



# What is language and law about?

- **Law** is found everywhere in the entire explosion of news that journalists have to live in and explore in media outlets
- ➔ Lawsuits (one person brings against another) > *pain and suffering – punitive damages – loss of companionship – class action* - etc...
- ➔ Criminal trials (prosecutor brings a case against an alleged criminal) > *murder – manslaughter – impersonation – handling stolen goods* - etc....
- ➔ Businesses going bankrupt etc.



If law pervades our lives, its Language has an influence on law



shaped by *users of the law* > *practitioners* (e.g. lawyers, judges, legislators) > *academics* (e.g. law professors)



# Legal implications of language

- constitutions come into existence
- laws and statutes are enacted
- contractual agreements take effect
  
- interactions between police and suspects
- conversations between lawyers and their clients
- making a defamatory statement, etc.



- Language and Law: technical vocabulary (lexicon) is familiar to legal practitioners but foreign to the rest of us

➔ *court of first instance / first-instance court*: a court in which proceedings are started

the reasons for going to court: *the grounds*

➔ English or American lawyers argue a case in court: *right of audience*

➔ *to have ownership of a property*: the property belongs to you

➔ *injury, loss, or harm* (caused to someone): *damage*

*compensation* (sum of money): *damages*

*compensation* can be *claimed* (by the injured party)  
*awarded* (by the court)

Regular use of lexicon and grammar within the particular socio-cultural area:

- law is a specialized subject (like every discipline from Economics and Sociology to Medicine) >> ‘language users’ exclude others who are not expert of the discipline
- law needs a specialized “variety of language” (Tiersma 1999) or “legal register” (Kurzon 1999)

legal English or English legal language

to express / negotiate important meanings, including propositional, social and functional meanings

- Regular lexicon often used to highlight differences from the stereotypical interpretation of ordinary English language

Technical terms used in legal language only

*acquittal – guilty plea – finding of guilty ...*

terms borrowed from ordinary language - operating in semantically extended contexts > acquiring specialized meanings in law because of the proper conduct of law

*consideration - diminished responsibility - negligence  
nervous shock - recklessness actual / grievous bodily harm*

➔ actual / grievous >> premodifiers of crimes at different levels of seriousness and criminal liability

- The characteristic of Legal English or English legal language is its use by experts in the field to communicate among each other



Sager (1990: 105) on the definition of special languages:  
“semi-autonomous, complex semiotic systems based on and derived from general language”

- Specialist use of language by experts:

— *Discourse community* (Swales 1990): a term used in composition studies and sociolinguistics for a group of people involved in and communicating about a particular topic or in a particular field

→ a group of people who share certain language-using practices typical of “registers” and “genres” (e.g. Swales 1990, 1998; Berkenkotter/Huckin 1995)

→ *Specialized discourse* (Gotti 2003) at all levels of language: lexical, morpho-syntactic, textual, pragmatic

Bhatia (1993: 14) extends Swales' definition of genre:

“it is a recognizable communicative event characterized by a set of communicative purpose(s) identified and understood by the members of the professional or academic community in which it regularly occurs”



contingent upon the discursive practices and methodology of the law discipline

# Discursive practices and methodology of law: legal judgments

- Highly conventionalised in communicative purpose > formal pronouncement of law in a dispute > compels a person to compensation of some harm suffered (civil judgments) or punishment for some other harm (emphasising the guilt of the offender in criminal judgments)
- Patterns of rhetorical strategies associated with typical modes of expression – e.g.

## **Narrative writing / Reported speech as a factual recount of events**

On 26 November 2015 the appellant was convicted following a trial in the Crown Court ...

## **Hypothesising and Speculating**

The question we must answer is whether we consider this conviction justifiable in the circumstances.

## **Conceding issues by use of concessive clauses**

Irrespective of the expert witnesses, the claim did not succeed.

