

## Appendix X

### Suggestions for further reading

This book can be used as a starting point for exploring an extremely varied and rich literature on a wide range of topics in many disciplines. The following is a selective bibliography of writings which provide possible ways into exploring in more detail some of the general themes and particular topics touched on in the text.

#### General

We know of no single work which covers exactly the same ground as the present one. Sharon Hanson, *Legal Method, Skills and Reasoning* (3rd edn, Routledge-Cavendish, 2010) grew out of access courses in which earlier editions of this book were used and adopts a similar approach, but with a more extensive use of figures, charts and algorithms. Frederick Schauer, *Playing by the Rules* (Oxford University Press, 1991) and Joseph Raz, *Practical Reason and Norms* (Hutchinson, 1975) cover similar ground to Chapters 2–5 from a philosophical perspective. Neil MacCormick's magisterial quartet, 'Law, State and Practical Reason', published by Oxford University Press (esp. *Rhetoric and the Rule of Law: A Theory of Legal Reasoning* (2005) and *Practical Reason in Morality and Law* (2009)) is the most substantial jurisprudential contribution in this area since 1999 and is relevant to many themes in this book. We are generally in sympathy with his ideas. On epistemological underpinnings, see G. Samuel, *Epistemology and Method in Law* (Ashgate, 1999).

Douglas Walton, *Informal Logic: A Pragmatic approach* (Cambridge University Press, 2nd edn, 2008), S. Cotterrell, *Critical Thinking* (Palgrave MacMillan, 2005); and classics, such as Max Black, *Critical Thinking* (Prentice-Hall, 1952) and E. R. Emmet, *The Use of Reason* (Longman, 1960) are useful general introductions to the more analytical aspects of the study of rules and their interpretation. Denis Galligan, *Law in Modern Society* (Oxford University Press, 2007), Mary Douglas (ed.), *Rules and Meanings* (Penguin, 1973) and the entertaining David Fraser, *Cricket and the Law: The Man in White is Always Right* (2nd edn, Routledge, 2005) provide useful insights into sociological and anthropological literature. James B. White, *The Legal Imagination* (Little, Brown, 1973), the pioneering precursor of the law and

literature movement, contains a great deal of material, non-legal and legal, which can still be used to illustrate and expand many of the themes in this book. *The New Oxford Companion to Law* (Peter Cane and Joanne Conaghan, eds., Oxford University Press, 2008) and the impressive *International Encyclopedia of the Social and Behavioral Sciences* (IESBS. Elsevier 2001) are more reliable general reference points than *Wikipedia*.

For readers with no prior legal background, useful starting points are Brian Simpson, *Invitation to Law* (Basil Blackwell, 1988); Jeremy Waldron, *The Law* (Routledge, 1990); John Adams and Roger Brownsword, *Understanding Law* (4th edn, Sweet & Maxwell, 2006); Wade Mansell, Belinda Meteyard and Alan Thomson, *A Critical Introduction to Law* (3rd edn, Cavendish, 2004); and Phil Harris, *Introduction to Law* (7th edn, Cambridge University Press, 2007). Fiona Cownie, Anthony Bradney and Mandy Burton, *English Legal System in Context* (4th edn, Oxford University Press, 2007); Michael Zander, *Cases and Materials on English Legal System* (10th edn, Cambridge University Press, 2007); and Gary Slapper and David Kelly, *The English Legal System* (9th edn, Routledge-Cavendish, 2009) are standard introductions to English legal institutions and processes. A number of books have been published in recent years which deal with legal method and legal skills: see esp., Sharon Hanson (2010, above) and E. Finch and S. Fafinski, *Legal Skills* (2nd edn, Oxford University Press, 2009). Iain McLeod, *Legal Method* (7th edn, Palgrave MacMillan, 2009) is more descriptive and Caroline Maugham and Julian Webb, *Lawyering Skills and Legal Process* (2nd edn, Cambridge University Press, 2005) is more oriented to practice. Karl Llewellyn, *The Bramble Bush* (Oceana, 2nd edn, 1951; new edition (Steve Sheppard (ed.), Oxford University Press 2008) is very different in conception and style, but was also directed to beginning law students in the United States and is still widely used. Our own approach has been influenced by Llewellyn (even the legalistic child grew out of one of his examples). Chapters 1–5 of *The Bramble Bush* are directly relevant.

