

- **BRIEF COMMENT ON THE PRONONCEMENTS**

Sentencia Española: an appeal lodged by J.M.L.L. and M. C. M. L to the Supreme Court (as last resort) against the decision pronounced by the "Audiencia Provincial de A Coruña" which found them guilty of an offense against public health as the result of dealing or drug trafficking.

British Decision: it is Donoghue v Stevenson's case, one of the most famous cases in Scottish legal history. Donoghue brought an action against Stevenson, the manufacturer of a product that was consumed by the former. The appellant averred the bottle contained the decomposed remains of a snail, which caused her a severe gastroenteritis and other injuries. The House of Lords declared that the principles of their judgment also applied in English law.

US Opinion: it is a plea against a policy promulgated by a federal government policy. The appellants sought to decriminalize the use of marijuana for limited medical purposes and allow physicians to recommend marijuana for medical purposes.

- **GENRES**

As you know a genre is a distinctive communicative event that serves a certain communicative purpose; it is a highly structured and conventionalized communicative event. Each genre has a concrete intention, positioning, form and functional value, which restricts its use of linguistic resources. Although limited, linguistic choices are exploited in each genre to serve its purposes.

- **GENERIC SCRUTINITY**

We will analyse the following points:

- ❖ **Generic aspects of texts**

- **Macrostructure (cognitive), divided into:**

- **Sections**
- **Movements or parts within each section**

- ❖ **Contextual focus (foco contextual) or rhetorical function:**

- **Expositive**
- **Instructive**
- **Argumentative**

- ❖ **Textual aspects**

- **Intertextuality or the existence of discursive connections with preceding legislation or other texts**

- ❖ **Formal aspects**

- **morphosyntactic elements**
 - **Nominalization**

- **Passives**
 - **Conditionals**
 - **Anaphora**
 - **Whiz Deletion, etc.**
- ❖ **Lexical elements**
 - **Technical terms**
 - **Words of Latin, French and Old English origins**
Doublets, etc.
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❖ **Generic aspects of texts**

- **Macrostructure (cognitive), divided into:**
 - **Sections**
 - **Movements or parts within each section**

SENTENCIA ESPAÑOLA

- ❖ **Heading: Legal Citation**
 - N° Sentencia
 - Tribunal
 - Fecha
 - Ponente
- ❖ **Fallo:** Briefer version within a chart
- ❖ **Antecedentes:** every fact or event that has taken place before the legal citation and serves to judge or decide on the case.
 - Primero.- Hechos probados
 - Segundo.- Fallo primera sentencia (1º Instancia)
 - Tercero.- Recurso de casación de los acusados al tribunal Supremo
 - Cuarto.- Motivos de casación (artículos de la ley que supuestamente se vulneran)
 - 1.-
 - 2.-
 - 3.-
 - 4.-
 - 5 y 6.-
 - Quinto.- Impugnación del recurso
 - Sexto.- Votación
- ❖ **Fundamentos del derecho:** Code law or legal grounds to consider by the judge to pronounce the decision

PRIMERO.- Vulneración del artículo 24 de la CE o Incoación de Diligencias previas sin fundamentación

SEGUNDO.- Vulneración de la presunción de inocencia

TERCERO.- Aplicación indebida del artículo 268 del Código Penal.

CUARTO.- Indebida aplicación del artículo 28 del código penal respecto de M. C. (error en la apreciación de la prueba)

En el motivo quinto y en el sexto... denuncia un error en la apreciación de las pruebas; análisis de las drogas y declaraciones de los testigos.

Requisitos:

- 1) ha de fundarse en una verdadera prueba documental
- 2) ha de evidenciar un error en algún dato
- 3) que no haya contradicción con otros elementos de prueba
- 4) que este dato contradictorio sea importante

❖ **Fallo:** Sentencia o decisión del juez al recurso de casación y condena

BRITISH DECISION

❖ **Heading: Legal Citation**

- Appellant v Respondent
- Date
- Court of law
- Law Report

❖ **Decision and judges for and against:** The decision is based on the principle or principles of law, case law, precedents or customs. There were five judges to decide on the case; three of them considered that there was an action to the case; two of them dissented.

❖ **Preamble:** Previous decisions regarding other cases; it comprises the findings or material facts: Summary of the appellant's case
Summary of the defender's case

❖ **Ratio decidendi:** The principle or principles of law on which the court reaches its decision. Only the ratio of a case is binding on inferior courts, by reason of the doctrine of precedent.

❖ **An obiter dictum:** "said by the way", it is a remark or observation made by a judge that, although included in the body of the court's opinion, does not form a necessary part of the court's decision. Unlike the rationes decidendi, obiter dicta are not binding, although in some jurisdictions, such as England and Wales, they can be strongly persuasive.

- ❖ **Decision and Punishment:** the pronouncement of the judges and the duty of the defendant on the appellant (Fallo y condena o pena).

AMERICAN OPINION

- ❖ **Heading**

- Plaintiffs- Appellants v. Defendants-Appellants
- Court of Law
- Judges
- Date and Place

- ❖ **Counsel:** The body of barristers and solicitors in the case together with members of the Amicus brief or people who are interested in the case and file a brief on behalf of the party.