**Direct / Indirect quote - Modality (tentative reasoning) - specialist lexis**

# Identifying 'communicative purpose(s)' as a genre determinant: legal letter

(1) letters from a lawyer to a client and vice versa: to provide *notifications and instructions* for clients or record professional *legal advice* in a case >> informative/instructional + advisory purpose

(2) letters to and from opponents and other lawyers: to persuade, compel, or threaten the other party(ies) or lawyer(s) to take certain action prior to court proceedings

## Anglo-American civil law

letter written by the claimant's lawyer to demand the other side whom he/she is considering taking action against to accept liability by paying damages (*claim letter before action*) or

a reply letter written by the defendant's lawyer to defend or deny liability raised (*reply letter to defend or deny liability*)

- The 'common ground' of English legal language (use of language in conventionalized communicative settings - gives rise to specific set of communicative goals to a specialized disciplinary and social group)
  - >> inseparable relationship between language and law
  - >>> accuracy of wording is a desirable and important attribute for a good lawyer
- ..... distrust and derision for lawyer supposed abuses of ordinary language, e.g. deployment of archaic terms, over-elaborate syntax and high-sounding expressions
- Problematic issues: drafting of legal language in the field of legal translation

# Distinct ways of looking at English legal language

The way English language works in law (syntactic, semantic, pragmatic constraints)

- involves several research perspectives
- shows how we perceive language in law
- raises attention to the interdisciplinary study of the language of law
- is system-bound – perceived as a product of a specific history and culture

- Diverse and cumulative research perspectives

Legal register >>>> Discourse and Genre

Semiotics (system of value-judgments for legal inquiry)

Forensic linguistics (the provision of linguistic evidence > issues of authorship)

Legal linguistics

Plain language

Legal translation/Interpreting

Legal terminology

Linguistic Human Rights

# Different texts/discourses/genres of legal language

## Legal language

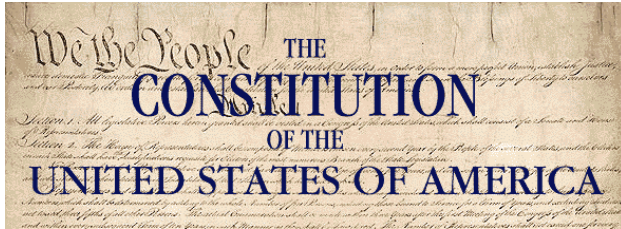
a comprehensive term used to refer to any form of text, discourse, or genre, either spoken or written, employed by its users in a variety of legal contexts



A wealth of genres of legal language (not exhaustive) created by legislators, judges, lawyers, and others in a variety of academic or professional settings

- legislation created at various levels (e.g. *treaties, statutes, rules/regulations*)
- judicial decisions (e.g. *judgments, orders*)
- private legal documents (e.g. *contracts, deeds, licenses, wills*)
- courtroom discourse (e.g. *lawyer-witness examination, judge's summing-up*)
- out-of-court discourse (e.g. *legal consultation between lawyer and client* such as by *letter writing or between lawyers, police investigation*)
- discourses of law in the social media (e.g. *blogs*)
- academic writing (e.g. *research articles, case notes, textbooks*)

- Some genres create **binding, legal effects**  
 >> authoritative *treaties, constitutions, statutes, contracts, wills*



- create **legal analysis** - expressing authoritative (binding) pronouncement of the law >> *judgments*

## HOW TO COMPLAIN

September 26, 2007

Via Certified Mail and  
Return Mail

Mr. Donald Zouas  
837 Francine Drive  
Bartlett, IL 60103

Dear Mr. Zouas:

I received your letter of September 15. Since you have declined to have the river birch tree that has been the subject of our correspondence trimmed at your expense and direction, my clients will undertake this project at their expense. The professional tree trimmer whom they have engaged for this purpose, however, has advised them that even though only branches overhanging my clients' property will be pruned, it will be necessary for the health of the tree that he enter onto your property for this purpose. He advises that he will need to make "collar" or "lateral" cuts from this vantage rather than more "blaze" cuts of the overhanging branches at the property line in order to preserve the health and vitality of the tree. I am not sure of the meaning or significance of this terminology or the processes it describes, but the tree trimmer seems quite knowledgeable and competent.