Most standard introductions to jurisprudence either concentrate on the ideas of leading jurists or so-called ‘schools’ of jurisprudence, or else approach the subject through standard issues in political theory. The approach adopted in this book is designed to stimulate students to think actively about theoretical issues about rules and their interpretation (‘to do jurisprudence’) before proceeding to the detailed study of what others have said about these theories (‘reading about jurisprudence’). We therefore hope that this book can be used as a preliminary to reading, for example, H. L. A. Hart’s *The Concept of Law* (Clarendon Press, 2nd edn, 1994); Ronald Dworkin’s *Law’s Empire* (Fontana, 1986); or writings by John Rawls, John Finnis, Karl Llewellyn, Neil MacCormick, Joseph Raz, and other modern classics. Among introductory works on jurisprudence that can be recommended are: N. Simmonds, *Central Issues in Jurisprudence* (3rd edn, Sweet & Maxwell, 2008), Brian Bix, *Jurisprudence: Theory and Context* (3rd edn, Sweet & Maxwell, 2003) and J. E. Penner, *McCoubrey and White’s Textbook on Jurisprudence* (4th edn, Oxford University Press, 2008). More expansive are M. D. A. Freeman, *Lloyd’s Introduction*

to *Jurisprudence* (Sweet & Maxwell, 8th edn, 2008); and J. Penner, D. Schiff and R. Nobles, *Introduction to Jurisprudence and Legal Theory: Commentary and Materials* (Butterworth, 2002). On so-called 'globalization' and law, see Twining *GJP* (2009), *GLT* (2000); Brian Tamanaha, *A General Jurisprudence of Law and Society* (Oxford University Press, 2001); H. Patrick Glenn, *Legal Traditions of the World* (Oxford University Press, 3rd edn, 2007); and, more generally, Peter Singer, *One World* (Yale University Press, 2nd edn, 2002).

## Chapters 1-2

On problems, see the stimulating entries under 'Problem-solving', in vol. 18 of IESBS. Classics include John Dewey's *How We Think* (Harrap, 1909) and *Logic: The Theory of Enquiry* (Holt, Rinehart & Winston, repr. 1966), G. Polya, *How to Solve It* (Princeton University Press, 2nd edn, 1957), and A. Newell and H. A. Simon, *Human Problem Solving* (Prentice Hall, 1972). On law, see Clarence Morris, *How Lawyers Think* (A Swallow, 1937, 1962); M. Constanzo, *Problem Solving* (Cavendish, 1994), ch. 2; S. Nathanson, *What Lawyers Do: A Problem-solving Approach to Legal Practice* (Sweet & Maxwell, 1997); On 'social problems', see A Giddens *et al.*, *Introduction to Sociology* (6th edn, 2007) and the literature cited there. On 'moral panics', see Stanley Cohen, *Folk Devils and Moral Panics* (3rd edn, Routledge, 2002). On the contrast between the way lawyers and their clients perceive and define 'problems', see Z. Bankowski and G. Mungham, *Images of Law* (Routledge, 1976), pp. 32ff. and Julie MacFarlane, *The New Lawyer* (University of British Columbia Press, 2008). For accounts of the constraints on rational policy making as a response to problems, see J. J. Richardson and A. G. Jordan, *Governing Under Pressure* (Basil Blackwell, 2nd edn, 1985) and generally, M. Moran, M. Rein and R. Gordon, *The Oxford Handbook of Public Policy* (Oxford University Press, 2006). On regulation, see S. Breyer, *Regulation and Its Reform* (Harvard University Press, 1982); A. Ogus, *Regulation: Legal Form and Economic Theory* (Oxford University Press, 1994), Julia Black, *Rules and Regulators* (Oxford University Press, 1997); R. Baldwin, S. Scott and C. Hood, *A Reader on Regulation* (Oxford University Press, 1998). R. Baldwin and M. Cave, *Understanding Regulation* (Oxford University Press, 1999); and Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation* (Cambridge University Press, 2007). On alternative methods of dispute resolution, see S. Roberts and M. Palmer, *Dispute Processes: ADR and the Primary Forms of Decision-Making* (2nd edn, Cambridge University Press, 2005).

