

ROUTLEDGE



third edition

LEGAL ENGLISH

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Introduction to legal English

1

THE DEVELOPMENT OF MODERN ENGLISH

1.1

The English language contains elements from many different European languages and has also borrowed words from a wide variety of other languages. It is impossible to grasp how these influences affect the language without knowing a little about the history of the British Isles.

Prior to the Roman invasion in 55 BC, the inhabitants of Britain spoke a Celtic dialect. Latin made little impression until St. Augustine arrived in 597 AD to spread Christianity. Latin words are regularly used in English, particularly in professional language. In the legal profession, Latin phrases like *inter alia* (among others) and *per se* (in itself) remain in current use.

Subsequently, the Angles, Saxons and Jutes invaded the British Isles from mainland northern Europe. The language they brought with them forms the basis of what is known as Old English. This gives us the 100 most commonly used words in the English language (words like *God, man, woman, child, love, live, go, at, to*).

The Vikings began to raid the north-east of England from Scandinavia from the eighth century onwards. At a later date, a significant number of Vikings settled in this area, bringing with them their own linguistic contribution (which can be seen for example in the numerous place names in the north-east of England (and Scotland) ending in *-by* or *-thorpe, -wick, -ham* and in words such as *egg, husband, law, take, knife*).

In 1066 the Normans invaded from northern France and conquered England. Words such as *court, parliament, justice, sovereign* and *marriage* come from this period.

Later, the English helped themselves initially to further words from French, such as *chauffeur, bourgeois, elite*. As the British Empire expanded, further opportunities to borrow words arose – words such as *taboo* and *pukka* came into the English language from that period.

The result of this multiplicity of linguistic influences is a rich and diverse language with a complex grammar and many synonyms. For example, a coming together of two or more people could be a *meeting* or *gathering* (Old English), *assignation* or *encounter* (Old French), a *rendezvous, rally* or *reunion* (French), a *caucus* (Algonquin), *pow-wow* (Narragansett) or a *tryst* (Old French).

SOURCES OF LEGAL ENGLISH

Legal English reflects the mixture of languages which has produced the English language generally. However, modern legal English owes a particular debt to French and Latin. Following the Norman invasion of England in 1066, French became the official language of England, although most ordinary people still spoke English. For a period of nearly 300 years, French was the language of legal proceedings, with the result that many words in current legal use have their roots in this period. These include *property, estate, chattel, lease, executor* and *tenant*.

During this period, Latin remained the language of formal records and statutes. However, since only the learned were fluent in Latin, it never became the language of legal pleading or debate.

Therefore, for several centuries following the Norman invasion, three languages were used in England. English remained the spoken language of the majority of the population, but almost all writing was done in French or Latin. English was not used in legal matters.

In 1356, the Statute of Pleading was enacted (in French). It stated that all legal proceedings should be in English, but recorded in Latin. Nonetheless, the use of French in legal pleadings continued into the seventeenth century in some areas of the law. In this later period, new branches, in particular of commercial law, began to develop entirely in English and remain relatively free of French-based terminology.

As the printed word became more commonplace, some writers made a deliberate effort to adopt words derived from Latin, with the aim of making their text appear more sophisticated. Some legal words taken from Latin in this way are *adjacent, frustrate, inferior, legal, quiet* and *subscribe*. Some writers also started to use a Latin word order. This led to an ornate style, deliberately used to impress rather than inform. Even today, Latin grammar is responsible for some of the ornateness and unusual word order of legal documents. It also lies behind the frequent use of *shall* constructions in legal documents.

English was adopted for different kinds of legal documents at different times. Wills began to be written in English in about 1400. Statutes were written in Latin until about 1300, in French until 1485, in English and French for a few years, and in English alone from 1489.

DIFFERENT REGISTERS OF ENGLISH

The use of different registers of English determine whether the language used sounds down-to-earth or sophisticated. The register achieved is dictated largely by whether the words used are mostly Old English or Old Norse in origin or whether they come from Latin or French.

As noted above, Latin and French have particular relevance to legal and professional language, while Old English and Old Norse are more relevant to daily speech.

To examine the truth of this statement, look at the following sentences:

Example 1

1.3.1

The merchandise contained in the consignment is of inferior quality to that anticipated by the purchaser.

The – Old English
 Merchandise – from Old French
 Contained – from Latin
 In – from Latin
 The – Old English
 Consignment – from Latin
 Is – Old English
 Of – Old English
 Inferior – from Latin
 Quality – from Latin
 To – Old English
 That – Old English
 Anticipated – from Latin
 By – Old English
 The – Old English
 Purchaser – from Old French

Sixteen words: eight Old English, six from Latin, two from Old French.

Now consider the same idea expressed in a different way:

The standard of the goods the delivery is made up of is worse than the buyer thought it would be.

The – Old English
 Standard – from Old French
 Of – Old English
 The – Old English
 Goods – Old English
 The – Old English
 Delivery – from Old French
 Is – Old English
 Made – Old English
 Up – Old English
 Of – Old English
 Is – Old English

Worse – Old English
 Than – Old English
 The – Old English
 Buyer – Old English
 Thought – Old English
 It – Old English
 Would – Old English
 Be – Old English

Twenty words: 18 from Old English, two from Old French.

We notice the following:

- The first sentence is more sophisticated than the second, both in grammatical construction and in terminology.
- The first sentence is more appropriate to the standards of legal English.
- The first sentence contains 16 words, while the second sentence contains 20.
- The first sentence consists of 50 per cent Latin or French-derived words, whereas in the second only 10 per cent of the words are Latin- or French-derived.

1.3.2 Example 2

The difference is even more marked when we speak of everyday things. Consider this sentence:

I went to the nearest shop with the dog, and met my wife on the way.

