar a una *regla* (Ossorio, 2001);
- sujetar a reglamento un instituto o una materia determinada (RAE, 2006).

***Tentative translation:*** regulate (Mazzucco, 2004) (Cabanellas, 2008).

### **Regulate:**

- to control by rule or restriction (Garner, 2009);
- to adjust something so that it is correct (Collin, 1995).

### **Sentencia:**

- declaración del juicio y resolución del juez (RAE, 2006);
- modo normal de extinción de la relación procesal; acto procesal emanado de los órganos jurisdiccionales que deciden la causa o punto sometidos a su conocimiento; decisión judicial que en la instancia pone fin al pleito civil o causa criminal, resolviendo respectivamente los derechos de cada litigante y la condena o absolución del procesado (Ossorio, 2001).

***Tentative translations:*** judgment; decision; decree; ruling (Mazzucco, 2004); (judicial) decision (Cabanellas, 2008).

### **Judgment:**

- a court's final determination of the rights and obligations of the parties in a case (Garner, 2009);
- legal or official decision of a court (Collin, 1995).

<sup>3</sup> (n.d.). Retrieved September 14, 2015, from <http://www.merriam-webster.com/>

**Ruling:**

- the outcome of a court's decision either on some point of law or on the case as a whole (Garner, 2009);
- decision made by a judge, magistrate, arbitrator, etc. (Collin, 1995).

**Decision:** a judicial or agency determination after consideration of the facts and the law; especially, a ruling, order, or judgment pronounced by a court when considering or disposing of a case (Garner, 2009).

**Decree:** a court's final judgment (Garner, 2009).

**LATIN TERMINOLOGY**

**Ídem:** pronombre latino que significa <<el mismo>> o <<lo mismo>>; se usa particularmente en una lista, para indicar que se repite parte o todo lo del asiento anterior (Moliner, 2000).

***Tentative translations:*** (el/lo) mismo; igual que (García de Diego, 1995).

## **COMMENTS AND OPINIONS ON THE TRANSLATION**

Having analyzed the text fully from many different perspectives, which allowed us to approach the translation process in a more fluid and accurate way, we will now proceed to make the comments that we consider pertinent as regards the special features of the resulting translation and the difficulties that we encountered along the way. We will be mainly dealing with matters of formality and terminology.

As we mentioned earlier in this work, our translation had to be made according to the formalities established by the *Colegio de Traductores Públicos de la Ciudad de Buenos Aires (CTPCBA)* (Association of Certified Legal Translators of the City of Buenos Aires, Argentina). Such formalities are enumerated in the rules of certification provided by the *CTPCBA*, and we will discuss them below.

To begin with, it is important to say that, by certifying a specified translation, the *CTPCBA* guarantees the legal certainty of the target text or document (the translation itself). When carrying out the certification procedure, the *CTPCBA*'s task is to compare the signature and seal of the certified legal translator with those registered at the institution, to prove that the registration of such translator is up to date, and to control that the target document complies with all the necessary formalities. The *CTPCBA* does not certify the content of a translation.<sup>1</sup>

We will now enumerate those formalities required by the *CTPCBA* that we had to follow when doing our translation.

To start with, the translation must always be preceded by the original source document, or otherwise a certified copy of it. The text of the translation must also be preceded by the heading “*TRADUCCIÓN PÚBLICA*” in the national language (in this case, Spanish), preferably in capital letters.<sup>1</sup>

Moreover, at the end of any certified legal translation, we must include a closing phrase or expression (called “*fórmula de cierre*” in Spanish) which includes the following information: the target language and source language, the place in which the rendering was made, and the date on which the translation was made. If the certified legal translator translates only certain parts of the source text, he must explain this in the closing phrase or expression, stating the exact parts that he was required to translate.<sup>1</sup>

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<sup>1</sup> CTPCBA - Colegio de Traductores Públicos de la Ciudad de Buenos Aires. (n.d.). Retrieved September 14, 2015, from <http://www.traductores.org.ar>