## Chapter 3

The philosophical and sociological literature is vast and rapidly expanding. The following is a selection of standard theoretical writings. In addition to Schauer, *Playing by the Rules* and Raz, *Practical Reason and Norms*, helpful general

discussions of the nature of rules are to be found in Max Black, *Models and Metaphors* (Cornell University Press, 1962); D. Schwayder, *The Stratification of Behaviour* (Routledge, 1965); K. Baier, *The Moral Point of View* (Random House, 1965); P. Collett (ed.), *Social Rules and Social Behaviour* (Basil Blackwell, 1977) and Alan Goldman, *Practical Rules: When We need Them and When We Don't* (Cambridge University Press, 2002). See also an entertaining collection of rules by Hugh Rawson paradoxically entitled *The Unwritten Laws of Life* (Carbolic Smoke Ball Co., 2008). Also worth consulting are D. Emmett, *Rules, Roles and Relations* (Macmillan, 1966); R. S. Downie, *Roles and Values* (Methuen, 1961); Peter Brooks and Paul Gewirtz (eds.), *Law's Stories* (Yale University Press, 1996), chs. 4–6, Anthony C. Arend, *Legal Rules in International Society* (Oxford University Press, 1999), and R. Epstein, *Simple Rules for a Complex World* (Harvard University Press, 1995). Rather more advanced are G. von Wright, *Norm and Action* (Allen & Unwin, 1968); D. Lewis, *Convention* (Harvard University Press, 1969); G. Gottlieb, *The Logic of Choice* (Allen & Unwin, 1968); Edna Ullman-Margalit, *The Emergence of Norms* (Oxford University Press, 1977); A. Ross, *Directives and Norms* (Routledge, 1968); F. Waismann, *The Principles of Linguistic Philosophy* (Macmillan, 1965), esp. chs. 1, 2 and 7; Sylvie Delacroix, *Legal Norms and Normativity* (Hart, 2006) and Mette Hjort (ed.) (1992), *Rules and Conventions* (Johns Hopkins University Press), esp. ch. 8, by Charles Taylor, 'To Follow a Rule'. Karl Llewellyn's *The Theory of Rules* is published for the first time in 2010 by the University of Chicago Press (ed. F. Schauer). On particularism and anti-nomianism in ethics, see J. Dancy, *Ethics without Principles* (Oxford University Press, 2004). See also Judith Shklar, *Legalism* (Harvard University Press, 1964). On Bentham's 'anti-nomian thesis' in respect of binding rules of evidence and procedure, see William Twining, *Theories of Evidence: Bentham and Wigmore* (Stanford University Press, 1986), pp. 66–74.

On the distinction between rules, habits, commands and predictions, see esp. Hart, *The Concept of Law* and the defence and refinement of Hart's views in D. N. MacCormick, *HLA Hart* (2nd edn, Stanford University Press, 2008). On rules and principles, see R. Dworkin, *Taking Rights Seriously* (Duckworth, 1977), *A Matter of Principle* (Harvard University Press, 1985) and, restating some of his positions, *Justice in Robes* (Harvard University Press, 2006). For discussion of Dworkin's ideas, see S. Guest, *Ronald Dworkin* (Edinburgh University Press, 2nd edn, 1997).

On analysis of duty, right, etc., see W. Hohfeld, *Fundamental Legal Conceptions* (Yale University Press, 1964), R. W. M. Dias, *Jurisprudence* (Butterworths, 5th edn, 1985), ch. 8, Andrew Halpin, *Rights and Law* (Hart, 1997) and William Twining, *GJP* (2009) pp. 49–54. On 'systems', see C. Sampford, *The Disorder of Law* (Basil Blackwell, 1989) and *GJP*, ch. 15. On attitudes to rules see, for example, Jean Piaget, *The Moral Judgment of the Child* (Routledge & Kegan Paul, 1932) and J. L. Tapp and F. J. Levine, 'Legal Socialisation: Strategies for an Ethical Legality', *Stanford Law Review*, 27 (1972), 1–72. For a psychological account, see Tom R.

Tyler, *Why People Obey the Law* (Princeton University Press, 2nd edn, 2006). On justified departures from legal rules, see D. Galligan, *Law in Modern Society* (2007) pp. 317–20 and M. Kadish and S. Kadish, *Discretion to Disobey* (Stanford University Press, 1973); see also H. W. Arthurs, *Without the Law: Administrative Justice and Legal Pluralism in Nineteenth Century England* (University of Toronto Press, 1985).