Accordingly, my clients are requesting permission for their tree trimmer to have access to your property and river birch tree for the purpose of eliminating the nuisance which the overhanging branches pose to my clients' home and property, but in a manner intended to prevent any infection or other damage to the tree.

The tree trimmer advises that this is the proper time of the year for his work, so my clients would appreciate a prompt response to their request. If they have to proceed without access to your property they cannot be responsible for any resulting damage to the tree.

Sincerely,

*James G. Ward*  
James G. Ward

JGW/j



- express resolution of client's case – e.g. *lawyer-client advisory letter*

- Each genre of legal text/discourse tends to have its own stereotypical format and is generally written in legal language or "legalese"

→ *treaties, constitutions, legislation, statutes, regulations* establish **rights and duties** for people and institutions at large

Austin (1962) > "written performatives"  
vs operative/dispositive in lawyer's parlance

→ *contract* contains one or more promises

In consideration of the covenants contained herein, the parties agree as follows....

→ *will* contains **performative verbs** that transfer property upon death

I revoke all former testamentary dispositions. (revocation clause)

I appoint as my executors my son Adam Smith of 4 Baker Street London and my daughter Sophie Smith of 4 Goodge Street London. (appointment of executors)

I give the residue of my estate after payment of all my debts equally to my two children. (residuary clause)

→ *deed* transfers property during the lifetime of its maker

*treaties, constitutions, legislation, statutes,  
regulations, contract, will, deed, .....*



**Genres** forming the universe of legal language vary considerably in terms of:

- modes of communication (written or spoken)
- ‘communicative purpose(s)’ achieved in their situational contexts
- different participants involved in the genre production
- linguistic features

# Focal areas of legal language research : some examples

Courtroom discourse (e.g. *lawyer-witness examination*) >> turn allocation in courtroom (spoken interaction) constrained by power relations (lawyers and layfolk)

Coerciveness of courtroom questioning (Danet et al. 1980, Harris 1984, 2001; Lowndess 2002; Stygall 2012) during cross-examination with degrees of coercion in lawyers' questions ranging from the very open

*"can you tell us anything about the incident?"*

to the highly coercive

*"you removed it, didn't you?"* > leading questions

→ significance of narrative account for the larger trial narrative

# Focal areas of legal language research : some examples

From a linguistic perspective, discourse analysis also utilised to:

- see how legal language is inherently vague/fuzzy (Bhatia, Engberg, Gotti, Heller 2005)
- examine practices and attendant discourses of 'legal communities' and their elaboration of identities, roles and cultures (e.g. Bhatia, Candlin, Gotti 2003; Bhatia, Candlin, Engberg 2008; Bhatia, Candlin, Evangelisti 2008; Bhatia, Candlin, Gotti 2010/2012; Bhatia 2011; Tessuto 2012; Williams and Tessuto 2013; Bhatia, Garzone, Salvi, Tessuto, Williams 2014; Bhatia and Gotti 2015; Tessuto, Bhatia, Garzone, Williams 2016)
- look into relations between discourse, power and ideology (Wagner and Cheng 2011; Bhatia, Hafner, Miller, Wagner 2012)

# Characteristics of English legal language

- How did English legal language get to be the way that it is?
- How did it develop?

the history of the language of lawyers



originated in ancient times from England's shared body of law – the 'common law' of the realm

- Many such characteristics have their roots in the historical origins of **English law** influenced by two main language traditions:
- Latin >> the language of the educated classes in England's medieval times
- French >> the Anglo-Norman's French language used in legal pleadings later developed into Law French (i.e. royal courts at this time were conducted in French)
- Other characteristics persist at different degrees in legal English usage of the modern day >> they are justifiable attempts to reach formality and precision