As to those translations that are made into a foreign language, they must include two closing phrases: the first one must be in the target language and the second one must be in the source language. The certified legal translator may include between these two closing phrases an explanation stating that the second phrase (that in the national or source language) is included for certification purposes only. Finally, it is also important that the closing phrase or phrases be put immediately after the text of the translation and on the same page. In the event that there were some blank spaces left throughout the text, these should be filled in with dashed lines.<sup>1</sup>

When it comes to the signature and seal of the certified legal translator, these must be placed after the closing phrase or phrases, and no space must be left in between. The certified legal translator must also affix his seal on every page of the original document and of the translation.<sup>1</sup>

In reference to the content of that seal, we should mention that the seal of any certified legal translator must include or show the following information: translator's name and surname, the languages in which the translator is certified, translator's license number, and translator's registration number (that which is given when the translator registers with the *CTPCBA*).<sup>1</sup> Regarding these last two points, we must say that, as we do not yet have a license number or a registration number, these were replaced with fictitious numbers.

We will now comment on the choices made while translating that we think are worthy of mention and discussion. These choices are based on what we have learned throughout our course of study and on the theory provided by the trustworthy sources which we have consulted.

We will start with the formalities of our translation. First of all, we decided to include the page numbers of the source document, mostly because we did not translate the entire document. Therefore, in case the reader wants to compare any part of our translation with the source text, he will be able to find the specific part easily. We also chose to include an explanation, or, where possible, a tentative translation of other elements that appeared in the text, such as badges, seals, and the like. It is important to mention that all the explanations which do not belong to the source text and which are added by the translator himself have to be written between brackets. In our case, we chose square brackets since parentheses had already been used throughout the source text.

When it comes to the general layout of our translation, we chose to keep the layout of the source text. Accordingly, we used italics throughout, and whenever we wanted to emphasize a particular word, phrase or expression we used boldface.

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<sup>1</sup> CTPCBA - Colegio de Traductores Públicos de la Ciudad de Buenos Aires. (n.d.). Retrieved September 14, 2015, from <http://www.traductores.org.ar>

Furthermore, as regards the use of punctuation marks, we must say that this brought us some difficulties when arranging and organizing the paragraphs, since the sentences and the paragraphs of the source text were so long and full of explanations included between brackets that, at first, we did not know how to present the information in a clearer way. In some cases, we could divide long paragraphs into separate sentences, but in other cases we just had to maintain the punctuation marks used in the source text. The following is an example of a paragraph that we could divide into two separate sentences in an attempt to organize the information in a correct and clearer way:

“Indeed, we may state that the identity is what characterizes and defines a thing, making it different from the rest. Etymologically, this term derives from the Latin word ‘*idem*’, which means ‘the same’, and has been taken from the Late Latin word ‘*identitas*’, which is formed by ‘*ens*’ (being) and ‘*entitas*’ (entity) [...]”

In reference to terminology, the task of translating the terms that belonged to the areas of psychology and pedagogy proved to be a great challenge. In particular, the terms related to the identity of a person, and especially the way in which they are presented and described throughout the source text, were highly confusing. When we first approached the jargon analysis, we could only find definitions and explanations of one of the identities described in the text: the “*identidad personal*”. However, none of the sources that we consulted included the other types of identities that were mentioned in the text. In addition, the text provides various explanations for just one single type of identity, which made it even more confusing. For example, what the text describes as “*identidad genética*” was also referred to as “*identidad de origen*”.

Hence, after analyzing the source text several times, we decided that for the sake of simplicity and clarity we would only use the terms “genetic identity” and “dynamic identity” (for the Spanish terms “*identidad genética*” and “*identidad dinámica*” respectively) throughout our rendering, even when the term was explained and not directly mentioned in the source text. We will provide an example in an attempt to illustrate what we have just mentioned in a clearer way (the second sentence belongs to our rendering).

“[...] es inexacto predicar que **la identidad de origen** desplace en importancia a **la identidad que confiere el curso de la vida** [...]” (Page 19, lines 16-18).

“[...] it is incorrect to state that **the genetic identity** of a person is more important than **the dynamic identity which is given by the course of life.**”

In this case, as in all the other cases where the author referred to any of these types of identities, we simply used the terms discussed earlier with the aim of avoiding any possible confusion or misunderstanding.