On the functions of rules and the law-jobs theory, see K Llewellyn, *Jurisprudence* (Chicago University Press, 1962), ch. 14; K. Llewellyn, 'The Normative, the Legal and Lawjobs', *Yale Law Journal*, 49 (1940), 1355; and K. N. Llewellyn and E. A. Hoebel, *The Cheyenne Way* (University of Oklahoma Press, 1941), esp. chs. 10 and 11. See also Karl Llewellyn's *The Theory of Rules* (Schauer, ed., 2010). In considering the law-jobs theory, it is useful to take account of R. Merton, *On Theoretical Sociology* (Free Press, 1967), R. Cotterrell, *The Sociology of Law: An Introduction* (Butterworths, 2nd edn, 1992) and GJP (2009), ch. 4. See further William Twining, *Karl Llewellyn and the Realist Movement* (Weidenfeld & Nicolson, 1973), ch. 9 and Apps. B and C. On regulation, see R. Baldwin and J. C. McCrudden, *Regulation and Public Law* (Weidenfeld & Nicolson, 1987); R. Baldwin, *Rules and Government* (Oxford University Press, 1995), K. Hawkins, *The Uses of Discretion* (Clarendon Press, 1992), A. Ogus, *Regulation: Legal Form and Economic Theory* (Oxford University Press, 1994), Julia Black, *Rules and Regulators* (Oxford University Press, 1997); and B. Morgan and K. Yeung, *An Introduction to Law and Regulation* (Cambridge University Press, 2007).

On interpreting 'reality', see Douglas, *Rules and Meanings*; Peter Berger and Thomas Luckmann, *The Social Construction of Reality* (Anchor, 1990); Z. Bauman, *Legislators and Interpreters* (Polity Press, 1987), and William Twining, *RE* (2nd edn, Cambridge University Press, 2006) pp. 120–5 and 262–4.

## Chapters 4–6

On the relationship between rule-makers and interpreters, see L. Fuller, 'The Case of the Speluncean Explorers', *Harvard Law Review*, 62 (1949), 616 and L. Jaffe, *English and American Judges as Law-Makers* (Clarendon Press, 1969). R. Megarry's *Miscellany at Law* (Stevens, 1955) and *A Second Miscellany at Law* (Stevens, 1973) are rich treasuries of concrete, often amusing, examples of many of the points made in Chapters 4–6. The main themes in Chapter 5 take Hart's *The Concept of Law* as their starting point. For a contrasting approach, see particularly L. Fuller, *The Morality of Law* (Yale University Press, 1969). The two main recent works in jurisprudence are Raz *Between Authority and Interpretation* (Oxford University Press, 2009), and Neil MacCormick's quartet 'Law, State and Practical Reason'. Two works offering additional perspectives are P. Bobbitt, *Constitutional Interpretation* (New York: Oxford University Press, 2005) and A. Marmor, *Interpretation and Legal Theory* (Clarendon Press, 1992). On language and the law, see Jim Evans,

*Statutory Interpretation* (Butterworths, 1989), esp. ch. 2, B. Bix, *Law, Language and Legal Determinacy* (Oxford University Press, 1995) and Timothy Endicott and Andrew Orville, *Vagueness in law* (Oxford University Press, 2000). At some stage during their education, all law students should read J. L. Austin, *How to Do Things with Words* (Oxford University Press, 1962).

A recent book on American constitutional interpretation, Lackland H. Bloom, *Methods of Interpretation: How the Supreme Court Reads the Constitution* (Oxford University, 2009) is surprisingly close to our approach in that it focuses on the interpretive *practices* of judges and emphasizes the continuities, rather than the differences, between constitutional and other forms of legal interpretation. On the ‘intention’ of the legislature, see R. W. M. Dias, *Bibliography of Jurisprudence* (Butterworths, 3rd edn, 1979). The American debate on ‘original intent’ has stimulated an enormous and sophisticated literature: see, for example, and Antonin Scalia and Amy Gutmann (1997) *A Matter of Interpretation: Federal Courts and the Law* (with critical comments, Princeton University Press, 1997). R. Bork, ‘Neutral Principles and First Amendment Problems’, *Indiana Law Journal*, 47 (1979), 1; Steven G. Calabresi (ed.), *Originalism: A Quarter-Century Debate* (Washington, DC: Regnery, 2007). On the development of rules in response to novel or exceptional circumstances, see L. Fuller, ‘Reason and Fiat in Case Law’, *Harvard Law Review*, 59 (1946), 376, ‘Human Purpose and Natural Law’, *Natural Law Forum*, 3 (1958), 68; and Ian McNeil, ‘The Many Futures of Contracts’, *Southern California Law Review*, 47 (1974), 691.

## Chapters 7 and 8

General introductions to the political and constitutional structure of modern Britain include Anthony King, *The British Constitution* (Oxford University Press, 2007), P. Leyland, *The Constitution of the United Kingdom: A Contextual Analysis* (Hart Publishing 2007); V. Bogdanor, *The New British Constitution* (2009 Hart Publishing); J. Jowell and D. Oliver, *The Changing Constitution* (eds., Oxford University Press, 6th edn 2007); and M. Moran, *The British Regulatory State* (2003).