# Legalese

- Several authors (Mellinkoff 1963; Crystal and Davy 1969; Tiersma 1999; Mattila 2006) on:

lexical and syntactic complexities of English legal language used in legal documents over the centuries

identified a distinct 'dialect', derogatorily known as 'legalese': refers to the conventional language of the legal profession characterized by archaic usage, prolixity and redundancy for laymen to read and understand

Conservative and to some extent static language >> different from ordinary English language

# Legalese

- David Mellinkoff noted years ago

*The Language of the Law* (1963)

English legal writing includes 'distinctive words, meanings, phrases, and modes of expression'

credited with launching plain legal English in American law

## Legalese: main features

- Lexical features

Latin terms

*ab initio, prima facie, obiter dicta*

terms of French origin

*appeal, complaint, counsel, damage, evidence,  
indictment, justice, party, sue, verdict*

including unusual word order

*Attorney General, accounts payable, malice aforethought  
notary public*

→ adjectives standing behind nouns they modify in phrases

*Adj + Nn > General Attorney*

Terms of art (or legal jargon) with different origins  
borrowed from ordinary words  
used with special meanings

*consideration*

*duress*

*privity of contract*

*redemption*

Archaic referential adverbs *Here, There, Where* + preposition (pronominal adverbs) of Old English origin:

*Hereby* [adv.] modern equivalent 'in this way', 'by this'

*Hereof* [adv.] modern equivalent 'of this'

*Thereby* [adv.] modern equivalent 'in that way', 'by that'

*Whereof* [relative adverb] modern equivalent 'of what', 'of which'

shorthand for presenting information already mentioned in the text

*the parties hereto ... instead of the parties to this contract ...*

Other archaic, legalistic words with referential value (unfamiliar pro-forms) > do not replace the noun (whole purpose of pro-forms) but used as adjectives to modify the noun

➔ demonstrative adjectives *said* and *such* (or *aforesaid*) to refer back to a person or thing already mentioned (in place of 'it', 'he', 'she', etc.) > *the said John Smith*

➔ -er, -or, and -ee name endings for agents in law

*lessor and lessee*

*(mis)representor and (mis)representee*

reciprocal and opposite nature of the relationship is indicated by the use of alternative endings

Pleonasms: strings of (near)-synonyms in different parts of speech coming in two or three words

### Doublets

*aiding and abetting / agreed and declared / claim and demand / fit and proper / null and void / power and authority / use and enjoyment / terms and condition*

### Triplets

*amend, vary or revoke / costs, charges and expenses / dispute, controversy or claim / lawful, valid and binding / right, title and interest*

amplify the meaning and add rhetorical effect to the legal idea expressed

- Ritualized word forms, or parallelisms

*the truth, the whole truth and nothing but the truth*

- Vague words leading to uncertainty

*reasonable man, reasonable care, proper*

- Overuse of *shall* modal auxiliary to express different meanings

Status: "Full capacity" *shall* have the following meaning . . .

Future action: If . . . then the contract price *shall* be increased . . .

Faulty imposing of obligation: The remaining oil *shall* be sold by lessee . . .

etc.....

- Phrasal verbs

*... parties enter into a contract ...*

*... serve documents upon the parties ...*

- Syntactic features
- Extremely long, complex sentences: many embedded clauses
- Nominalizations: nouns constructed from verbs, usually by adding an 'ing', 'tion' or 'al' ending

*after consideration of the facts*

instead of

*the court considered the facts*

*make an application instead of apply*

- Passive voice sentence structures instead of active forms

- Lack of punctuation in legal documents (e.g. *conveyances*, *deeds*)
- Poor paragraphing to aid reading and understanding of the information presented