Regarding the international instruments and domestic laws and codes that are mentioned throughout the text, these were left in Spanish and a tentative translation was provided next to each of the terms. In the case of international treaties or conventions, most of them were originally drafted in English, and, therefore, we

decided to use the official names in that language. In the event that the reader wants to search for one of those instruments, he will be able to do it by using those official names.

The only term that does not have an English equivalent is “*Juzgado de Familia N°1*”, which is the name of the court of original jurisdiction. Accordingly, we provided for a brief explanation stating what it is and which its main function is.

Finally, we wanted to comment on the fact that the references to books, articles or other pertinent legal cases were kept in the source language, *i.e.* in Spanish, since they were not essential to the understanding of the text and, therefore, did not require a tentative translation. Again, if the reader wants to consult one of those articles or cases, he will only need the original name or reference.

All things considered, we hope that our translation represents the content of the source text as accurately as possible and that the comments in this section help to clarify any doubt that the reader may have had while reading our rendering.

## **CONCLUSION**

Having carried out an exhaustive analysis of the document at issue in terms of its content, context, grammar and terminology, and having completed the translation of those parts that we were required to translate, we can only say that the experience that we got out of this work could not be more positive and enriching.

Most importantly, we learned how to prepare and organize a piece of work that is the closest thing to a real translation that we may be required to do in our professional lives. Not only we had to follow the rules given by our tutor, but we also had to learn how to manage our time in an attempt to comply with the delivery date.

On the whole, we are satisfied with the general outcome of our work, although, for instance, we would have liked the grammatical analysis to include a more complete study of all the parts of speech available in Spanish. However, we understand that it is always better to define from the beginning the specific subjects or topics that one will deal with in a research work of this kind in an attempt to focus and expand on those subjects in depth.

As it could be expected, there were several difficulties that we had to overcome throughout this challenging process. Most of them had to do with the search for trustworthy sources for the grammatical analysis and for the jargon analysis, the understanding of some aspects inherent to the case, and the making of decisions during the translation process. Nevertheless, we have tried to solve those difficulties as best as we could.

In conclusion, this linguistic work proved to be an all-encompassing effort, since in order to fulfill the analysis and approach the translation process we had to review and apply all the techniques, topics and concepts that we have been taught during our course of study.

We would like to thank our tutor and the University for providing us with the necessary tools to accomplish this work. Our greatest expectation is that this work reflects our effort and dedication and that it complies with all the necessary requirements.

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TRADUCCIÓN PÚBLICA -----

[Page one]-----

[On the upper left-hand margin of the first page of the document there appears a badge that -- reads:] *Poder Judicial de la Provincia de Buenos Aires* [Judicial Branch of the Province of -- Buenos Aires] -----

[On the upper right-hand margin of the first page of the document there appears a bar code]-- "**R. A. E. C/ B. P. D. S/CAMBIO DE NOMBRE**" [R. A. E. v B. P. D., ON CHANGE OF --- NAME] -----

**JUZGADO DE FAMILIA N°1 – OLAVARRÍA** [a Court of Original Jurisdiction that hears - cases related to family matters in the City of Olavarría, Province of Buenos Aires] -----

Docket No. [blank]-----

Folio No. [blank] -----

(...) -----

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*“Therefore, although it is true that a relationship between a person’s filiation, name, and --- documents or papers with which he identifies himself is commonly desirable, due to the fact- that these are aspects inherent to his personality and significant from the point of view of--- social order (arts. 7 y 8, Convención sobre los Derechos del Niño [sections 7 and 8 of the -- Convention on the Rights of the Child]; 1, 33, 75 inc. 22 y ccdtes., Const. nacional [sections 1, 33, 75 subsection 22, and other pertinent sections of the Argentinian Constitution]; 18, --- Convención Americana de Derechos Humanos -Pacto San José de Costa Rica [section 18 of the American Convention on Human Rights -Pact of San José, Costa Rica]; 1, 10, 11 y --- ccdtes., Const. Provincial [sections 1, 10, 11, and other pertinent sections of the ----- Constitution of the Province of Buenos Aires]; 11 y 12, ley 26.061 [sections 11 and 12 of --- Act 26061]; ley 18.248 [Act 18248]; ley 26.413 [Act 26413]; ley provincial 14.078 [Act----- 14078]; etcetera), in this case, however, to keep the girl’s surname by which she has been---*