On the use of law by government, see D. Butler, A. Adonis and T. Travers, *Failure in British Government: The Politics of the Poll Tax* (Oxford University Press, 1994); R. Baldwin and M. Cave, *Rules and Government* (Oxford University Press 1995), ch. 4; T. Daintith and A. Page, *The Executive in the Constitution* (Oxford University Press, 1999); E. Page, ‘The Civil Servant as Legislator: Law Making in British Administration’, *Public Administration*, 18 (2003), 651; A. Brazier (ed.), *Parliament, Politics and Law Making* (Hansard Society, 2004) and C. Harlow and R. Rawlings, *Law and Administration* (Cambridge University Press, 4th edn, 2009). On policy making and legislation, see Richardson and Jordan *Governing Under Pressure* (1985), and Moran *et al.*, *The Oxford Handbook of Public Policy* (2006). On the specific example of

privacy see, E. Barendt (ed.) *Freedom of the Press* (Ashgate 2009) and T. Gibbons (ed.) *Free Speech in the New Media* (Ashgate 2009)

*The Legislative Process in Great Britain*, by S. A. Walkland (Allen & Unwin, 1968) and *Parliamentary Scrutiny of Government Bills* (Allen & Unwin, 1974) by J. Griffith are classic studies, although dated in their detail. On parliamentary matters, see *Griffith and Ryle on Parliament* (eds. R. Blackburn and A. Kennon, Sweet & Maxwell, 2nd edn, 2003); D. Oliver and G. Drewry, *The Law and Parliament* (Butterworths, 1998); P. Giddings (ed.), *The Future of Parliament* (Palgrave, 2005); A. Kelso, *Parliamentary Reform at Westminster* (Manchester University Press, 2009) and P. Davis, 'The Significance of Parliamentary Procedures in Control of the Executive: A Case Study: The Passage of Part 1 of the Legislative and Regulatory Reform Act 2006' [2007] *Public Law*, 675. The *Journal of Legislative Studies* is a useful reference point.

On devolution, see R. Hazell (ed.), *Constitutional Futures: A History of the Next Ten Years* (Oxford University Press, 1999); V. Bogdanor, *Devolution* (Oxford University Press, 1979); R. Hazell and R. Rawlings (eds.), *Devolution, Law Making and the Constitution* (Imprint-Academic, 2005); A. Trench (ed.), *Devolution and Power in the United Kingdom* (Manchester University Press, 2007); R. Hazell (ed.), *Constitutional Futures Revisited* (Palgrave Macmillan 2008).

On the preparation of legislation, see D. Miers and A. Page, *Legislation* (Sweet & Maxwell 2nd edn, 1990) and a contemporary account, E. Page, 'Their Word is Law: Parliamentary Counsel and Creative Policy Analysis' [2009] *Public Law*, 790. Specialized accounts of drafting include E. Driedger, *The Composition of Legislation and Legislative Forms and Precedents* (Department of Justice, Ottawa, 2nd edn, 1976), R. Dickerson, *Fundamentals of Legal Drafting* (Little, Brown, 1965); G. Thornton, *Legislative Drafting* (Butterworths, 3rd edn, 1987); V. Crabbe, *Legislative Drafting* (Cavendish, 1994) and Ian McLeod *Principles of Legislative and Regulatory Drafting* (Oxford University Press, 2009). *In on the Act* by Sir H. Kent (Macmillan, 1979) is the memoirs of a former Parliamentary Counsel, and provides a rare and valuable, if a little dated, account of the Parliamentary Counsel Office. A different perspective is provided by the plain English movement: see M. Cutts, *Lucid Law* (Plain Language Commission, 2nd edn, 2000). The dangers associated with the simplification of statutory rules are illustrated by the exchanges between Parliamentary Counsel and 'plain English' writers. See E. Sutherland, 'Clearer Drafting and the Timeshare Act 1992: A Response from Parliamentary Counsel to Mr Cutts', *Statute Law Review*, 14 (1993), 163, 170. This article was written in response to the alternative version set out in M. Cutts, *Unspeakable Acts: the Language and Typography of an Act of Parliament* (Words at Work, 1993). Cutts' own response was published as 'Plain English in the Law', *Statute Law Review*, 17 (1996), 50.

