

## 'Legalese'

Why legal language is so different from everyday English

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## A Brief History of England

- **B.C. – 1st century A.D.** Celtic spoken
- **43 A.D. – 410** Roman occupation; Invasions by Picts & Scots
- **450 – 466** Arrival of Angles, Saxons & Jutes (from Denmark & Germany)

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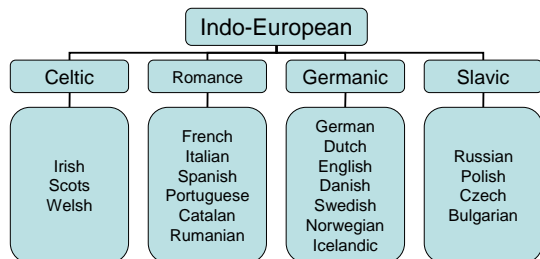
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## Some Indo-European Language Families



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## English is a Germanic Language

English	German	Spanish	French
one	ein	uno	un
two	zwei	dos	deux
three	drei	tres	trois
four	vier	cuatro	quatre
five	fünf	cinco	cinq
cow	Kuh	vaca	vache
stone	Stein	piedra	pierre
come	kommen	venir	venir

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## Other Germanic characteristics of English

Verb + Particle	
go up	ascend
go down	descend
go in	enter
go out	depart
go back	return

Compound adverbs
hereby
therefore
heretofor
herewith

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## A Brief History of the English Language

<b>500 – 1100</b>	<b><i>Old English</i></b>
<b>1100 – 1500</b>	<b><i>Middle English</i></b>
<b>1500 – 1700</b>	<b><i>Early Modern English</i></b>

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A Brief History of the English Language

- 476  
Fall of the Roman Empire
- 1066  
Norman Conquest
- 1492  
Discovery of America

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A Brief History of the English Language

- 476      Fall of the Roman Empire  
[500 – 1100]      *Old English*
- 1066      Norman Conquest  
[1100 – 1500]      *Middle English*
- 1492      Discovery of America  
[1500 – 1700]      *Early Modern English*

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Which famous author or work is associated with each period of English?

- [500 – 1200]      *Old English*
  - *Beowulf*
- [1100 – 1500] *Middle English*
  - *Chaucer*
- [1500 – 1700]      *Early Modern English*
  - *Shakespeare*

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## The Lord's Prayer

- Fæder ure þu þe eart on heofonum; [Old English]  
Si þin nama gehalgod  
to becume þin rice,  
gewurþe ðin willa, on eorðan swa swa on heofonum.
- Oure fadir that art in heuenes, [Middle English]  
halewid be thi name;  
thi kyngdoom come to;  
be thi wille don, in erthe as in heuene.
- Our Father, who art in heaven; [Early Modern English]  
Hallowed be thy Name;  
Thy kingdom come,  
Thy will be done, on earth as it is in heaven.

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## Alliteration (characteristic of Old English poetry)

- Now Beowulf bode in the burg of the Scyldings,
- Leader beloved, and long he ruled
- In fame with all folk since his father had gone

any and all  
bed and breakfast  
to have and to hold  
house and home  
might and main  
hale and hearty  
live and learn  
live and let live  
green as grass

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## French Influence on Legal English

- French syntax: Noun + Adjective

accounts payable  
attorney general  
solicitor general  
notary public  
condition precedent  
letters testamentary  
malice aforethought

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French influence:  
Conjoined Expressions (Doublets)

devise and *bequeath*  
breaking and *entering*  
acknowledge and *confess*  
goods and *chattels*  
had and *received*  
will and *testament*  
fit and *proper*  
free and *clear*

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Modern English Legal Vocabulary:  
A Blend of Old English, French, and Latin

- After a French *marriage* or an Old English *wedding*, you have entered into Old English *wedlock* or the gratuitous complication of Latin *matrimony*.
- You may *buy* a *home* in Old English or *purchase* a *mansion* in French, *own* it in Old English or take *possession* in French.
- You have an Old English *child*, who will also be a French *infant* and a Latin *minor*.
- You write an Old English *will* or a Latin *testament*. In it you dispose of your French *property* which was once the same as Old English *goods* or French *chattels*.
- In Old English you *forgive* debts, and at one time you could *pardon* them in French.

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- An Old English *sheriff* or a French *constable* arrests you for French *larceny* which is the same as Old English *theft*.
- You get an English *lawyer* or a French *attorney* who goes to a French *court*, approaches the Old English *bench*, and speaks to a French *judge*.
- The Old English *witnesses* take an Old English *oath* and *swear* in Old English that their French *evidence* is not English *hearsay*.
- The Old English *foreman* of a French *jury* brings in a French *verdict* of Old English *guilty*, and in a former day you might end up on an Old English *gallows* or a French *gibbet*.

---from David Mellinkoff, *The Language of the Law*, Little, Brown & Co. 1963, p. 58.

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Characteristics of Legal Discourse:  
Wordiness

- For the parties agree:  
Now, **Therefore**, in consideration of the premises, and the representations, warranties, covenants and undertakings of the parties **hereinafter** set forth, and for other good and valuable considerations, the parties agree among themselves as follows:

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Characteristics of Legal Discourse:  
Unclear

- Although the will itself was silent as to who would take if the son predeceased the mother, she not having at the time of the son's death remarried, and the son leaving issue at his death, which event occurred, this omission by itself, in the will only, cannot aid the son and defeat the testator's clear intention that the son would take only in the event he survived the death or remarriage of his mother, Lula Kiester.

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Contributory Negligence:  
(Jury instruction)

- It may be described as such negligence on the part of the plaintiff, if found to exist, as helped to produce the injury or the damages complained of, and if you find from a preponderance of all the evidence in either of these cases that plaintiff in such case was guilty of any negligence that helped proximately to bring about or produce the injuries of which plaintiff complains, then and in such place the plaintiff cannot recover.

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**Contributory Negligence:  
Plain English jury instruction)**

"If Mrs. Jones' injury was caused partly by Mr. Smith's negligence and partly by her own negligence, she cannot recover."

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**Pronouns in the Law**

- a) Burger<sub>i</sub> told Mason<sub>j</sub> that he<sub>i</sub> would win the case.
- b) Burger<sub>i</sub> told Mason<sub>j</sub> that he<sub>j</sub> would win the case.
- c) Burger<sub>i</sub> told Mason<sub>j</sub> that he<sub>k</sub> would win the case.
- d) ?Burger told Mason that Burger would win the case.
- e) ?Burger told Mason that Mason would win the case.
- f) Burger told Mason that Perry would win the case.
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- Stella told Mason that he would win the case.
- a') Stella<sub>i</sub> told Mason<sub>j</sub> that he<sub>j</sub> would win the case..
- b') Stella<sub>i</sub> told Mason<sub>j</sub> that he<sub>k</sub> would win the case.

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**Avoidance of Pronouns  
(in the law)**

Party of the first {second} part“

...the party of the first part does hereby covenant with the party of the second part that the party of the second part is to build and maintain the fence along the road by the Large Swamp and half of the fence of the Little Round Swamp, and the party of the first part is to build and maintain the other half of the fence."

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## 2. Proper names

"It is stipulated that 'Elliot advised Gilligan that...Elliot was going to sell as much as was left to certain of *his* friends' after Gilligan took what *he* wanted of the \$2,500,000 remaining after Elliot's wife took \$500,000.

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