*publicly known since her date of birth is justifiable from the perspective of her best interest - in furtherance of the protection of her dynamic identity, taking into consideration her young age, her good faith as regards the use of her surname for all these years, and the impact that an opposite solution could cause on her, even if at the time of the registration her maternal - filiation was known and her paternal filiation was not (arg. arts. 3, 9 y 12, Convención ----- **Internacional sobre los Derechos del Niño** [sections 3, 9, and 12 of the International----- Convention on the Rights of the Child]; **1, 18, 31, 33, 75 inc. 22 y ccdtes. Constitución ----- nacional** [sections 1, 18, 31, 33, 75 subsection 22, and other pertinent sections of the ----- Argentinian Constitution]; **2,3 y ccdtes., ley 26.061** [sections 2, 3, and other pertinent----- sections of Act 26061]; **1, 11, 15 36.2 y ccdtes. Constitución provincial** [sections 1, 11, 15, 36.2, and other pertinent sections of the Constitution of the Province of Buenos Aires]; **4, 5, 6, 7 y ccdtes., ley 13.298** [sections 4, 5, 6, 7, and other pertinent sections of Act 13298]).”---*

“Indeed, we may state that the identity is what characterizes and defines a thing, making it-- different from the rest. Etymologically, this term derives from the Latin word ‘**idem**’, which - means ‘the same’, and has been taken from the Late Latin word ‘**identitas**’, which is formed- by ‘**ens**’ (being) and ‘**entitas**’ (entity) (Corominas, Joan; ‘**Diccionario Crítico Etimológico-- Castellano e Hispánico**’, Ed. Gredos, Madrid, 1980, tº III, p. 437). Pursuant to traditional -- psychology, we may identify ourselves through the act by which we recognize ourselves as -- being ourselves, despite all the possible variations (‘**Gran Enciclopedia Rialp [Ger]**’, Ed. --- Rialp, Madrid. 1981, tº XII, Voz ‘**identificación**’, por C. Monedero Gil, p. 337).”-----

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“It has been said that the right to personal identity ‘refers to a person’s origin as a human -- being and to those elements that correspond to him, such as his name, filiation, nationality, - language, customs, culture, and other elements that constitute his own ‘being’” (D’Antonio, - Daniel Hugo, ‘**Derecho a la Identidad, Reforma Constitucional y Acciones de Estado**’. ----- *Revista de Jurisprudencia Provincial*, Año I, nº 4, p. 328), including his qualities, character,

*and thoughts whenever these represent effective ways of behavior that acquire social-----  
projection (according to Fernández Sessarego, Carlos, 'Derecho a la identidad personal', --  
Astrea, Bs. As., 1992, pág. 113)."* -----

*"Taking this reality into account, it is possible to recognize the various dimensions of a-----  
person's identity (static, dynamic, and cultural (pursuant to Lorenzetti, Ricardo L., -----  
'Constitucionalización del Derecho Civil y Derecho a la Identidad Personal en la Doctrina-  
de la Corte Suprema', LL 1993-D-678)), and, even though we assume that the origin of a----  
person is his starting point, beginning, root, and cause, it is incorrect to state that the -----  
genetic identity of a person is more important than the dynamic identity which is given by ---  
the course of life. Those two features of a person's identity are not exclusive. On the-----  
contrary, they complement one another. Together with the dynamic identity which is shaped  
throughout the evolutionary process of a person's life, the genetic identity forms a -----  
fundamental and solid unit that takes shape and consolidates progressively (my vote in -----  
C. 85.363 [case 85.363], sent. del 27 III-2008 [judgment rendered on 27-III-2008]; among -  
others)."*-----