There have been many publications critical of the arrangements for the preparation and enactment of Bills. Among these is the now classic report of the Renton

Committee, *The Preparation of Legislation* (Cmnd 6053, 1975); see further Sir R. Andrew, *Review of Government Legal Services* (1989, Cabinet Office), and the two Hansard Society Reports in 1992 and 2008. *Making the Law* (1992; Chairman: Lord Rippon) and *Law in the Making: Influence and Change in the Legislative Process* (2008, Chairman: Peter Riddell). There have been a number of reports prepared by the Procedure Committees of each of the House of Commons and the House of Lords. In the late 1990s the Commons' Modernisation Committee published a number of proposals; these are discussed in *The Future of Parliament*. A useful overview of the current state of legislation is D. Greenberg, 'The Volume and Complexity of UK Legislation Today', in *Halsbury's Laws of England Centenary Essays 2007* (ed. S. Hetherington, 2007), p. 55.

The literature on interpretation falls broadly into two groups. On the one hand are texts that aim to give a technical account of the courts' approach; prime among these is Francis Bennion's magisterial *Bennion on Statutory Interpretation* (Butterworths, 5th edn, 2008). The decision in *Pepper v. Hart* has itself attracted considerable attention. See F. Bennion, *Pepper v. Hart in Its Context* (Oxford University Press, 1995), A. Kavanagh, 'Pepper v. Hart and Matters of Constitutional Principle', *Law Quarterly Review*, 121 (2005), 98; Lord Steyn speaking extra-judicially, 'Pepper v. Hart: A Re-Examination', *Oxford J Legal Studies*, 21 (2001), 59; and S. Voganauer, 'A Retreat from Pepper v. Hart? A Reply to Lord Steyn', *Oxford J Legal Studies*, 25 (2005), 629. See also Lord Lester, QC, 'Pepper v. Hart Revisited', *Statute Law Review*, 15 (1994), 10; Lord Lester appeared for the taxpayer in this case, and C. Jenkins, 'Pepper v. Hart: A Draftsman's Perspective', *Statute Law Review*, 15 (1994), 23. The specific area of the interpretation of tax legislation has also attracted attention. See generally B. Arnold, 'A Comparison of General Anti-Avoidance Rules and Judicial General Anti-Avoidance Doctrines as a Means of Controlling Tax Avoidance: Which Is Better (What Would John Tiley think?)', in *Comparative Perspectives on Revenue Law: Essays in Honour of John Tiley* (eds. J. Jones, P. Harris and D. Oliver, Cambridge University Press, 2008), ch. 1. See generally the discussion of 'legitimated interposition' in M. Kadish and S. Kadish, *Discretion to Disobey*, pp. 66–72.

Rather different are texts designed for the student and wider jurisprudential interests. These include J. Bell and G. Engle, *Cross on Statutory Interpretation* (Butterworths, 3rd edn, 1995); M. Freeman (ed.) *Legislation and the Courts* (Ashgate, 1997); Jim Evans, *Statutory Interpretation*; N. MacCormick and R. Summers, *Interpreting Statutes: A Comparative Study* (Dartmouth, 1991); and W. Eskridge, *Dynamic Statutory Interpretation* (Harvard University Press, 1994). Though dated, a critical account is the Law Commission's excellent *The Interpretation of Statutes* (Law Com. No. 21, HC, paper 256). More recent assessments of the nature of statutory interpretation derive their inspiration from theoretical writing on language: general introductions are Goodrich, *Reading The Law* and B. Jackson, *Semiotics and Legal Theory* (Routledge & Kegan Paul, 1985), and Raz *Between Authority and Interpretation*.



For an exploration of what might be involved in theoretical perspectives on statutory interpretation see, J. Barnes, 'Statutory Interpretation', in *Appealing to the Future: Michael Kirby and His Legacy* (eds. I. Freckleton and H. Selby, 2009), ch. 6, and R. Graham, 'What Judges Want: Judicial Self-Interest and Statutory Interpretation', 30 (2009), *Statute Law Review*, 38. *Legislation in Context: Essays in Legisprudence* (ed. L. Wintgens, Ashgate, 2007) is a more ambitious attempt to examine legislation and its interpretation from a theoretical perspective. Purposive interpretation is addressed in A. Barak, *Purposive Interpretation in Law* (2005, Princeton University Press).

## Chapter 9

In the British literature on the interpretation of cases, discussion has centred very largely on the rules of precedent; see in particular, R. Cross, *Precedent in English Law* (Clarendon Press, 4th edn, 1991). Theoretical treatments are R. Wasserstrom, *The Judicial Decision* (Stanford University Press, 1961) and L. Goldstein (ed.), *Precedent in Law* (Clarendon Press, 1987), and N. Duxbury, *The Nature and Authority of Precedent* (Cambridge University Press, 2008). N. McCormick and R. Summers, *Interpreting Precedents* (Dartmouth, 1997) provides a valuable comparative account. A substantial retrospective analysis of the work of the Appellate Committee prior to the commencement of the Supreme Court is L. Blom-Cooper, B. Dickson and G. Drewry, *The Judicial House of Lords* (Oxford University Press, 2009).

