

# Rhetorical Tropes in English Judicial Literature

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## Introduction

Philosophers, scholars and playwrights have used rhetorical tropes as literary devices for centuries. As well as furthering the objectives of writing, the tropes are important when used in an oral context and serve a dual purpose as performance tools. It is little wonder that the English judiciary, influenced by the culture and symbols of religious writers such as Thomas Moore and English playwrights like Shakespeare should adopt such effective tropes in their own rhetoric when presenting judicial opinions.

## Aim

The aim of the research was to produce a digest of rhetorical tropes in English judicial text. The report of the research, complete with analysis, will be published in the legal journal *Law and Humanities*.

## Method

The scope of the research was limited by the following variables:

- Legal area – **Equity and Trusts**.
- Rhetorical tropes for analysis – **Metaphor; Simile; Irony; Pun; Antithesis; Euphemism; Hyperbole; Paradox; Personification and Understatement**.
- These tropes were then identified and examined in the judicial speeches of three legal forums: **House of Lords, Court of Appeal and High Court**.

### METAPHOR – Equity and Trusts – House of Lords

Case: *Lonsdale trading as Lonsdale Agencies v Howard & Hallam Ltd*

"He must be assumed to have been able to take over the agency and if I may be allowed the metaphor stand in the shoes of the agent, even if as a matter of contract, the agency was not assignable or there were in practice dealings in such agencies: compare *Brand Revenue Commissioners v Crossman* [19AC 26]."

Judges: Lord Bingham of Cornhill, Lord Hoffmann, Lord Rodger of Earlsferry, Lord Carswell and Lord Neuberger of Abbotsbury

**Analysis:** The metaphor in this paragraph is used to aid understanding of the legal position by presenting the argument using tangible images that would be likely to be familiar to a lay person set apart from the judiciary. This contributes to the accessibility of the opinion and suggests that it is often deemed to be the role or even the responsibility of English judges when applying the law, to be as transparent as possible with their decision-making for the benefit of the anticipated audience. Colloquial tropes may be a way to achieve this.

Figure 1. An extract from the case-by-case analysis in the digest

## Results

By producing a spreadsheet digest for each rhetorical trope, it made it possible to collect a selection of cases in which they were used within the three legal forums.

This allowed for a case-by-case analysis as well as the chance to cross-reference between forums.

Rhetorical Trope - Metaphor	Case 1 (most recent)	Case 2
Forum		
House of Lords	<b>Lonsdale (trading as Lonsdale Agencies) v Howard &amp; Hallam Ltd</b> [2007] UKHL 32, 4 July 2007  [dig:MHL200732]	<b>OBG Ltd v. Allan; Douglas v. Hello! Ltd; Mainstream Properties Ltd v Young</b> [2007] UKHL 21,[2007] IRLR 608  [dig:MHL200721]
Court of Appeal	<b>R (on the application of Malik) v. Waltham Forest NHS Primary Care Trust and another</b> [2007] EWCA Civ 265 [2007] IRLR 529  [dig:MCA2007265]	<b>Sherrington and another v Sherrington</b> (Civil Division) 29 December 2006  [dig:MCA2006]
High Court	<b>Clement v Wetherill</b> [2007] EWHC 602 (QB), 5BS09306 Queen's Bench Division 5, 6, 9, 28 March 2007  [dig:MHC2007602]	<b>Three Rivers District Council and others v Bank of England</b> [2006] EWHC 816 (Comm), 1993 Folio 1309, (Transcript) Queen's Bench Division (Commercial Court) 30, 31 January, 12 April 2006  [dig:MHC2006816]

TABLE 1: An extract from the spreadsheet digest  
Information found via Lexis Nexis legal database.

This revealed the following trends:

- The **House of Lords**, as the apex of the judicial hierarchy, acts as a **regulator** of the lower courts and judges within in this forum restrict the misuse/overuse of rhetorical tropes as well as preserving the superiority of legal principles to literary devices.
- Often in this forum, as in other lower forums, rhetorical tropes, particularly metaphor and simile, act as a tool to provide **clarification** of a complex legal matter, illustrating the desire to make the judicial decision-making more accessible and transparent.
- On the other hand, the personal preference of the judges toward the use of tropes can be identified and judges such as Lord Wilberforce emphasise the **vague/inaccurate** consequences of navigating away from legal terminology.
- Collectively the judicial literature suggests a belief in the promotion of the **supremacy and autonomy of English law** as a cognitive and living body.
- The **Court of Appeal** uses a variety of colloquial terminology and the imagery and personification created by this allows for **simplification** and analogy of legal principles to familiar 'everyday' concepts.
- The **performance element** of the use of rhetorical tropes is visible in this forum particularly with judges such as Lord Denning, whose use of simile, euphemism and understatement for the purpose of style, is inspired by a substantial belief in the English idyll whereas other judges deny the virtue of style over substance.
- In terms of the use of irony, the judges' opinions highlight a self-awareness of the faults of the legal system in which they operate, which due to its incremental nature may be understandable. This is different to the House of Lords where the maintenance of the supremacy of English law seems to take precedence over such cynicism.
- The **High Court** also uses well-known similes and metaphors to provide clarification and understanding. By virtue of its lower status, it more often conceives the parties to be the audience than judges in future cases. For simplicity, tangible concepts replace intangible principles e.g.: **Yukong Line Ltd of Korea v Rendsburg Investments Corp of Liberia and others (No 2)**
- High Court judges demonstrate an empathic disposition to adopt the parties' own narrative style and use of rhetorical tropes (as revealed by witness statements and reports) in a way that is not seen, perhaps for obvious functional reasons, in higher courts. This adoptive process reduces linguistic and stylistic barriers to communication.
- Not only have I observed the extent to which judges employ rhetorical tropes to inform, perform and persuade, but I have also examined the extent to which judges are persuaded by counsels' use of Rhetorical tropes in each of the forums studied.

## Further Research

Future research in this area will take place in terms of the expansion of the digest. Interest may extend research to other legal forums, particularly the European Courts, and to other legal areas.