I – Old English
 Went – Old English
 To – Old English
 The – Old English
 Nearest – Old Norse
 Shop – Old French
 With – Old English
 The – Old English
 Dog – Old English
 And – Old English
 Met – Old English
 My – Old English
 Wife – Old English
 On – Old English
 The – Old English
 Way – Old English

Sixteen words: 14 Old English, one Old Norse, one Old French.

We could express the same idea as follows:

I proceeded to the closest emporium accompanied by the dog and encountered my spouse along the route.

I – Old English
 Proceeded – from Latin
 To – Old English
 The – Old English
 Closest – from Old French
 Emporium – from Greek
 Accompanied – from Old French
 By – Old English
 The – Old English
 Dog – Old English
 And – Old English
 Encountered – from Old French
 My – Old English
 Spouse – from Latin
 Along – Old English
 The – Old English
 Route – Old English

Seventeen words: ten Old English, two from Latin, four from Old French, one from Greek.

We notice the following:

- The second sentence seems more sophisticated than the first, but it is unnecessarily sophisticated and formal for the meaning it carries. It runs the risk of sounding pretentious. The first sentence appears more straightforward.
- The first sentence is predominantly Old English. The second sentence is 41 per cent Latin-, Old French- and Greek-derived. The apparent formality of the sentence comes from the use of these alternative words.

Example 3

The sentence taken below follows the wording of a typical *force majeure* clause. Looking at the linguistic breakdown, we note clearly that the words which describe legal concepts (**party, liable, failure, delay, performance, obligations**) come from French or Latin, while the basic and concrete words mainly come from Old English.

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

Neither – Old English
 Party – Old French
 Shall – Old English
 Be – Old English
 Liable – probably from French
 To – Old English
 The – Old English
 Other – Old English
 For – Old English
 Failure – Latin
 To – Old English
 Perform – Old French
 Or – Old English
 Delay – Old French
 In – from Latin
 The – Old English
 Performance – Old French
 Of – Old English
 Its – Old English
 Obligations – Latin
 Caused – Latin
 By – Old English
 Circumstances – Latin
 Beyond – Old English
 Its – Old English
 Reasonable – Old French
 Control – Old French

Twenty-eight words: 16 Old English, seven Old French, five Latin.

We could try to express the same idea relying solely on words derived from Old English and Old Norse, but would probably fail to produce anything fit for purpose. The closest I can get is:

It's not anyone's fault if they cannot do what they said they would do owing to something they could not do anything about.

We notice the following:

- In the first text, nine of the Old English words are articles or prepositions (e.g. **the, to, for, in, by**). All the important legal terms (e.g. **party, liable, obligations, reasonable, perform**) are either Old French or Latin.

- In the second text, we have 23 words, of which 22 are from Old English and Old Norse and only one (**fault**) is from Latin. But it is a painfully unsophisticated piece of drafting, which lacks the legal precision of the first text and would not work at all without the use of the word **fault**.

Conclusions

The examples above demonstrate that English is not a homogeneous language. It draws on different linguistic influences and these vary depending on the register of language being used and the purpose for which it is being used. When using informal language, the proportion of Old English words is higher than Old French and Latin words, but when using legal English this balance changes.

When using English for legal purposes we are likely to need to draw on an established pool of terminology derived from Latin and French. In fact, we cannot get by without Latin and French-derived words. Some of these words are relatively commonplace (e.g. **cause, circumstance, control**) and can be used in a wide variety of contexts, while others (e.g. **liable, party, obligation**) have more specific legal meanings.

In all cases, the underlying grammatical construction of the sentences is largely based on Old English, while the Latin- and French-derived words largely define the terminology used. Thus, Latin-based terminology is essential to legal English. To use a computing analogy, we might say that where legal English is concerned, English is the 'hardware' which determines the grammatical construction of the sentences, but the Latin-based terminology is the 'software' which provides the legal meaning.

WHAT MAKES ENGLISH DIFFICULT?

It is said of chess that the game takes a day to learn, and a lifetime to master. In similar vein, English is reputed to be an easy beginner's language in which it is nevertheless very hard to achieve native-level fluency. Why is this?

There are probably four main factors that make English difficult to master. These are:

- 1 Lack of clear rules of grammar. We have seen how English is a product of various different linguistic traditions. One of the results of this is a comparative lack of consistent grammatical rules. The way in which prepositions are used provide a clear and exasperating example of this issue.
- 2 Extensive vocabulary. There are many different ways of saying the same thing in English. This is again due to the fact that English draws upon different linguistic traditions. For example, if you wanted to say that something was legally permissible, you could use the Old Norse (Scandinavian)-derived word,

1.3.4

1.4

lawful. Alternatively, you could use the Latin-derived word, **legitimate.** Or, if you wanted a more emotive word, you could use the Old English word, **right.** To take another example, when talking about employment do you say **calling, career, profession, employment, job, work, occupation** or **vocation?**

- 3 The use of phrasal verbs in English (and legal English). For example, you **put down** a deposit, and you **enter into** a contract. These combinations must be learned individually because they involve using a verb with a preposition or adverb or both; and, as noted above, prepositions do not always follow clear grammatical rules. Some of the phrasal verbs most commonly used in legal English are set out in a glossary at the back of the book.
- 4 The use of idioms. Idioms are groups of words whose combined meaning is different from the meanings of the individual words. For example, the expression **over the moon** means 'happy'. Idioms are frequent in ordinary English – they are a distinctive element of the way native English speakers use the language. They are found less often in legal English, but exist in some legal jargon. For example, the expression **on all fours** is used to refer to the facts of a case which correspond exactly to the facts of a previous case.

