

LEGAL ENGLISH

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Lecture 1

The main characteristics of Legal English

English is the predominant language of international business, and has a significant role as a legal language within the European Union. Legal English is now a global phenomenon. It is the style of English used by lawyers and other legal professionals in the course of their work. Legal language contains a number of unusual features which are related to terminology, linguistic structure, linguistic conventions, and punctuation.

The development of Legal English is closely connected with the history of Great Britain the legal tradition of which is based on common law. For several centuries following the Norman invasion, English remained the spoken language of the majority of the population, while almost all writing was done in French or Latin. The English-speaking nations (especially the U.S., the UK, Canada, Australia, New Zealand, and South Africa) inherited the system of common law, the main feature of which is that laws are not codified. Among the consequences of such tradition we can name the drafting of many important legal documents with the use of archaic linguistic forms.

During the history Legal English was influenced by Latin and French. Following the Norman invasion of England in 1066, Anglo-Norman French became the official language of England. For a period of nearly 300 years, it was the language of legal proceedings. As a result many words using in modern legal English are derived from Anglo-Norman, for example: *property*, *estate*, *chattel*, *lease*, *executor*, and *tenant*. Its influence may be illustrated by some of the complex linguistic structures employed in legal writing.

From 1066 Latin was the language of formal records and statutes, but it was not the language of legal pleading or debate. The Statute of Pleading, which was enacted in French in 1356, stated that all legal proceedings should be in English, but recorded in Latin. Nonetheless, the use of French in legal pleadings continued into the seventeenth century in some areas of the law.

The influence of Latin can be seen in a number of words and phrases such as *ad hoc*, *de facto*, *bona fide*, *inter alia*, and *ultra vires*, which remain in current use in legal writing. English was adopted for different kinds of legal documents at different times. Wills began to be written in English in about 1400. Statutes were written in Latin until about 1300, in French until 1485, in English and French for a few years, and in English alone from 1489. According to the *Proceedings in Courts of Justice Act 1730* Latin was replaced by English. As a result new branches of law such as commercial law began to develop entirely in English.

During the Medieval period lawyers used a mixture of Latin, French and English. The usage of pairs of words from different languages led to the emergence of mixed language doublets in legal language. Among the examples of mixed language doublets are: "breaking and entering" (English/French), "fit and proper" (English/French), "lands and tenements" (English/French), "will and testament" (English/Latin). Examples of English-only doublets are: "let and hindrance", "have and hold."

For written forms of legal English is used the term **legalese** which is characterized by verbosity, Latin expressions, nominalizations, embedded clauses, passive verbs, and lengthy sentences.

The main characteristics of Legal English are as follows:

- 1) Sentences often have apparently peculiar structures, for example, *the provisions for termination hereinafter appearing or will at the cost of the borrower forthwith comply with the same*. The influence of French grammatical structures is a contributory reason for this factor.
- 2) Punctuation is used insufficiently. Particularly in conveyances and deeds we can observe the conspicuous absence of punctuation. Historically there was a

widespread idea among lawyers that the meaning of legal documents was contained only in the words used and their context. In modern legal drafting punctuation is used to clarify their meaning.

3) Foreign phrases are sometimes used instead of English phrases (e.g. *inter alia* instead of *among others*).

4) Older words like *hereof*, *thereof*, and *whereof* (and further derivatives, including *-at*, *-in*, *-after*, *-before*, *-with*, *-by*, *-above*, *-on*, *-upon*) are used in legal English primarily to avoid repeating names or phrases. For example: *the parties hereto* instead of *the parties to this contract*.

5) Use of modifiers such as *the same*, *the said*, *the aforementioned* etc., in legal texts is interesting, because very frequently they are used as adjectives to determine the noun, but not replace them. For example: *the said John Smith*.

6) Legal English contains some words and titles, such as *employer* and *employee*; *lessor* and *lessee*, in which the reciprocal and opposite nature of the relationship is indicated by the use of alternative endings: *-er*, *-or*, and *-ee*.

7) Phrasal verbs are often used in a quasi-technical sense. For example, *parties enter into contracts*, *put down deposits*, *serve [documents] upon other parties*, *write off debts*, and so on.

Legal language is sometimes difficult to understand, because of the usage of a large number of difficult words and phrases. Legal English employs a great deal of technical terminology which is unfamiliar to the layman (e.g. *waiver*, *restraint of trade*, *restrictive covenant*, *promissory estoppel*). Much of this vocabulary is derived from French and Latin. These terms of art include ordinary words used with special meanings. For example, the familiar term *consideration* refers, in legal English, to contracts, and means, *an act, forbearance or promise by one party to a contract that constitutes the price for which the promise of the other party is bought* (Oxford Dictionary of Law). Other examples are *construction*, *prefer*, *redemption*, *furnish*, *hold*, and *find*. There is a curious historical tendency in legal English to string together two or three words to convey what is usually a single legal concept. Examples of this are *null and void*, *fit and proper*, *(due) care and*

attention, perform and discharge, terms and conditions, dispute, controversy or claim, and promise, agree and covenant. This was originally done for the sake of completeness.

Nowadays the linguistic theories which investigate legal English are forensic linguistics and legal discourse. *Forensic linguistics* is a field of applied linguistics involving the relationship between language, the law, and crime. Its purpose is the application of linguistic knowledge, methods and insights to the forensic context of law, language, crime investigation, trial, and judicial procedure. Discourse is the term that describes written and spoken communications. *Legal Discourse* analysis focuses on the investigation of legal texts: written codes and the textual records of the judicial proceedings. Legal documents (contracts, licences, etc); court pleadings (summonses, briefs, judgments, etc.); laws (Acts Of Parliament and subordinate legislation, case reports) and legal correspondence constitute the sources of linguistic researches.