

Legal English

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Outline

1. What are the sources of legal English?
2. What distinguishes English legal documents from the continental ones?
3. What is legalese?
4. What are the specific features of legal English?
5. Chess and legal English: What do they have in common?

Linguistic sources of legal English (LE)

Discuss the questions.

- What event marked the beginning of the English legal history? Why?
- What language or languages influenced the development of legal English?

Historic landmarks

- **1066** – **French** – official language of England; **Latin** – language of formal records and statutes; **English** – spoken language; not used in legal matters
- **1356** – **the Statute of Pleadings** was enacted (in French!). All legal proceedings should be in English.
- **Until 17 century** – French still used in some areas and **Latin** was used to appear more sophisticated
- **English** was adopted for different legal documents (wills – from 1400; statutes – from 1489)
- **17 century** – development of commercial law – entirely in English

Different linguistic sources of legal English – mixture of languages

Neither party shall be liable to the other for failure to perform or delay the performance of its obligations caused by any circumstances beyond its reasonable control.

28 words:

- 4 red words – from Latin
- 7 blue words – from Old French
- 17 black words – Old English

French borrowings

- In lieu of
- Feme sole
- Choses in action/possession
- Pur autre vie (estate)
- Lien
- Force Majeure
- Tort
- (Easement) appurtenant
- On parole
- Demurrer

Latin borrowings (Latinisms)

- Bona fide
- Caveat emptor
- Prima facie
- Ultra vires
- Sic
- Ad hoc
- Amicus curiae

Legal system & language of law

Discuss the questions.

1. What law system is England?
2. What distinguishes the English legal system from that of continental countries?
3. Is legal English different from legal Russian/German/French etc.?

Civil law vs common law language

A contract of Lease

- **Germany:** *The lessor leases to the lessee the following dwelling ...*
- **UK/US** *'The Landlord has let and by these presents does grant, devise and let unto the Tenant and the said Tenant has agreed to hire and take, and does hereby hire and take as tenant the following space in the apartment building ...'.*

US legal agreements

The US contracts are **very long**.

10,000 words

There is a great deal of **explanation, qualification and limitation** in the language.

There is **a great deal of legalese**.

The legalese is similar from agreement to agreement, but **not exactly the same**.

Contracts of a particular type of **transaction are similar in general coverage, but the specific language varies considerably from contract to contract**.

German legal agreements

The German agreements are **much lighter**, about one-half or two thirds the size of otherwise comparable US agreements.

1,400 words

There is **much less explanation, qualification and limitation** in the language.

There is **much less legalese**.

The legalese is **almost identical from contract to contract**.

Many provisions are **quite similar from contract to contract**.

The effects of case law on legal English

1. **Common law influence: ‘Preventative law’** – desire to prevent possible future disputes → **wordiness (verbosity), long-winded and complex sentences**
2. **Common law influence: Value of the precedent** – commitment to the legal tradition and re-using previous legal texts → **formal, old-fashioned and archaic diction**

Legalese

Discuss the questions.

1. What is legalese?
2. Legal English vs legalese: the same or different?
3. What is legalese usually contrasted with?

Legalese & plain English

- **Legalese** (*disapproving*) language used by lawyers and **in legal documents** that is difficult for ordinary people to understand
(Cambridge Dictionary)
- **Legalese** vs **plain English campaign** (attempt or campaign to clarify and simplify the language of law for the ‘mere mortals’)
- What exactly makes *legalese* difficult?

What makes legal English difficult?

1. Purely technical terms
2. Semi-technical or mixed terms
3. Formal and archaic vocabulary
4. Word strings: doublets, triplets and longer phrases
5. Legal clichés
6. Specific use of modal verbs
7. Abundant use of passive structures
8. Long and complex sentences
9. Conditional and limiting clauses (qualifications)

Purely technical terms

- Terms that are found exclusively in the legal sphere and have no application outside it.

Solicitor, estoppel, mortgage, lien, tort, fraud, equitable damages, manslaughter

- What problems may arise?

