‘Legalese’

Why legal language is so different from everyday English

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)

Some Indo-European Language Families

Indo-European
  - Celtic
    - Irish
    - Scots
    - Welsh
  - Romance
    - French
    - Italian
    - Spanish
    - Portuguese
    - Catalan
    - Rumanian
  - Germanic
    - German
    - Dutch
    - English
    - Danish
    - Swedish
    - Norwegian
    - Icelandic
  - Slavic
    - Russian
    - Polish
    - Czech
    - Bulgarian
English is a Germanic Language

<table>
<thead>
<tr>
<th>English</th>
<th>German</th>
<th>Spanish</th>
<th>French</th>
</tr>
</thead>
<tbody>
<tr>
<td>one</td>
<td>ein</td>
<td>uno</td>
<td>un</td>
</tr>
<tr>
<td>two</td>
<td>zwei</td>
<td>dos</td>
<td>deux</td>
</tr>
<tr>
<td>three</td>
<td>drei</td>
<td>tres</td>
<td>trois</td>
</tr>
<tr>
<td>four</td>
<td>vier</td>
<td>cuatro</td>
<td>quatre</td>
</tr>
<tr>
<td>five</td>
<td>fünf</td>
<td>cinco</td>
<td>cinq</td>
</tr>
<tr>
<td>cow</td>
<td>Kuh</td>
<td>vaca</td>
<td>vache</td>
</tr>
<tr>
<td>stone</td>
<td>Stein</td>
<td>piedra</td>
<td>pierre</td>
</tr>
<tr>
<td>come</td>
<td>kommen</td>
<td>venir</td>
<td>venir</td>
</tr>
</tbody>
</table>

Other Germanic characteristics of English

<table>
<thead>
<tr>
<th>Compound adverbs</th>
</tr>
</thead>
<tbody>
<tr>
<td>hereby</td>
</tr>
<tr>
<td>therefore</td>
</tr>
<tr>
<td>heretofor</td>
</tr>
<tr>
<td>herewith</td>
</tr>
</tbody>
</table>

Verb + Particle

| go up | ascend |
| go down | descend |
| go in | enter |
| go out | depart |
| go back | return |

A Brief History of the English Language

500 – 1100 Old English

1100 – 1500 Middle English

1500 – 1700 Early Modern English
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
The Lord’s Prayer

• Fæder ure þu be eart on heofonum; [Old English]
  Si þin nama gehalgod
to become þin rice,
gewurþe ðin willa, on eorðan swa swa on heofonum.
• Oure fadir that art in heuenes, [Middle English]
halewid be thi name;
thi kyingdoom come to;
be thi wille don, in ethe 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.

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 ffather 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

French Influence on Legal English

• French syntax: Noun + Adjective

  accounts payable
  attorney general
  solicitor general
  notary public
  condition precedent
  letters testamentary
  malice aforesaid
French influence:
Conjoined Expressions (Doublets)

\[
\begin{align*}
\text{devise} & \text{ and } \text{bequeath} \\
\text{breaking} & \text{ and } \text{entering} \\
\text{acknowledge} & \text{ and } \text{confess} \\
\text{goods} & \text{ and } \text{chattels} \\
\text{had} & \text{ and } \text{received} \\
\text{will} & \text{ and } \text{testament} \\
\text{fit} & \text{ and } \text{proper} \\
\text{free} & \text{ and } \text{clear}
\end{align*}
\]

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.

- 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.

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:

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.

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.
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."

Pronouns in the Law

- a) Burger told Mason that he would win the case.
- b) Burger told Mason that he would win the case.
- c) Burger told Mason that he 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.
- Stella told Mason that he would win the case.
- a') Stella told Mason that he would win the case.
- b') Stella told Mason that he would win the case.

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."
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."