1.5

WHAT MAKES LEGAL LANGUAGE DIFFICULT?

One of the main reasons why legal language is sometimes difficult to understand is that it is often very different from ordinary English. This comprises two issues:

- 1 The writing conventions are different: sentences often have apparently peculiar structures, punctuation is used insufficiently, foreign phrases are sometimes used instead of English phrases (e.g. **inter alia** instead of **among others**), unusual pronouns are employed (**the same, the aforesaid**, etc.), and unusual set phrases are to be found (**null and void, all and sundry**).
- 2 As we have seen in the examples given at 1.4 above, a large number of difficult and unfamiliar words and phrases are used. These fall into four categories, brief details of which are given below.

1.5.1

Legal terms of art

Legal terms of art are technical words and phrases that have precise and fixed legal meanings and cannot usually be replaced by other words. Some of these will be familiar to the layperson (e.g. **patent, share, royalty**). Others are generally known only to lawyers (e.g. **bailment, abatement**).

A number of frequently encountered terms of art are defined in the glossary of legal terminology at the back of this book.

Legal jargon

1.5.2

Terms of art should be differentiated from legal jargon. Legal jargon comprises words used by lawyers which are difficult for non-lawyers to understand. Jargon words range from near-slang to almost technically precise words. Well-known examples of jargon include **boilerplate clause** and **corporate veil**.

Legal jargon includes a number of archaic words no longer used in ordinary English. These include words like **annul** (to declare that something, such as a contract or marriage, is no longer legally valid) and **bequest** (to hand down as an inheritance property other than land).

It also includes certain obscure words that have highly specialised meanings and are therefore not often encountered except in legal documents. Examples include **emoluments** (a person's earnings, including salaries, fees, wages, profits and benefits in kind) and **provenance** (the origin or early history of something).

Jargon words should be replaced by plain language equivalents wherever possible.

Legal meaning may differ from the general meaning

1.5.3

There is also a small group of words that have one meaning as a legal term of art and another meaning in ordinary English. One example is the word **distress** which as a legal term of art refers to the seizure of goods as security for the performance of an obligation. In ordinary English it means anxiety, pain or exhaustion.

Here are some further examples.

Word and its legal English meaning	Word and its ordinary English meaning
<p>Consideration in legal English means an act, forbearance, or promise by one party to a contract that constitutes the price for which the promise of the other party is bought. Consideration is essential to the validity of any contract other than one made by deed.</p> <p>For example, 'The rights were transferred to Laxby Ltd in exchange for a consideration of £5 million.'</p>	<p>Consideration in ordinary English means; (1) careful thought, (2) a fact taken into account when making a decision, (3) thoughtfulness towards others.</p>
<p>Construction in legal English means interpretation. For example, 'A strict construction was placed upon the exemption clause in the contract'.</p> <p>'To construe' is the infinitive verb form of the term.</p>	<p>Construction in ordinary English means; (1) the action of constructing [e.g. a building], (2) a building or other structure, (3) the industry of erecting buildings.</p>

Find in legal English is generally used to refer to a judge's final decision in court. For example, 'the judge found for the defendant'.

Furnish in legal English is often used to mean to provide or send documents or information. For example, 'please furnish us with the title deeds'.

Hold in legal English generally refers to a decision on the evidence, issues or law in question reached by a judge in court proceedings.

For example, 'The judge held that the evidence obtained in the search of the premises could not be used against the defendant.'

Prefer in legal English refers to the formal bringing of charges by the prosecutor in a criminal case.

Redemption in legal English means the return or repossession of property offered as security on payment of a mortgage debt or charge.

Tender in legal English means an offer to supply goods or services. Normally a tender must be accepted to create a contract.

Find in ordinary English is a synonym for 'discover'.

Furnish in ordinary English generally refers to the furnishing of a room and is associated with the noun 'furniture'.

Hold in ordinary English means (1) to grasp something ('he held a stick'); (2) to have a certain position ('she held the position of human resources manager'); (3) to arrange an event ('they held a party'); (4) to keep or detain ('he was held by the police'), etc.

Prefer in ordinary English means to like one thing better than another.

Redemption in ordinary English usually means Christian salvation.

Tender in ordinary English means: (1) gentle and kind, (2) (of food) easy to cut or chew, (3) (of a part of the body) painful to the touch, (4) young and vulnerable, (5) easily damaged.

For further details on the meanings of these and other words and phrases, refer to the glossaries dealing with obscure words and phrases at the back of the book.

1.6

THE IMPORTANCE OF LEGAL ENGLISH

1.6.1 Overview

Legal English is important because law is important; it provides the means by which law, when written in English, is communicated and enforced.

Law can be divided into two types – national and international. National law provides the means by which countries govern the relationships between the state and its subjects (criminal law) and between the subjects themselves (civil law). International law provides the means by which international relations

between countries (public international law) and between individuals and organisations based in different countries (private international law) are regulated.

Countries in which English and the common law system are relevant

1.6.2

National law, of course, reflects the languages used in each individual country. In this regard, it may be noted that English is the principal language in a number of countries, including the USA, UK, Australia, New Zealand and Canada.

English is also an important second language in a number of other countries formerly under British colonial influence, such as India and Pakistan. In such countries, the common law system is also relevant to some degree, although in most the legal system used draws upon a mixture of different legal traditions, of which common law is only one.

Here is a list of the countries in which the English language and English common law are relevant.