As should be clear from the text, we are more in sympathy with the analysis adopted by K. N. Llewellyn in *The Common Law Tradition* (Little, Brown, 1960) and *The Case Law System in America* (trs. M. Ansaldi, ed. P. Gewirtz, University of Chicago Press, 1989). Other classic works by American writers such as B. Cardozo, *The Nature of the Judicial Process* (Yale University Press, 1921); J. Frank, *Courts on Trial* (Atheneum, 1949) and O. W. Holmes, 'The Path of the Law', *Harvard Law Review*, 10 (1897), 457, and R. Posner, *How Judges Think* (Harvard University Press, 2008) are recommended. Though some are dated, useful accounts of how judges approach their tasks are Lord Devlin, *The Judge* (Oxford University Press, 1961); B. Laskin, *The Institutional Character of the Judge* (Hebrew University of Jerusalem, 1972); Robert Stevens, *Law and Politics* (Weidenfeld & Nicolson, 1979); A. Paterson, *The Law Lords* (Macmillan, 1982); J. A. G. Griffith, *The Politics of the Judiciary* (Fontana, 5th edn, 1997); and M. Detmold, *Courts and Administrators* (Weidenfeld & Nicolson, 1989). On South Africa, see D. Dyzenhaus, *Judging the Judges and Ourselves* (Hart, 1998).

## Chapter 10

Helpful introductions to the matters discussed in this chapter are Hanson *Legal Method, Skills and Reasoning*; Ian Ward, *A Critical Introduction to European*

*Law* (Cambridge University Press, 3rd edn 2009), and J. Holland and J. Webb, *Learning Legal Rules* (Oxford University Press, 7th edn 2010). More substantial are P. Craig and G. de Búrca, *EU Law: Text and Materials* (Oxford University Press, 4th edn, 2007), A. Arnall, *The European Court of Justice* (Oxford University Press, 2nd edn 2006). The United Kingdom has frequently been cast as an awkward, half-hearted, semi-detached or reluctant member of the Community. See D. Miers, 'The Development of the European Community 1973–1995', in P. Giddings and G. Drewry (eds.), *Westminster and Europe* (1995), ch. 1; J. Mance, 'Opting into Community Law and Interpreting Convention Rights: Is the United Kingdom More or Less Committed?' [2009] *Public Law* 544, and P. Craig, 'Britain in the European Union', in J. Jowell and D. Oliver (eds.), *The Changing Constitution*.

Accessible introductions to the ECHR are Lord Lester of Herne Hill, QC and K. Beattie, 'Human Rights and the British Constitution', in J. Jowell and D. Oliver (eds.), *The Changing Constitution*, and S. Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects* (Cambridge University Press, 2006). More substantial are A. Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford University Press, 2nd edn, 2007) and D. Harris, M. O'Boyle, E. Bates and C. Buckley, *Law of the European Convention on Human Rights* (Oxford University Press, 2nd edn, 2009). Three useful analyses are M. Dembour, *Who Believes in Human Rights?* (Cambridge University Press, 2006), A. Young, *Parliamentary Sovereignty and the Human Rights Act* (Hart Publishing, 2009) and A. Kavanagh, *Constitutional Review under the UK Human Rights Act* (Cambridge University Press, 2009).

## Chapter 11

Useful introductions to reasoning in general include the works by Cotterrell, Black, Emmet, and Flew cited under Chapters 4–6 and Douglas Walton, *Informal Logic: A Pragmatic Approach* (2nd edn, 2008), R. Hospers, *Introduction to Philosophical Analysis* (Routledge, 2nd edn, 1969). See also such standard works as Irving M. Copi, *Introduction to Logic* (Prentice Hall, 2009, 13th edn) and Ian Hacking, *An Introduction to Probability and Inductive Logic* (Cambridge University Press, 2001); S. Mellone, *Elements of Modern Logic* (Tutorial Press, 2nd edn, 1958); M. Cohen and E. Nagel, *An Introduction to Logic* (Routledge, 1963).

