

Decoding Legalese: Exploring the History and Intricacies of the Language of Law

Rocío Bastera, Giuliana Senabre and Chiara Zini

Legalese refers to a style in legal drafting characterized by specialized terminology and phrasing commonly used by legal professionals in legal documents. Legalese can be difficult for the public to understand. Key features of classic Legalese include long, wordy, complicated sentence structures using passive voice and obsolete formalisms, as well as the use of Latinisms.

While legal writers usually aim to achieve precision, clarity and simplicity in the language they use during the course of their work, what is precise is often not simple. The language used to write a legal document usually contains a number of unusual features related to terminology, linguistic structures, punctuation, and long-dated usage.

Let us consider an example found in a contract:

"In the event of a breach of this agreement by any party hereto, the non-breaching party shall be entitled to seek remedies, including but not limited to, liquidated damages as specified herein."

This sentence is a clear example of Legalese: long and wordy sentences, use of passive voice and terms or expressions that could be simplified. This leads to the next question: how can we express the same meaning using simpler words? Now take a look at this example:

"If you break the contract, you will have to pay a penalty."

The sentence above is an example of Plain English, which unlike Legalese, seeks to present information in a simple, clear and accessible manner for anyone to understand legal content at the first try (understand it the first time they read or hear it).

When translating legal documents in general, it is essential for translators to have a good understanding and command of legal terminology and to be fully aware of the impact that the legal terms used in a given document may have. All legal terms should be used very carefully, always considering how those terms are to be understood and interpreted by the legal professionals requiring either the source document or its translation. Fortunately, most legal documents usually include a section with definitions of the most relevant words and phrases used in it.

HISTORICAL ASPECTS

The development of legal English is closely connected with the history of Great Britain: when the Romans conquered Britain, they established a legal system based on Latin. After the Romans left, the English legal system began to evolve. But a unified national legal system emerged only after the Norman conquest of 1066. This development explains why legal English contains many terms derived from French, which are unfamiliar to most people.

In the history of legal language, style has been a crucial factor in this kind of writing. Similar to what happens with old poetry, or expressions taken from the church services, many expressions in Legalese have been conceived in a repetitive and alliterative manner. This had the intention of helping people understand and remember the "correct language" in the preliterate days.

Even when French became the official language from 1066 up until the mid-14th century, Anglo-Saxon was the language of the people, which would explain such tautology in early scribes. The idea was to make sure the meaning was clear for all parties.

As of today, some phrases and expressions still stand, such as: *each and every; the truth, the whole truth and nothing but the truth; null and void; rest, residue and remainder*. The reason behind the existence of these expressions may be that the clerk in charge of putting the law into words was not sure of which term was the correct one, and to avoid making a mistake, all the terms were included just in case.

FEATURES OF LEGAL ENGLISH

There are several distinctive features of Legalese. For a more practical reference, we will exemplify these features through some phrases that were taken from the Last Will and Testament of Elvis A. Presley. These are some of the categories we would like to discuss:

Use of technical terminology: legal English encompasses a significant amount of technical terminology that is specific to the legal profession. This includes terms derived from French and Latin, which have specific meanings in legal contexts such as *void ab initio*, *forum conveniens*, and *promissory estoppel*.

“In the event that all of my descendants should be deceased at any time prior to the time for the termination of the trusts provided for herein, then in such event all of my estate and all the assets of every trust to be created hereunder (as the case may be) shall then distributed outright in equal shares to my heirs at law per stripes¹ [sic].”

Special meanings: the meanings of legal phrases and terms are often different from the usual meanings in daily English. For example, the term *consideration* in contract law is defined as “promise, performance, or forbearance bargained by a promisor in exchange for their promise”².

“In dealing with the Trustee³, no grantee, pledge, vendee, mortgage, lessee or other transference of the trust properties, or any part thereof, shall be bound to inquire with respect to the purpose or necessity of any such disposition or to see to the application of any consideration therefore paid to the Trustee.”

Lack of punctuation: legal documents often lack punctuation, which can make them difficult to read and understand.

“I hereby expressly authorize my Executor and my Trustee, respectively and successively, to permit any beneficiary of any and all trusts created hereunder to enjoy in specie the use or benefit of any household goods, chattels, or other tangible personal property (exclusive of choses in action, cash, stocks, bonds or other securities) which either my Executor or my Trustees may receive in kind, and my Executor and my Trustees shall not be liable for any consumption, damage, injury to or loss of any tangible property so used, nor shall the beneficiaries of any trusts hereunder or their executors

¹ Per *stirpes* is a Latin phrase that means “by roots” or “by branch.” This phrase often appears in the context of wills and retirement accounts to define how your assets should be passed down in the event a beneficiary passes away before you do.

² *Consideration* could also have this meaning of “pondering or analysing something” in Legalese, such as in the phrase *take into consideration*.

³ A *trustee* is an individual assigned with the responsibility of managing and overseeing assets or funds held within a trust. In the context of a will trust, these assets are administered on behalf of chosen beneficiaries who are entitled to receive them under circumstances specified in the will.

of administrators be liable for any consumption, damage, injury to or loss of any tangible personal property so used.”