- American Samoa
- Antigua and Barbuda
- Australia
- Bangladesh
- Barbados
- Belize
- Botswana
- Cameroon
- Canada
- Cook Islands
- Cyprus
- Dominica
- Federated States of Micronesia
- Fiji Islands
- Ghana
- Grenada
- Guyana
- Hong Kong
- India
- Ireland
- Israel
- Jamaica
- Kenya
- Kiribati
- Lesotho
- Malawi

- Malaysia
- Maldives
- Malta
- Marshall Islands
- Mauritius
- Mozambique
- Namibia
- Nauru
- New Zealand
- Nigeria
- Niue
- Pakistan
- Papua New Guinea
- Samoa
- Seychelles
- Sierra Leone
- Singapore
- Solomon Islands
- South Africa
- Sri Lanka
- Swaziland
- Tanzania
- Thailand
- Tokelau
- Tonga
- Trinidad & Tobago
- Tristan da Cunha
- Turks & Caicos
- Tuvalu
- Uganda
- UK
- USA
- Vanuatu
- Western Samoa
- Zambia
- Zimbabwe

1.6.3 English in international law

Furthermore, the practice of both branches of international law (public and private) is heavily dominated by the English language. In this regard, the importance of English as a common global language has been strongly boosted by the increase in global trade over the past decades. This has had a knock-on

effect on the importance of legal English as a specialist branch of international English usage.

Particularly given the economic power and influence of the US over the past century, it is no surprise that many common law concepts relating to contract law have found their way into the way in which the international business community approaches the composition of business contracts.

As we have seen above, legal English differs from ordinary English in a number of key respects. As with other forms of professional language (e.g. medical English), it has its own writing conventions, punctuation standards, terms of art and set phrases which at times differ markedly from ordinary English usage. To some extent these oddities are the product of centuries of usage, and this is particularly the case where certain archaic constructions such as the *here-*, *where-* and *there-* words still found in legal drafting are concerned.

The distinctiveness of legal English

1.6.4

The distinctiveness of legal English comes from the purpose for which it is used as well as from its historical linguistic roots.

To put it very simply, legal language differs from ordinary language broadly because its main purpose is not to communicate but to regulate. This is very clearly the case where legislation is concerned, but is also true of private arrangements between parties which are intended to have legal effect.

For instance, the function of a typical commercial contract is to lay down the conditions on which the contract or certain parts of the contract come into effect, to state the obligations agreed between the parties to the contract and to define what each party may or may not do in performing the contract.

In the chapters that follow, we will see how the considerations sketched above come into play in practice.



Now test your understanding of the origins and sources of Legal English online with our true/false quiz.

In English writing, the decimal point is represented by a dot (.) and commas are used to break up long numbers. Commas cannot be used to represent a decimal point.

Therefore, the number ten thousand five hundred and fifty-three and three-quarters is written like this in English:

10,553.75

while in most Continental European countries, it is written like this:

10.553,75.

When referring to sums of money, the following rules apply:

- When writing numerical sums, the currency sign goes before the sum (e.g. \$100). Note that there is no gap between the sign and the figure that follows it.
- When spelling out numbers, the name of the currency is put after the number (e.g. 'one hundred pounds sterling').

The percentage sign (%) appears after the number to which it relates, and there is no gap between the sign and the number (e.g. 95%).

5.3 CITATIONS

5.3.1 References to statutes

The names of statutes should be written without a comma between the name of the statute and the year it was enacted. For example, the 'Children Act 1995'.

The word 'the' should not form part of the name of a statute. Therefore, one should write 'the Single European Act 1986' and not 'The Single European Act 1986'.

When referring to a section of a statute write 'section' in full using a lowercase 's' (unless starting a sentence). For example, 'section 2 of the Sales of Goods Act 1979'.

When referring to a particular sub-section of a statute do not use the word 'sub-section'. Use the word 'section' followed by the relevant number and letter, for example, 'section 722(1) of the Companies Act 1985'.

5.3.2 References to cases

Case citations fulfil two functions. They name the case and also tell the reader where a report of the judgment can be found. The name of the case itself appears in italics, with the word 'versus' replaced by 'v'. The notation which appears after the name of the case indicates where the case report can be found:

For example, the citation *Donoghue v. Stevenson* [1932] AC 562 (HL) tells us that the case was decided by the UK House of Lords (HL), involved a claimant called

Donoghue and a defendant called Stevenson, and can be found in the 1932 volume of the series of the Law Reports called the 'Appeals Cases' at page 562.

Footnotes in academic texts

5.3.3

When citing works in footnotes, the following rules apply:

- The names of authors are generally given with the surname first followed by initials. For example: Rutherford, T. B., Taylor, R. D. and Footner, B. A.
- The names of individual articles are generally given in quotation marks, with only the first letter of the first word capitalised. For example: 'The future of fossil fuels'.
- The names of publications are italicised without quotation marks, followed by the year of publication and the name of the publisher. For example: *The Environmental Law Review*, Vol. 35 (Dogford University Press, 2006).
- The page number or numbers relevant to the point raised in the text are given at the end of the footnote.

Therefore a footnote citing the information given above would appear as follows: Rutherford, T. B., Taylor, R. D. and Footner, B. A., 'The future of fossil fuels', *The Environmental Law Review*, Vol. 35 (Dogford University Press, 2006) at p. 35.

Standard bibliographical abbreviations

5.3.4

Here is a table listing the standard bibliographical abbreviations which can be used when citing works in footnotes:

Full name	Abbreviation
and others (<i>et alia</i>)	et al.
Edition	edn.
Editions	edns.
Editor	ed.
Editors	eds.
in the same place (<i>ibidem</i>)	ibid.
Line	l.
Lines	ll.
Number	No.
page 35	p. 35
pages 35-43	pp. 35-43

Full name	Abbreviation
Paragraph	para.
paragraphs	paras.
revised/revision	rev.
translator/translated	trans.
Volume	Vol.