On practical reasoning, see Neil MacCormick, *Practical Reason In Law and Morality* (Oxford University Press, 2008) and, more generally, Douglas Walton, *Practical Reasoning* (Rowman & Litchfield, 1989) and S. Toulmin, *The Uses of Argument* (Cambridge University Press, 1964). For a more up-to-date but more technical account, see F. Klix, 'Problem-solving: Deduction, Induction and Analogical Reasoning', *IESBS*, 18 (2001), 12123. For 'a plea for pluralism' very much in the spirit of this chapter, see Susan Haack, *Putting Philosophy*

to *Work* (2008), ch. 17. Especially relevant for lawyers is the work of Chaim Perelman. The *locus classicus* is C. Perelman and L. Olbrechts-Tyteca, *The New Rhetoric: A Treatise of Argumentation* (University of Notre Dame Press, 1969). Some readers may find it easier to start with Perelman's *The Idea of Justice and the Problem of Argument* (Routledge, 1963), see also Eveline Feteris, *Fundamentals of Legal Argumentation* (Kluwer Academic, 1999). J. Raz (ed.), *Practical Reasoning* (Oxford University Press, 1978) contains useful essays whose themes are explored in his more difficult *Practical Reason and Norms* (Hutchinson, 1975).

On legal reasoning, recent works include Neil MacCormick *Rhetoric and the Rule of Law: A Theory of Legal Reasoning and Practical Reason in Morality and Law*; Larry Alexander and Emily Sherwin, *Demystifying Legal Reasoning* (Cambridge University Press, 2008) (critically reviewed by G. Samuel in 29 *Legal Studies* 181) and Lloyd L. Weinreb, *Legal Reason: The Use of Analogy in Argument* (Cambridge University Press, 2005). Still worth consulting are J. Stone, *Legal System and Lawyers' Reasonings* (Stevens, 1964); S. Burton, *An Introduction to Law and Legal Reasoning* (Boston, 1985); and R. Summers, 'Two Types of Substantive Reasons', 63 (1978), *Cornell Law Review*, 707 and *Essays on the Nature of Law and Legal Reasoning* (Berlin, Duncker and Humbolt, 1992); Dworkin, *Law's Empire*; R. Alexei, *A Theory of Legal Argumentation* (Clarendon Press, 1989); P. Atiyah and R. Summers, *Form and Substance in Anglo-American Law* (Oxford University Press, 1987); M. Detmold, 'Law as Practical Reason' [1989] *Cambridge Law Journal*, 436; and C. Sunstein, *Legal Reasoning and Political Conflict* (Oxford University Press, 1996).

On advocacy and storytelling, see William Twining, *Rethinking Evidence* (Cambridge University Press, 2006), chs. 9 and 10 and Jerome S. Bruner, *Making Stories: Law, Literature and Life* (Farrar, Straus and Giroux, 2002). On advocacy, see D. Napley, *The Technique of Persuasion* (Sweet & Maxwell, 4th edn, 1991); R. du Cann, *The Art of the Advocate* (Penguin, 1964); E. A. Parry, *The Seven Lamps of Advocacy* (Allen & Unwin, 1923); K. Evans, *Advocacy at the Bar* (Blackstone Press, 2nd edn, 1995); A. Boon, *Advocacy* (1993), M. Stone, *Cross-Examination in Criminal Trials* (Butterworths, 2nd edn, 1995), Inns of Court School of Law, *Advocacy* (Blackstone Press, 1998). Books on mooting are useful sources for exercises in and guidance about advocacy: Tim Kaye and Lynne Townley, *The Book of Moots* (1995) and J. Snape and G. Watt, *How to Moot: A Student Guide to Mooting* (Oxford University Press, 2010).

On the relationships between literary and legal interpretation discussed in the Epilogue, see Dworkin, *Law's Empire* and *A Matter of Principle*, ch. 7; P. Goodrich, *Reading the Law* (Basil Blackwell, 1986); R. Posner, *Law and Literature* (3rd edn, Cambridge, MA, Harvard University Press, 2009); James B. White, *Heracles' Bow* (University of Wisconsin Press, 1985); S. Fish, *Is There a Text in the Class?* (Harvard University Press, 1980) and *Doing What Comes*

*Naturally* (Clarendon Press, 1989). On 'deconstruction', see Ian Ward, *An Introduction to Critical Legal Theory* (Cavendish, 1998), ch. 7. On the more general subject of law and literature, see, for example, Philip Kissam, 'Disturbing Images: Literature in a Jurisprudence Course', *Legal Studies Forum*, 22 (1998)329; Paul Raffield and Gary Watt (eds.), *Shakespeare and the Law* (Hart, 2008), two lively journals, *Law and Literature* (US) and *Law and the Humanities* (UK) and Ian Ward's fascinating and topical book, *Law, Text, Terror* (Cambridge University Press, 2009). On law and popular culture see, for example, William MacNeil's amusing *Lex Populi* (Stanford University Press, 2007)