# England's Common Law language seeping into distinct forms of *legal English we know today*

- Other characteristics persist at different degrees in legal English usage of the modern day >> reflect historical development throughout the centuries
- England's language and its system of law from the 11<sup>th</sup> to the 18<sup>th</sup> century and beyond made its headway with increasing centralization
- Main story of English common law language from the 18<sup>th</sup> to the 20<sup>th</sup> century was its exportation to other common law legal systems and language that operate today

(Common Law) English-speaking countries

UK, USA, Australia, New Zealand, Canada and some of the former colonies of England in Africa and Asia - e.g. Nigeria, Kenya, Malaysia and Hong Kong

Exportation of English law to other common law jurisdictions also means a distinctive development of legal English in other English-speaking countries

BrE	ScotE	AmE
chamber/set(of barristers)	stable	no equivalent
barrister	advocate	trial lawyer/appellate lawyer
contributory negligence	contributory negligence	comparative negligence
on the balance of probabilities	on the balance of probabilities	preponderance of evidence
representative action, group action	representative action, group action	class action

BrE	ScotE	AmE
company law	company law	corporate law
competition law	competition law	antitrust law
conditional fees	conditional fees	contingency fees ('no win, no fee')
material facts	material facts	key facts
postal rule (in contract law)	postal rule	mailbox rule

different terms for almost similar concepts exist today among English-speaking countries or native 'localities' of English – ENL (Kachru 1992: on the traditional cultural and linguistic bases of English)

Why?

→ necessary to suit national or locale-specific conditions and traditions of substantive and procedural law in ENL settings

## From legalese to **plain language**

..... complexity and technicality of English legal language throughout centuries >>> pressures for reform by members of the Plain Language Movement from the major **English-speaking countries**

- **US-based movement** (beginning in 1970s) promotes plain language in public and private sectors



- inspiring source for other international associations



Plain Language  
Association  
International




an international association promoting plain legal language

- Plain language proponents = legal practitioners >> lawyers, judges and parliamentary draftsmen

argue for clarity, simplicity and directness in the drafting of legislation and other legal documents

believe that these documents need to be readily comprehensible when legal content is conveyed to non-lawyers

## More recent addition to Plain Language Movement



Butt and Castle (2006) dig a hole through traditional legal language and its peculiar characteristics that make legal documents aloof from its users

Propose a step-by-step guide to drafting in the modern style, using examples from four types of legal documents

*leases, company constitutions, wills and conveyances*

# Some plain language developments around the world

- Success of plain language as a ‘movement’ (a quasi-political, society-changing cause) kicks on in law firms and in legislation in English-speaking countries
- **US & Australia:** high profile in public and private sectors and law schools – legal writing focusing on clear communication
- **Canada and New Zealand:** plain language practitioners and advocates
- **UK:** *Plain English Campaign* and *Plain Language Commission* lead the charge and provide rewriting services and training - major legislative developments in statutory writing - new rules for civil procedure - language used in court proceedings
- **South Africa:** law firms establish plain language practices - government is active in plain legislation

# Exceptions to plain language proposals: 'enacting' formula of UK statutes

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Enacting formula performatively gives statutory text force of law (binding) for people at large >> enactment 'speech act' of 'parliamentary intention'

Antiquated words and infrequent expressions resulting from the historical tradition:

- jussive/passive imperative (BE IT ENACTED) >> binding force of statutes
- prepositions (by and with) with similar meaning ('doublet') >> add rhetorical emphasis to the idea being expressed
- use of same instead of the modern alternative pronoun ('them')

# Plain language in the EU

Also, plain language standards applied by the European Union institutions - directed at people who have to write many different types of documents (genres)

*legislation, minutes, speeches, press releases etc.*

EU plain language principles: *Joint Practical Guide* - European Parliament, the Council and the Commission

EU multilingual legislation must be made readily comprehensible to a variety of EU multicultural audiences for whom important rights and responsibilities are defined