For further guidance on citing legal sources, please refer to the Oxford Standard for Citation of Legal Authorities ('OSCOLA'), which can be found at www.law.ox.ac.uk/published/oscola.

5.4

HEADINGS

When capitalising the initial letters of words in headings or titles, the following rules should be followed:

- Capitalise the first letter of every important word in the heading, such as a noun, pronoun, verb, adjective and adverb.
- Capitalise the first letter of the first and last word regardless of what part of speech they are.
- Also capitalise the first letter of any word that follows a colon or dash.
- Put articles (**the, a, an**), conjunctions (such as **and, or**) and prepositions of four or fewer letters (such as **of, by, with**) in lowercase – unless they are the first or last word of the heading or the first word following a colon or dash.

Using this system produces heading which look like this: *The Treatment of Snake and Spider Bites: A Comprehensive and Practical Manual*.

Terminology and linguistic peculiarities

6

This chapter is devoted to various types of terminology and linguistic peculiarities which are encountered from time to time when reading legal text. The main purpose of covering them here is not to recommend their usage – except in the limited circumstances in which this might be appropriate – but to present them in order that they can be recognised and interpreted by the reader.

TERMS OF ART

6.1

Legal English, in common with many other professional languages, employs a great deal of terminology that has a technical meaning and is not generally familiar to the layperson. These are sometimes referred to by lawyers as 'terms of art'.

Examples include **waiver, restraint of trade, restrictive covenant** and **promissory estoppel**. See the glossary of legal terminology for more information.



Take the multiple choice quiz online to practise terms of art.

FOREIGN TERMINOLOGY

6.2

A number of Latin and French words and phrases (such as **inter alia, mutatis mutandis, ad hoc** and **force majeure**) are in regular use in legal English. While these should not be overused, a number of them are regarded as indispensable by lawyers because they express a legal idea much more succinctly than could be achieved in English. For example, the phrase **inter alia** is sometimes rendered in English as 'including but not limited to'.

See the glossary of foreign terms used in law at the back of the book for more information.



Now go online and match the Latin terms with the correct sentences.

DOUBLETS AND TRIPLETS

6.3

There is a curious historical tendency in legal English to string together two or three words to convey what is usually a single legal concept. Examples of this include **null and void, fit and proper, perform and discharge, dispute, controversy or claim**, and **promise, agree and covenant**. These are often called 'doublets' or 'triplets'.

These should be treated with caution, since sometimes the words used mean, for practical purposes, exactly the same thing (**null and void**); and sometimes they do not quite do so (**dispute, controversy or claim**).

Modern practice is to avoid such constructions where possible and use single word equivalents instead. For example, the phrase **give, devise and bequeath** could be replaced by the single word **give** without serious loss of meaning.

However, the pace of change in legal usage is slow, and as a result it is still quite common to see certain typical doublets and triplets in certain legal documents. Some of the most common of these are listed below (with suggested equivalents in brackets).

Able and willing	(= able)
Agree and covenant	(= agree)
All and sundry	(= all)
Authorise and direct	(= authorise OR direct)
Cancelled and set aside	(= cancelled)
Custom and usage	(= custom)
Deem and consider	(= deem)
Do and perform	(= perform)
Due and owing	(= owing)
Fit and proper	(= fit)
Full and complete	(= complete)
Goods and chattels	(= goods)
Keep and maintain	(= maintain)
Known and described as	(= known as)
Legal and valid	(= valid)
Null and void	(= void)
Object and purpose	(= object OR purpose)
Order and direct	(= order)
Over and above	(= exceeding)
Part and parcel	(= part)
Perform and discharge	(= perform OR discharge)
Repair and make good	(= repair)
Sole and exclusive	(= sole OR exclusive)
Terms and conditions	(= terms OR conditions)
Touch and concern	(= concern)
Uphold and support	(= uphold)
Cancel, annul and set aside	(= cancel)
Communicate, indicate or suggest	(= communicate)
Dispute, controversy or claim	(= dispute)
Give, devise and bequeath	(= give)
Hold, possess and enjoy	(= hold)
Pay, satisfy and discharge	(= pay)
Possession, custody and control	(= possession OR custody OR control)

Promise, agree and covenant	(= promise OR agree)
Repair, uphold and maintain	(= repair OR uphold OR maintain)
Way, shape or form	(= way)

HERE-, THERE- AND WHERE- WORDS

Words like **hereof, thereof, and whereof** (and further derivatives ending in **-at, -in, -after, -before, -with, -by, -above, -on, -upon**, etc) are not often used in ordinary English. They are still sometimes used in legal English, primarily as a way of avoiding the repetition of names of things in the document – very often, the document itself.

Construction

Although at first sight these words may appear very strange indeed, there is a certain logic to their construction. Essentially, they are prepositions and pronouns rolled into one.

For example, if we take the following sentence:

The parties to this contract agree as follows . . .

We could retain the preposition **to** and replace **this contract** with **here**, then combine **here** and **to** to give the following:

The parties hereto agree as follows . . .

Here is another example:

Any dispute arising from this contract shall be resolved in arbitration.

We could retain the preposition **from** and replace **this contract** with **here** to give the following:

Any dispute arising herefrom shall be resolved in arbitration

Usage

In most cases the use of such words is strictly unnecessary or can be rendered unnecessary by the use of definitions. For example, if there is likely to be doubt about the matter **the parties** can be defined, in a definitions section, as 'the parties to this contract'. In most cases, however, the meaning of words and phrases can be gathered from the context in which they are placed. **Here-, there- and where-** words persist in modern legal usage largely as a consequence of legal tradition rather than usefulness.