- ❖ **Opinion:** Decision by the judge or pronouncement

- The Federal Marijuana policy: applicable law or statutes
- Litigation History: Preamble or narration of previous facts or events regarding the case
- Discussion: Case Precedents or Case law; what happened in other cases

Ratio Decidendi: reasons based upon law that give rise to the pronouncement

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)

- ❖ **Concurring Opinion:** Appeals have dissenting and concurring opinions; in this case it serves to support or confirm the decision or pronouncement.

- ❖ **Appendix:** Additional or supplementary information regarding the case (other people's evidence or testimonies)
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❖ Contextual focus (foco contextual) or rhetorical function of genres (pragmatic):

- **Expositive:** it is found in descriptive and narrative texts. It deals with the narration of events, facts and other important details. It has the function of providing relatively objective information about the case, the facts and events that have taken place before the legal citation.
- **Instructive:** It is found in operative texts and intends to persuade the addressee by commands or instructions to do or not to do something either with options or without options as is the case of decisions.
- **Argumentative:** Its function is that of managing the situation so to make it favourable to the producer's goal.

SENTENCIA ESPAÑOLA

- ❖ **Antecedentes:** Expositive; it is the preamble or the narration organizing actions and events related to the case to take into account for the final pronouncement.
- ❖ **Fundamentos del derecho:** Argumentative: it sets the legal basis or principles for the arguments of the judge to pronounce a decision. He uses these legal bases to conduct and justify his arguments.
- ❖ **Fallo:** Instructive: the judge persuades and instructs the addressee to serve sentence.

BRITISH DECISION

- ❖ **Decision and judges for and against:** Instructive
- ❖ **Preamble:** Expositive
- ❖ **Ratio decidendi:** Argumentative and instructive
- ❖ **Obiter dictum:** Argumentative
- ❖ **Decision and Punishment:** Instructive

AMERICAN OPINION:

- ❖ Opinion: Instructive
 - The Federal Marijuana policy: Argumentative

- Litigation History: Expositive
- Discussion: Case Precedents or Case law; Argumentative and instructive
- ❖ Concurring Opinion: Instructive and argumentative
- ❖ Appendix: Expositive

PRONOUNCEMENTS CONTRASTED

Date, place and case number are shown in the Heading of the three pronouncements. However, the surname of both appellant and defendant parties can be only found in both British and the American, which is not the case in the Spanish.

In the British and American sentence, the two parties are cited as two opponents in a fight: mind that court procedure in common law systems is **accusatorial or adversarial** meaning that judges reach a decision based upon the evidence presented by the parties. Notice that in the case of the Spanish the name of the parties is omitted; we only know the initials of both appellant and defender.

On the contrary Spanish legal system is **inquisitorial**, meaning that it is the judge or group of judges who investigate the case. Therefore, it is not a coincidence that the preamble or previous events narrated by the judge are wider and more detailed in the Spanish sentence. They are relatively objective facts and events that have been investigated by judges. Everything known about what has happened before the legal citation is shown in the judgement.

In the case of the British and American the preamble is shorter; mind that it is the task of lawyers to narrate and inform the judge their own version of the events. Therefore, some of the facts or events regarding the case could be concealed by the parties if they wish.

The set of legal principles or basis interpreted by the judge to pronounce the decision are "*los fundamentos de derecho*" in the Spanish sentence. Its function is purely argumentative since it shows the legal bases for the judge's arguments. Keep in mind that the Spanish legal sources are **written civil codes**, and judges have to interpret and apply these codes to a specific case. These codes are orderly and succinctly detailed in the sentence.

Nevertheless, both the British and American common law system is **based on precedents** or decisions already taken in other similar cases. Although mainly

argumentative, this text could be also regarded as **instructive or exhortative** since it is binding to subsequent decisions of lower courts.

Finally, the decision itself (fallo) in the Spanish sentence is left at the end of the sentence. In the case of the British and the American it is shown both at the beginning and at the end. Moreover, the American sentence includes an Appendix at the very end with testimonies of other people related to the case. Both the British and Spanish sentence lack this last component.

❖ Textual aspects

- **Intertextuality, or the existence of discursive connections with preceding legislation or other texts**

SENTENCIA ESPAÑOLA

- ❖ As noted before, the Spanish Civil law jurisdiction is based on Civil Codes. Therefore, Spanish pronouncements will refer to those written legal codes such as:
 - La Constitución
 - Los Artículos del Código Civil
 - La LECrim o Ley de Enjuiciamiento Criminal
 - El Código Penal

BRITISH AND AMERICAN PRONOUNCEMENT

- ❖ In this case common law legal systems are based on precedents of judicial decisions on other cases. Therefore, in these texts there are ongoing references to other sentences previous to the case that is being judged. References to legislation or parliamentary law enacted by parliament can also be found in these texts.
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❖ Formal aspects