Purely legal terms: problems and strategies

- stable and usually monosemic: *testator, easement*, etc.
- 2% of the legal document
- Russian equivalents given in the dictionary
- the least troublesome for the translator but...

Problems and strategies

1. Identifying the meaning (e.g. *due diligence; security agreement*) – dictionary + context
2. No full equivalent in TL – partial equivalent (e.g. *public nuisance*)
3. Absence of equivalent in TL – leave untranslated or create your own equivalent (e.g. *grooming*)

Semi-technical or mixed terms

- Ordinary words with a specialist legal meaning

The testator died without issue.

Issue (plain English meanings): *ВЫПУСК, издание, проблема, устье реки, кровь, гной* и др.

Issue (legal English meaning):?????.....

Plain vs legal meaning

	Plain English meaning	Legal English meaning
consideration	careful thought over a period of time; a fact or a motive taken into account when deciding something	
performance	an act of stating or presenting; the act of accomplishing a task	
execute	kill	
construction	building	
premises	buildings, facilities	

Plain vs legal meaning (answers)

	Plain English meaning	Legal English meaning
consideration	careful thought over a period of time; a fact or a motive taken into account when deciding something	1) payment or money; 2) a vital element in English contract law = benefit bargained for between the parties
performance	an act of stating or presenting; the act of accomplishing a task	fulfilment of one's obligations required by the contract
execute	kill	1) sign or draw up a contract; 2) perform a contract
construction	building	interpretation
premises	buildings, facilities	1) circumstances; 2) grounds for sth

Semi-technical terms

Problems:

- Polysemic and contextually dependent
- Difficult to recognize as legal terms (e.g. *security, interest*)

Strategies:

- Attention to context + checking meaning in the dictionary
- Raising awareness of this lexis

Formal vocabulary: task

Formal	Informal
1. <i>prior to</i>	before
2.	mentioned before
3.	next to, near
4.	to start
5.	dependent on
6.	to inform in advance
7.	if

Formal vocabulary: task (answers)

Formal	Informal
1. <i>prior to</i>	before
2. <i>aforementioned</i>	mentioned before
3. <i>adjacent to</i>	next to, near
4. <i>to commence</i>	to start
5. <i>contingent upon</i>	dependent on
6. <i>to notify</i>	to inform in advance
7. <i>in the event of</i>	if

Archaic diction

- This indenture made the ninth day of May 1887 ... witnesseth that...
- THE UNDERSIGNED, being the joint incorporators hereinbefore named, for the purposes of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do hereby make this Certificate, declaring and certifying that this is our act and deed and the facts herein stated are true, and accordingly have hereto set our hands this 8th day of July, 1997.

Archaic adverbs with *here-*, *there-*

- Used for **avoiding repetition** in legal documents
 - ***Here-*** is used to talk about **the document** we are reading or drawing up.
 - ***There-*** refers to **another thing** (e.g. a document, an object or a event) **quoted earlier in this sentence or paragraph**.
1. Pursuant to Article 5 ***hereof***, the Seller shall bear full product liability. (= Article 5 of this Contract)
 2. The owners of the preferred shares shall be entitled to the cumulative dividends ***thereon***. (= the cumulative dividends on the preferred shares)

Archaic adverbs: task

Explain the meaning of the words in red.

1. Nothing **herein** is intended to limit protection of the insured.
2. In the event of any product claim, Seller shall reimburse Buyer for all reasonable expenses incurred by Buyer in connection **therewith**.
3. Seller **hereby** conveys to Buyer all right, title and interest in and to any intellectual property developed **hereunder**.
4. The equipment shall be delivered on 13 September 2022. The company agrees to pay **therefor** the sum of \$200,000.
5. The failure of any party to exercise any right or remedy shall not constitute a waiver **thereof**.