Examples

Here is a non-exhaustive list of some of these words, together with examples of usage:

6.4

6.4.1

6.4.2

6.4.3

Hereafter means 'from now on or at some time in the future'. For example, 'the contract is effective hereafter'.

Hereat means (1) 'at this place or point' or (2) 'on account of or after this'. For example, 'hereat the stream divided'.

Hereby means 'by this means; as a result of this'. For example, 'the parties hereby declare'.

Herefrom means 'from this place or point'. For example, 'the goods shall be collected herefrom'.

Herein means 'in this document or matter'. For example, 'the terms referred to herein'.

Hereinabove means 'previously in this document or matter'. For example, 'the products hereinabove described'.

Hereinafter means 'later referred to in this matter or document'. For example, 'hereinafter referred to as the Company'.

Hereinbefore means 'previously in this document or matter'. For example, 'the products hereinbefore described'.

Hereof means 'of this matter or document'. For example, 'the parties hereof'.

Hereto means 'to this place or to this matter or document'. For example, 'the parties hereto'.

Heretofore means 'before now'. For example, 'the parties have had no business dealings heretofore'.

Hereunder means 'later referred to in this matter or document'. For example, 'the exemptions referred to hereunder'.

Herewith means 'with this letter or document'. For example, 'I enclose herewith the plan'.

Thereof means 'of the thing just mentioned'. For example, 'The contract was signed on 1 May 1999. The parties thereof ...'

Thereafter means 'after that time'. For example, 'The products shall be transported to The Grange. Thereafter, they shall be stored in a warehouse.'

Thereat means (1) 'at that place or (2) on account of or after that'. For example, 'thereat, payments shall cease'.

Thereby means 'by that means; as a result of that'. For example, 'the parties thereby agree'.

Therein means 'in that place, document or respect'. For example, 'The parties shall refer to the contract dated 1 May 1999. It is agreed therein that ...'

Thereinafter means 'later referred to in that matter or document'. For example, 'thereinafter, it is agreed that ...'

Thereof means 'of the thing just mentioned'. For example, 'Reference is made in paragraph 5 to the contract dated 1 May 1999. The parties thereof agreed that ...'

Thereon means 'on or following from the thing just mentioned'. For example, 'The machine rests on a wooden block. There is placed thereon a metal bracket ...'

Thereto means 'to that place or to that matter or document'. For example, 'the parties thereto'.

Therefor means 'for that'. For example, 'the equipment shall be delivered on 13 September 2003. The Company agrees to pay therefor the sum of \$150,000'.

Therefor should not be confused with 'therefore' which means 'for that reason'.

Thereupon means 'immediately or shortly after that'. For example, 'delivery shall take place on 13 September 2003. Thereupon the equipment shall be stored in the Company's warehouse'.

Whereabouts means 'the place where someone or something is'. For example, 'the Company shall be kept informed as to the whereabouts of the products'.

Whereat means 'at which'. 'The seller attempted to charge extra interest on late payment, whereat the buyer objected'.

Whereby means 'by which'. For example, 'the contract dated 1 May 1999, whereby the Company agreed to purchase the products'.

Wherefore means 'as a result of which'. For example, 'the buyer breached the contract, wherefore the seller suffered damage'.

Wherein means (1) 'in which, or (2) in which place or respect'. For example, 'the contract dated 1 May 1999, wherein it is stated that ...'

Whereof means 'of what or of which'. For example, 'the Company one of the directors whereof is a foreign national'.

Whereupon means 'immediately after which'. For example, 'The sum of \$15,000 shall be paid by the buyer to the seller on 13 September 2003, whereupon the buyer's liability to the seller shall be discharged'.



Practise using old-fashioned terms like these by filling in the gaps in the deed of partition online.

WHATSOEVER, WHERESOEVER AND HOWSOEVER

In addition to the words listed above, you may also encounter the words **whatsoever**, **wheresoever** and **howsoever**. These have extremely limited practical meaning and exist as a result of legal tradition only.

Whatsoever means 'whatever', i.e. 'no matter what' in contractual contexts.

Wheresoever means 'wherever', i.e. 'in or to whatever place' in contractual contexts.

Howsoever means 'however', i.e. 'in whatever way or to whatever extent'.

These words are occasionally used together, for example, in the following sentence:

This limitation shall apply in any situation whatsoever, wheresoever and howsoever arising.

The word **whosoever** may also be encountered. This simply means 'whoever'.

6.6 HENCE, WHENCE AND THENCE

The words **hence**, **whence** and **thence**, and the derivatives **henceforth** and **thenceforth**, are all archaic forms in ordinary English which are however still occasionally seen in legal English. Their meanings are briefly outlined below.

Hence means (1) for this reason, and (2) from now on. **Henceforth** means from this or that time on.

Whence means (1) from what place or source; (2) from which or from where; (3) to the place from which; or (4) as a consequence of which.

Thence means (1) from a place or source previously mentioned, (2) as a consequence.

Thenceforth means from that time, place or point onwards.

6.7 -ER, -OR AND -EE NAMES

Legal English contains a large number of names and titles, such as **employer** and **employee** in which the reciprocal and opposite nature of the relationship is indicated by the use of **-er/-or** and **-ee** endings. These endings derive from Latin. In the example given here, the employer is the one who employs the employee. Hence, the employee is employed by the employer.

Here are some further examples that you may have encountered.

Assignor is a party who assigns (transfers) something to another party.

Assignee is the party to whom something is assigned.

Donor is a party who donates something to another party.

Donee is the party to whom something is donated.

Interviewer is a person who is interviewing someone.

Interviewee is a person who is being interviewed by the interviewer.