*"If we relate a person's identity only to his origin, we are ignoring the aspect that refers to -  
the adaptation of the person to the outside world, i.e. that aspect which refers to the person's  
way of relating to the world. A person's personal identity results from a course. Hence, we--  
cannot mistake a person's biological origin for his identity, which is the factor that-----  
determines who he is. In the creation of such personal mark, other factors, such as the -----  
person's subsequent growth, development, and death, are equally important (in that regard,  
Fernández Sessarego, Carlos, "El derecho a la identidad personal", Astrea, Buenos Aires, -  
1992, pág. 115 y ss.).* -----

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*A person is born, grows, develops, and dies through a sequence of events and acts that-----  
strongly define his identity."* -----

*“As we may notice, a person’s personal identity results from an evolution and, therefore, --- from ‘the persistence of the person as a living unit distinct from the rest through the changes that occur throughout his life’ (Merani, Alberto L., “Diccionario de Pedagogía”, Ed. ----- Grijalbo, Barcelona, 1982, Voz “Identidad Personal”, p. 81).” -----*

*“Therefore, a person’s identity is shaped day after day and is connected to each and every -- one of the events that a person goes through throughout his life. Thus, we notice that its ---- pedagogical definition refers to the changes that a person undergoes throughout his life, ---- while its psychological definition makes reference to the series of consequent states of ----- consciousness that takes place throughout the person’s life. A person’s identity is comprised of his past, his present, and even his future expectations (in reference to our article “La ---- identidad del niño, ¿está sólo referida a su origen?”, JA 1998-III-1006).” -----*

*“Thus, alongside the biological reality of a person, there is another reality: a sociological,-- cultural, and emotional one. This reality also shapes a human being’s identity and has been- acceptable under law from a dynamic perspective as from the incorporation of the-----*

***Convención sobre los Derechos del Niño** [Convention on the Rights of the Child] into the -- Constitution (**art. 75 inc. 22, Const. nacional** [section 75 subsection 22 of the Argentinian -- Constitution]).-----*

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*Indeed, both the genetic identity and the dynamic identity, which, nowadays, names and ---- individualizes a person by giving him a name and a surname, are based on the implicit or --- non-defined rights provided for by **art. 33** [section 33] of the **Carta Magna** [Argentinian ---- Constitution], by many international and constitutional instruments (**arts. 75 incs. 22 y 23---** **Constitución nacional** [section 75 subsections 22 and 23 of the Argentinian Constitution];-- **7 y 8 de la Convención sobre los Derechos del Niño** [sections 7 and 8 of the Convention on the Rights of the Child; **XVII de la Declaración Americana de los Derechos y Deberes del - Hombre** [section XVII of the American Declaration of the Rights and Duties of Man]; **6 de--***

*la Declaración Universal de los Derechos Humanos [section 6 of the Universal Declaration of Human Rights]; 3, 18 y 19 de la Convención Americana sobre Derechos Humanos -Pacto San José de Costa Rica [sections 3, 18, and 19 of the American Convention on Human Rights -Pact of San José, Costa Rica]; 16 y 24 del Pacto Internacional por los Derechos Civiles y Políticos [sections 16 and 24 of the International Covenant on Civil and Political Rights]; 10.3 del Pacto Internacional por los Derechos Económicos, Sociales y Culturales [section 10.3 of the International Covenant on Economic, Social and Cultural Rights], by our Constitución provincial (art. 12.2) [section 12.2 of the Constitution of the Province of Buenos Aires], and by the substantive laws that govern their exercise (arts. 1, 2, 3, 5, 11 y cddtes., ley 26.061 [sections 1, 2, 3, 5, 11 and other pertinent sections of Act 26061]; etcetera).”*

(...)

This is a faithful translation into English of the pertinent parts of the photocopy of the original document in Spanish (from “Así, si bien cierto es que” on page 18 to “ley 26.061; etc.” on page 21) which I attach hereto. In Buenos Aires, 4 March 2016.

[For certification purposes only:]

Es traducción fiel al inglés de las partes pertinentes de la fotocopia del documento original en español (desde “Así, si bien cierto es que” en la página 18 hasta “ley 26.061; etc.” en la página 21) que he tenido a la vista y que adjunto a la presente. Buenos Aires, 4 de marzo de 2016.

