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Chapter 1 : legal language and the search for clarity | Download eBook PDF/EPUB

This book explores the intricate and multi-dimensional conception of clarity and obscurity in the law. It presents and examines the most recent research and theories, giving practical guidance on how to avoid obscurity in legal drafting and its impact on.

Criminal Law Casebook - Developments in leading appellate courts Observations on leading cases in criminal law around the world from to The link to the Index allows this site to be used as an online textbook. Aimed at Masters and above, and specialist practitioners. The case commentaries are from August to August Occasional entries from then, mainly book reviews. Monday, June 18, Clarity and obscurity One of the things that makes law both difficult and interesting is the shift between clarity and obscurity. Authoritative statements of the law, expressed clearly and simply, and in apparently absolute terms, tend later to be qualified by cases in which those requirements are not treated as absolute. Here, the Board declined para 34 to formulate rules subsidiary to the requirement that a person in custody be informed of his right to legal advice. One of the appellants, being illiterate and therefore probably at some disadvantage, had been told of his right to a lawyer but had not been told how he might exercise that right. The Board held that it was a matter for the judge in the circumstances of each case to decide whether the defendant had been properly informed of his right to legal advice. In contrast, the approach that the Board took to this right in Ramsarran v Attorney-General of Trinidad and Tobago [] UKPC 8 blogged here 28 February emphasises the social utility in facilitating the right to legal advice. That case, not cited in Daniel, concerned arrest on warrant for outstanding fines, whereas this involved murder. In Daniel the omission of the point was held not to have prejudiced the fairness of the trial, as the defendant had been in custody awaiting trial on other serious charges at the time of his trial for murder. An interesting, although not novel, point about secondary liability was mentioned in Daniel. Departure from a joint enterprise or common intention by one offender, who embarks on the commission of an offence outside that joint enterprise, can be followed by a decision by another offender to assist him in the commission of that new offence. The Board said this about secondary liability para A defendant may have joined an enterprise to commit one crime, only to find that his companions went beyond what he had contemplated and so in committing a different crime were acting outside the bounds of the joint enterprise. He may nevertheless have remained with them and lent assistance or encouragement to them in the commission of the new crime, which would make him a secondary party as an aider and abettor. This did not operate to their disadvantage, however, and if his directions were sufficient on the content of each concept and there was evidence on which they could properly so find, the jury were entitled to find the appellants guilty on the basis ascribed to each by the judge. The judge had not told the jury that they must exclude every inference consistent with innocence before they could find an accused guilty. I will call that the exclusionary direction. Instead, the normal direction on circumstantial evidence was given, amounting to little more than a reminder that guilt must be proved beyond reasonable doubt. The exclusionary aspect of the inferences direction was emphasised in Taylor v R blogged 14 March , and the need to consider inferences of innocence in the context of all the evidence in the case was stressed in R v Hillier blogged 23 March These cases were not mentioned by the Board in Daniel. Whether the exclusionary direction needs to be given depends on what is appropriate in the circumstances of each case, as I noted in commenting on Taylor, but the vagueness of that approach means that the absence of an exclusionary direction on inferences will frequently become a matter for consideration on appeal.

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The first is to critically reach a nexus between the disciplines of law and language with respect to the debates on the use of clarity in legal discourse. The second is to achieve an international perspective on the issues, drawing from a wide range of legal and political contexts.

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One of the things that makes law both difficult and interesting is the shift between clarity and obscurity. Authoritative statements of the law, expressed clearly and simply, and in apparently absolute terms, tend later to be qualified by cases in which those requirements are not treated as absolute.

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Of the Obscurity of Laws. If the power of interpreting laws be an evil, obscurity in them must be another, as the former is the consequence of the latter. This evil will be still greater if the laws be written in a language unknown to the people; who, being ignorant of the consequences of their own.