Lessor is a party who grants a lease over a property. He or she is therefore the landlord.

Lessee is the party to whom a lease over a property is granted. He or she is therefore the tenant.

Mortgagor is a lender who lends money to a property owner (the mortgagee) in return for the grant by the mortgagee of a mortgage over the property as security for the loan.

Mortgagee is the property owner to whom money is loaned by the mortgagor in return for the grant of a mortgage over the property.

Offeror is a party who makes a contractual offer to another party.

Offeree is the party to whom a contractual offer is made.

Payer is a party who makes a payment to another party.

Payee is the party to whom payment is made.

Promisor is a party who makes a promise to another party.

Promisee is the party to whom a promise is made.

Representor is a party who makes a contractual representation to another party.

Representee is the party to whom a contractual representation is made.

Transferor is a party who transfers something to another party.

Transferee is the party to whom something is transferred.

Note that these words are not always used in the way the examples given above might lead one to expect. For example, a **guarantor** is someone who provides a **guarantee**. However, the person to whom a guarantee is given is known technically as the **principal debtor**, not the guarantee. The guarantee is the document by which the secondary agreement that constitutes the guarantee is made.



Now complete the table online with the appropriate -er, -or or -ee name.

6.8 UNFAMILIAR PRONOUNS

Unfamiliar pronouns represent an archaic usage in legal English, and include such formulations as **the same**, **the said**, **the aforementioned**, etc.

The use of such pronouns in legal texts is interesting since very frequently they do not replace the noun – which is the whole purpose of pronouns – but are used to supplement them. For example, **the said John Smith**.

6.9

DEEMING

The word **deem** is frequently used in legal English. In its legal sense it means to treat a thing as being something that it is not, or as possessing certain characteristics which it does not in fact possess. This meaning is employed in contracts and in legislation to create the idea that something mentioned in the contract is **deemed** (treated) to be something else.

Consequently, although it would seem absurd to a layperson, from the point of view of common law drafting practices it would be perfectly acceptable to write in a contract:

In this agreement, all references to 'dogs' shall be deemed to be references to cats.

More typically, one might find **deemed** being used in this sort of clause:

Notice shall be deemed served 72 hours after having been posted.

The purpose of such a clause is to indicate that for the purposes of the contract the parties agree to regard a notice as having been served once 72 hours has passed after the notice was posted.

In ordinary language, **deem** is simply an old-fashioned term meaning to consider in a specified way. It is a synonym for think or judge.

6.10

ABBREVIATIONS

There are two kinds of abbreviations. The first kind is the acronym. An acronym is made from the initial letters or parts of a phrase or compound terms. It is usually referred to as a single word. For example, **radar** = radio detection and ranging.

The second kind is an initialism, which is made from the initial letters or parts of a phrase or compound term. These are usually referred to letter by letter rather than as a single word, e.g. **USA** = United States of America.

In general, those abbreviations which refer to an entity, such as **UK, USA, NATO** should be capitalised without dots between the letters.

Those abbreviations which are used as grammatical shorthand, such as **e.g.** and **i.e.**, are usually written in lowercase letters with dots between the letters.

There are also certain terms which are referred to in speech as a single word but which are capitalised in writing. For example, **NATO** = North Atlantic Treaty Organization.

Here is a list of some common abbreviations and their usages.

AGM = Annual General Meeting

a.k.a. = also known as ('John Smith a.k.a. King of Style')

a.m. = ante meridiem ('before noon')

AOB = any other business (often used in meeting agendas)

B2B = business to business

B2C = business to consumer

cc = carbon copy (used to show that a copy of a letter has also been sent to another person or persons).

CEO = chief executive officer

CGT = capital gains tax

c.f. = compare(d), with

c.i.f. = cost, insurance, freight contract

c.o.d. = cash on delivery

EC = European Communities

e.g. = exempli gratia

enc = enclosed

etc. = et cetera

EU = European Union

FBI = Federal Bureau of Investigation

f.o.b. = free on board contract

GATT = General Agreement on Trade and Tariffs

GBH = grievous bodily harm

GM = genetically modified

GmbH = German business vehicle equivalent to the common law limited company (Ltd.)

GMT = Greenwich mean time

GNP = gross national product

HR = Human Resources

ibid = ibidem ('in the same source')

ID = identification

i.e. = id est ('that is to say')

Inc = incorporated (USA)

- IOU = I owe you
 IPO = Initial Public Offering (of shares of a company)
 IT = Information Technology
 Ltd = limited company (UK)
 MD = managing director
 MEP = member of the European Parliament
 NAFTA = North American Free Trade Agreement
 NATO = North Atlantic Treaty Organization
 NB = nota bene ('note well')
 p.a. = per annum
 PA = personal assistant
 PC = (1) personal computer; (2) politically correct; (3) police constable
 p.c. = per cent
 plc = public limited company (UK)
 p.m. = post meridiem ('afternoon')
 p.p. = per procuracionem (used when signing a letter on someone else's behalf)
 PO = post office
 PPS = post postscript
 PR = public relations
 PS = postscript
 PTO = please turn over
 QC = Queen's Counsel
 QED = quod erat demonstrandum ('thus I prove')
 TLC = tender loving care
 UK = United Kingdom
 UN = United Nations
 USA = United States of America
 VAT = value added tax
 WIP = work in progress



Test your knowledge of the meaning of popular abbreviations online.

Elements of good style: clarity, consistency, effectiveness

7

7.1

GENERAL CONSIDERATIONS

Style in legal writing is to some extent a matter of personal preference or company policy. The only unbreakable rules of style in legal documents and letters are that your writing should be as easy to understand as possible and that it should avoid offensive terms.