Word strings

- **Word strings** are a series of nouns, verbs, adjectives, adverbs and other phrases. These words *are often (but not always!) synonyms or near synonyms.*
- **Alliteration:** *part and parcel, new and novel, safe and sound.*
- **English + French:** *break and enter, devise and bequeath, goods and chattels, will and testament, fit and proper.*
- **Doublets:** *terms and conditions, full and complete, null and void, power and authority*
- **Triplets:** *build, erect or construct; documents, instruments and writings; rest, residue and remainder*
- **Word strings:** *liabilities, expenses, losses, damages and costs*

Doublets and triplets

Doublets – 2 words	Triplets – 3 words
False and unt.....	Full, tr..... and cor.....
Sole and exc.....	Give, dev..... and bequ.....
Request and req.....	Cancel, an..... and set as.....
Alter and ch.....	Nominate, con..... and app.....
Null and v.....	Right, tit..... and int.....
Force and ef.....	Signed, sea..... and del.....
Aid and ab.....	Pay, sat..... and dis.....

Doublets and triplets

Doublets – 2 words	Triplets – 3 words
False and untrue	Full, true and correct
Sole and exclusive	Give, devise and bequeath
Request and require	Cancel, annul and set aside
Alter and change	Nominate, constitute and appoint
Null and void	Right, title and interest
Force and effect	Signed, sealed and delivered
Aid and abet	Pay, satisfy and discharge

Word strings: example

- Each party to this Agreement hereby acknowledges that it is aware that it or its **advisers, agents or solicitors** may discover facts **different from and in addition to** facts that they now **know or believe to be true** with respect to the subject matter of this Agreement, but it is their intention to hereby **fully, finally, absolutely and forever** settle according to the provisions of this Agreement **any and all liabilities, claims, disputes and differences** which **exist, may exist or have ever existed** between them relating in anyway to the matters the subject of this Agreement.

Doublets and triplets: translation strategies

1. The English phrase implies a genuine distinction and **each word should be rendered**: *aid and abet* – *оказывать пособничество и подстрекать*
2. The original phrase contains a mere tautology. **Combine the synonyms into one word** with a more general meaning: *alter and change* – *изменять*
3. The original phrase contains emphasis. **Add an intensifying adverb or adjective**: *without let or hindrance* – *без каких-либо помех*

Doublets and triplets: task

Translate into Russian.

1. The parties hereto **warrant and represent** that the facts contained herein are **true and correct**.
2. The deed has been **signed, sealed and delivered**.
3. This contract entered into **by and between** Itex and Peome shall take effect on 1 June 2022.

Doublets and triplets (answers)

- Стороны **заявляют**, что все содержащиеся в настоящем документе факты **соответствуют действительности** / являются **верными**.
- Настоящий документ **оформлен** в специальной письменной форме (= **подписан, скреплен печатью и вручен**).
- Настоящий договор заключен **между**...

Legal cliches

- Formal (and sometimes archaic) fixed or semi-fixed phrases traditionally used by lawyers in legal documents
- They are difficult for non-lawyers to understand

1. *In witness whereof*
2. *Notwithstanding the forgoing*
3. *As the case may be*

Legal cliches: task

Paraphrase in plain English the following legal cliches.

1. KNOW ALL MEN BY THESE PRESENTS
2. hereinafter referred to as
3. which consent may not be withheld arbitrarily
4. as of the date and year first above written
5. without prejudice to any sums due

Legal cliches (answers)

1. К сведению всех присутствующих лиц
2. Именуемые в дальнейшем (как)
3. При этом необоснованный отказ в предоставлении согласия не допускается
4. В дату, указанную в начале настоящего документа
5. Это не отменяет обязательств (клиента) по оплате сумм задолженностей

Legal meaning of 'shall'

Plain English:

1. You shall leave tomorrow. = a command
2. Shall we start? = suggestion/invitation

Legalese:

1. The seller **shall deliver** to the buyer the confirmation of payment. = **must (obligation)**
2. The tenant **shall be responsible** for maintenance of the building. = **will (a promise or a declaration to which the parties involved are legally bound)**

'*Shall*': translation strategies

Translate the sentences into Russian.