Use of doublets and triplets: legal English often strings together two or three words to convey a single legal concept, such as *null and void* and *terms and conditions*. This practice originated from the mix of languages used in early legal documents.

Use of pronominal adverbs: legal English uses words like *hereof*, *thereof*, and *whereof* to avoid repeating names or phrases, such as *the party hereto* instead of *the parties to this contract*.

“Except as otherwise stated expressly to the contrary herein, I give and grant to the said Trustee [...]”

Unusual word order: legal English often uses a different word order than standard English, such as the use of inversions.

“[...] nor shall the beneficiaries of any trusts hereunder or their executors of administrators be liable for any consumption, damage, injury to or loss of any tangible personal property so used.”

Use of passive voice: passive voice is very frequent in Legalese, especially where emphasis is placed on the agent.

“[...] I direct that the proceeds therefrom will be used by my Executor in payment of the debts, expenses and taxes listed in Item I of this will, to the extent deemed advisable by the Executor”.

Use of reduced and verbless clauses: such as gerundial clauses and reduced relative clauses.

“Having in mind the rule against perpetuities, I direct that (notwithstanding anything contained to the contrary in this last will and testament) each trust created under this will [...]”

Use of unfamiliar pro-forms: legal English uses pro-forms such as *the said* or *the aforementioned* to modify nouns. Pro-forms in legal English do not replace the head noun but are used as adjectives to modify the noun, such as *the said Robert Young*.

“In WITNESS WHEREOF, I, the said ELVIS A. PRESLEY, do hereunto set my hand [...]”

-er, -or, and -ee name endings: legal English often uses alternative endings to indicate the reciprocal and opposite nature of relationships, such as *lessor* and *lessee*, *legator* and *legatee*, *employer* and *employee*.

“I hereby expressly authorize my Executor⁴ and my Trustee [...]”

Words from Old and Middle English which are not commonly used anymore: expressions such as *witnesseth*, *aforesaid*, *forthwith*, *theretofore*, *thenceforth*.

Ceremonial language: signed, sealed and delivered; comes now the plaintiff; I do solemnly swear; Your Honour, etc.

Use of modal verbs: the most usual modals found in Legalese texts are *may* and *shall*.

“The Trustee may from time to time distribute the whole or any part of the net income or principal from each of the aforesaid trusts”

“[...] such distribution shall not be paid outright to such beneficiary but shall be added to and become a part of the trust so being administered for such beneficiary by the Trustee”.

4 An *executor* is an individual appointed in a person's will to manage their estate when they die.

CONCLUSION

Finally, it may be concluded that Legalese is the specialized language of legal drafting for the legal profession, which has evolved through history to ensure precision in legal documents. It is a complex drafting style, characterized by very specific technical terms, archaic expressions, and intricate sentence structures, which often make it difficult for laypeople (who are not involved in the field) to understand. However, Legalese remains essential in reflecting its deep connection between tradition and law.

Despite there being an incredible rise in the use of Plain English to make law understandable for everybody, the push for keeping Legalese alive remains strong.

For those of us who are studying to become certified translators, we cannot overlook this unique style of legal drafting. Most of the documentation we may receive as part of our job in the future will likely be drafted in Legalese style, and it would not be appropriate to translate the text into Plain English (unless specifically requested to do so, of course). Therefore, when mediating between the source and target languages, it goes without saying that legal translators, as specialized linguists in the field of law, must be highly sensitive to the unique features still prevalent in certain legal documents. Carefully studying the source text is an essential step for legal translators to ensure enhanced quality if they want to become effective and dependable in the field of legal translation.

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Rocío Bastera tiene 22 años y es Traductora Técnica Universitaria por la Universidad de Lanús. A su vez, se desempeña como profesora particular de inglés. Actualmente se encuentra cursando las últimas materias de la carrera. Le interesa la traducción de textos jurídicos y le gustaría, en el futuro, especializarse en esa área.



Giuliana Senabre tiene 22 años y comenzó a adentrarse en el mundo del inglés durante su paso por la escuela primaria, donde inició su camino en el estudio de ese idioma. Actualmente está cursando las materias del último año de la carrera de Traductor Público en la Universidad Nacional de Lanús. A la par de la carrera universitaria, trabaja como profesora de inglés empresarial y de negocios para diversas empresas en Argentina. Su propósito es especializarse en el área de la traducción jurídica, pero no cierra las puertas a otras áreas que le puedan ser de interés a lo largo de su carrera profesional.



Chiara Zini tiene 23 años y actualmente está cursando el último año de Traductorado Público en la UNLa. Se encuentra, además, realizando su Trabajo Final Integrador sobre la traducción de argentinismos en testimonios. Tiene experiencia en subtítulo y, si bien aún no sabe en qué área especializarse, le gustaría indagar ese campo. En su tiempo libre le gusta bailar folklore. En el futuro le gustaría estudiar otro idioma, aunque su objetivo inmediato es recibirse y empezar a trabajar como traductora de inglés.