In addition to drafting letters, emails and other communications, most lawyers also spend a considerable amount of time creating legal documents for a variety of purposes. These may either be intended for use in court proceedings or for use in non-contentious business such as sales of land, goods or services.

Typical documents prepared by lawyers for use in court include statements of claim, witness statements, divorce petitions, petitions for bankruptcy and affidavits.

Typical documents prepared by lawyers for non-contentious purposes include transfers of land, contracts for sale of goods, articles of association for companies, licences and options.

The style of writing used in legal documents differs from the style used in legal correspondence. This is because the purpose of legal documents is different from that of legal correspondence.

Most legal documents used in court proceedings either act as evidence in support or defence of some claim or make allegations and arguments either in support or in defence of a claim. Most legal documents used in non-contentious business generally record an agreement between parties. Such documents are intended primarily to regulate all aspects of the agreement reached between the parties. They lay down the obligations each party must carry out and specify the consequences of failure. They are intended to be legally effective in court. Consequently, the language used in legal documents displays certain typical features which often make them difficult to read. These include:

- Use of terms of art. These are words which have a precise and defined legal meaning. They may not be familiar to the layperson, but cannot be replaced by other words.
- Use of defined terms. Many legal documents contain a definitions section in which the parties agree that certain words used repetitively throughout the document shall have an agreed meaning.

- Use of obscure legal phrasing. This can be confusing to the layperson, either simply because the language is unfamiliar, or because the words used have a different meaning in ordinary English.
- Repeated use of the words **shall** and **must** to express obligations, and **may** to express discretions (where the parties are entitled to do something but are not obliged to do it), as well as a number of other words and phrases of similar meaning.

These issues are dealt with in more detail in Chapter 10.

The writing used in legal correspondence usually has a different purpose. It is generally intended to provide information and advice, to put forward proposals, and to provide instructions to third parties.

However, all legal writing should aim at achieving three goals – clarity, consistency and effectiveness. The notes set out below show how these goals can be achieved in practice.

7.2 CLARITY

Writing of all kinds should be as easy to understand as possible. The key elements of clarity are:

- Clear thinking. Clarity of writing usually follows clarity of thought.
- Saying what you want to say as simply as possible.
- Saying it in such a way that the people you are writing for will understand it – consider the needs of the reader.
- Keep it as short as possible.

7.2.1 Planning

Start by considering the overall purpose of your document or letter. Before starting to draft a document you need to be sure that you have a clear idea of what the document is supposed to achieve and whether there are any problems that need to be overcome to allow it to be achieved. Ask yourself the following questions:

- Have you taken your client's full instructions?
- Do you have all the relevant background information?
- What is your client's main goal or concern?
- What are the main facts which provide the backbone of the document?

- What is the applicable law and how does it affect the drafting?
- Are there any good alternatives for the client? Would it be more effective or cheaper to approach the client's goal in a different way? For example, if it seems that drafting the necessary documentation in English will be too difficult, consider the following options:
 - draft the document in your native language and have it translated and verified;
 - engage the services of a native English-speaking lawyer as a consultant in respect of the case;
 - draft the document as best as you can in English and have a legally-qualified English native speaker check and correct the documents.
- Are there any useful **precedents** (generic legal documents on which specific legal documents can be based) which could be used for the draft?

More detailed notes on drafting documents are contained in Chapter 11.

More detailed notes on correspondence are contained in Chapter 12.

Words

Whether writing documents or correspondence, the following guidelines are relevant.

Use the words that convey your meaning

Use the words that convey your meaning, and nothing more. Never use words simply because they look impressive and you want to try them out, or because you like the sound of them. There is a tendency in legal writing to use unnecessarily obscure words rather than their ordinary equivalents, perhaps out of a feeling that the obscure words are somehow more impressive.

Use ordinary English words where possible

Do not use a foreign phrase or jargon if you can think of an ordinary English word that means the same thing. For example, do not write **modus operandi** when you can write **method**, nor **de rigueur** when you can write **obligatory**.

In legal English, this is more difficult to achieve in practice than it is in ordinary English, because much of the terminology used (**inter alia**, **ab initio**, **force majeure**, **mutatis mutandis**) comes from French and Latin. These often act as shorthand for a longer English phrase. For example, **inter alia** comes out in English as 'including but not limited to'. Your choice of vocabulary – between English or French and Latin – will be influenced by who you are writing to.

7.2.2

7.2.2.1

7.2.2.2

7.2.2.3 Avoid negative structures

Avoid negative structures where possible. There is a tendency in much business and legal writing to try to soften the impact of what is being said by using **not un-** (or not *im-, il-, in-*, etc) formations such as:

- not unreasonable
- not impossible
- not unjustifiable
- not unthinkable
- not negligible

Such structures make what you are saying less clear and definite. They become very hard to follow when more than one is used within a single sentence, e.g.:

It is not impossible that this matter will have a not inconsiderable bearing upon our decision.

Which, translated into ordinary English, reads:

It is possible that this matter will have a considerable bearing upon our decision.

7.2.3 Sentences

In addition to the notes on sentence structure set out in Chapter 4 above, bear in mind the following points.

7.2.3.1 Keep sentences short where possible

Use words economically to form your sentences. This does not necessarily mean that every sentence should be short (which might create a displeasing staccato effect) but that all unnecessary words should be removed; this will make your writing much more vigorous.

In particular, pay attention to phrases that introduce new pieces of information or argument. These can often be reduced to single words. Here are some examples:

Commonly used phrase	Single word equivalent
be a significant factor in	affect, influence
be in a position to	can, may
be inclined to the view that	think (that)
by dint of	because
give rise to	cause
have a detrimental effect upon	harm
have a tendency to	tend