1. The seller **shall** deliver to the buyer the confirmation of payment. = **must (obligation)**
2. The tenant **shall** be responsible for maintenance of the building. = **will** (a promise or a declaration to which the parties involved are legally bound)

'*Shall*': translation strategies (answers)

1. The seller **shall** deliver to the buyer the confirmation of payment. = **must (obligation)**

*Продавец **обязан** предоставить покупателю подтверждение платежа.*

2. The tenant **shall** be responsible for maintenance of the building. = **will (a promise or a declaration)**

*Наниматель **несёт** ответственность за содержание и техническое обслуживание здания.*

Long and complex sentences

- *Read the sentence below identify two principal clauses. What exactly makes the sentence long and difficult to understand? What is the main idea of the sentence?*

In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a proposal in respect of his company for a voluntary arrangement for a composition of debts in respect of his company to the court for the appointment of an administrator, or having a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of his business or undertaking duly appointed, or being placed under judicial management, or having possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, the employment of the Contractor under this Contract shall be forthwith automatically terminated, but the said employment may be reinstated and continued if the Proprietor and the Contractor, his trustee in bankruptcy, liquidator, provisional liquidator, receiver or manager as the case may be shall so agree.

Long and complex sentences

In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a proposal in respect of his company for a voluntary arrangement for a composition of debts in respect of his company to the court for the appointment of an administrator, or having a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed or having a provisional liquidator, receiver or manager of his business or undertaking duly appointed, or being placed under judicial management, or having possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, **(1) the employment of the Contractor under this Contract shall be forthwith automatically terminated, (2) but the said employment may be reinstated and continued** if the Proprietor and the Contractor, his trustee in bankruptcy, liquidator, provisional liquidator, receiver or manager as the case may be shall so agree.

Long sentences: problems and strategies

- **Summary:** *In the event of... the employment of the contractor may be terminated but it may be continued in some situations / if....*
- **What makes the sentence complex?** – 1) several long conditional and limiting clauses to cover the conditions and situations in which such an event may occur; 2) the gap between the subject and the predicate.
- **Strategies:** 1) analyze the structure of the sentence so as to comprehend its message (identify the predicate and the subject of the sentence); 2) retain the original structure or break it up in two or more sentences in the target language.

Abundant use of passive structures

Translation strategies:

1. Preserve the passive structure.

*Payment **must be made** within seven days.*

*Платеж **должен быть осуществлен** в течение семи дней.*

2. Switch from passive to active.

***It is agreed by and between the parties** as follows...*

***Стороны договорились** о следующем...*

Conditional and limiting clauses

Legal English is unusually rich in conjunctions and prepositions of condition and hypothesis.

Positive:

If, where, whenever, provided that, in the event that/of, assuming that, so long as, subject to, should etc.

Negative:

Unless, failing, should... not, except as/where/if, but for etc.

Conditionals and hypothetical formulations: task

Read the sentence and identify the conditionals.

Where either party fails to perform their side of the bargain, then, subject to clause 15 above, if notice of non-performance is given in writing by the injured party within seven days, or, in the event that communication is impossible until the ship reaches a port of call, as soon thereafter as is practically possible, the injured party shall be entitled to treat the contract as discharged except as otherwise provided in this contract.

Conditionals and hypothetical formulations: task – answer

Read the sentence and identify the conditionals.

(1) Where either party fails to perform their side of the bargain, then, (2) subject to clause 15 above, (3) if notice of non-performance is given in writing by the injured party within seven days, or, (4) in the event that communication is impossible until the ship reaches a port of call, as soon thereafter as is practically possible, the injured party shall be entitled to treat the contract as discharged (5) except as otherwise provided in this contract.

By way of conclusion...

The game of chess and legal English:
what do they have in common?

Possible answer

The rules of the game of chess take a little time to learn, but a lifetime to master. The same is true of legal English.