- Lexical elements
- morphosyntactic elements

- ACTIVITY I. Find the following lexical and morphosyntactic elements in this fragment from the **Spanish Sentence**:
 - Voz Pasiva y pasiva refleja
 - El Uso de la tercera persona en el relato: impersonalidad
 - Paralelismos sintácticos
 - Oraciones largas y complejas
 - Sintagmas preposicionales

1. ANTECEDENTES

“1º) Por Auto de 11 de junio de 2.003, dictado por **el juzgado de Instrucción** núm. 1 de Corcubión, **se acordó** la entrada y registro en el domicilio de los acusados **J.M.L.L.**, conocido por “...”, mayor de edad, nacido el 3 de Noviembre de 1959 y sin antecedentes penales y M.C.M.L., conocida por “...”, mayor de edad, nacida el día 24 de Mayo de 1956 y sin antecedentes penales, situada en la, de la localidad de Corcubión, partido judicial del mismo. Personada **la comisión judicial** en la citada vivienda **se encontró**: -**En la cocina**, un mueble situado al fondo de la misma a la derecha, un cilindro de cartón conteniendo **en su interior**, 28 envoltorios de plástico de una sustancia **que una vez analizada** por el Ministerio de Sanidad y Consumo, **resultó ser heroína**; **en un mueble** situado al fondo a la izquierda, una báscula con restos de una sustancia marrón.- **En una habitación** destinada a dormitorio individual, **en el cajón** superior de la mesilla de noche, una funda de gafas de color negro con la inscripción “General Optica” **en su interior**, un trozo de una sustancia estupefaciente **que una vez analizada por** el Ministerio de Sanidad de Consumo, **resultó ser resina de cannabis**.”

- ACTIVITY II. Find the following lexical and morphosyntactic elements in this fragment from the British decision:
 - That; en el que se afirma que; referido al hecho de que
 - Long and complex sentences
 - Repetition of words
 - Technical terms
 - Nominalization: nouns constructed from verbs adding -ing or -tion
 - Conditionals

- Multiple negatives
- 3rd person

BRITISH DECISION

RESUMEN DEL CASO DEL DEMANDADO

Her Majesty's Solicitor General for Scotland (Àrd-neach-lagha a' Chrùin an Alba) is one of the Law Officers of the Crown, and the deputy of the Lord Advocate, whose duty is to advise the Crown and the Scottish Government on Scots Law.

W. G. Normand, Solicitor-General for Scotland (with him J. L. Clyde (of the Scottish Bar) and T. Elder Jones (of the English Bar)) for the respondent. In an ordinary case such as this the manufacturer owes no duty to the consumer apart from contract. Admittedly the case does not come within either of the recognized exceptions to the general rule, but it is sought to introduce into the law a third exception in this particular case - namely, the case of goods intended for human consumption sold to the public in a form in which investigation is impossible. The reason now put forward by the appellant was no part of Lord Hunter's dissent in the previous case; nor is there any hint of any such exception in any reported case. There is here no suggestion of a trap, and there are no averments to support it. It is said that people ought not to be allowed to put on the market food or drink which is deleterious, but is there any real distinction between articles of food or drink and any other article? In Heaven v. Pender (11 Q. B. D. 503.) Brett M.R. states the principle of liability too widely, and in Le Lievre v. Gould ((1893) 1 Q. B. 491.) that principle is to a great extent whittled away by the Master of the Rolls himself and by A. L. Smith L.J. The true ground was that founded on by Cotton and Bowen L.JJ. in Heaven v. Pender. (11 Q. B. D. 503.) In Blacker v. Lake Elliot, Ltd. ((1912) 106 L. T. 533.) both Hamilton and Lush JJ. treat George v. Skivington (9) as overruled. Hamilton J. states the principle to be that the breach of the defendant's contract with A. to use care and skill in the manufacture of an article does not per se give any cause of action to B. if he is injured by reason of the article proving defective, and he regards George v. Skivington (L. R. 5 Ex. 1.), so far as it proceeds on duty to the ultimate user, as inconsistent with Winterbottom v.

- ACTIVITY I. Find the following lexical and morphosyntactic elements in this fragment from the America pronouncement:
 - Metaphors
 - Long and complex sentences
 - Unusual prepositional phrases
 - Technical terms
 - Nominalization: nouns constructed from verbs adding -ing or -tion

- Latinisms, Galicisms, Archaisms
- Polysyllabic words
- 3rd person

AMERICAN PRONOUNCEMENT

The district court stated:

Petitioning Congress or federal agencies for redress of a grievance or a change in policy is a time-honored tradition. In the marketplace of ideas, few questions are more deserving of free-speech protection than whether regulations affecting health and welfare are sound public policy. In the debate, perhaps the status quo will (and should) endure. But patients and physicians are certainly entitled to urge their view. To hold that physicians are barred from communicating to patients sincere medical judgments would disable patients from understanding their own situations well enough to participate in the debate. As the government concedes, . . . many patients depend upon discussions with their physicians as their primary or only source of sound medical information. Without open communication with their physicians, patients would fall silent and appear uninformed. The ability of patients to participate meaningfully in the public discourse would be compromised.

Id.