LEGAL ENGLISH – CHANGING PERSPECTIVE

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Maja Stanojević

College of Applied Vocational Studies, Vranje, Serbia
E-mail: majastanojevic30@gmail.com

Abstract. *This paper is concerned with legal English and its potential difficulties that impede comprehension. The language characteristics of the written medium of legal English are going to be dealt with. The accounts given by some of the authors who have realized the necessity for language reform are presented. Thus, it is a summary of different views regarding the use of plain language.*

The paper shows how the general linguistic features of Legal English, defined in accordance with the principles of plain English writing, are changing. The complexity of Legal English lies in the fact that it is imbued with legalisms, i.e., archaic technical terms, and the overuse of synonymous, redundant and obscure expressions, as well as long and complex sentences written in the passive voice.

The issue is how to simplify and clarify written legal documents, so that ordinary citizens, as legal entities with little or no knowledge of legal matters, can understand them. However, the results of these efforts still haven't reached all branches of law or types of legal documents, so there is still plenty of room for improvement. Therefore, the focus of the paper would be to give the stylistic markers of the general linguistic features that could encourage lawyers worldwide to write in Plain English.

Key Words: *Legal English, Plain English writing style, language features.*

1. INTRODUCTION

Legal English is altering like any other register, but in this case calls for swift changes are coming not only from citizens and consumers, but also from legal professionals. Renowned lawyers have begun to understand that clients' needs are of utmost importance in the legal profession, so they stressed the urge for language reform in an attempt to make this obscure and complex language variety plain and easy to understand. In other words, they endeavored to clarify and simplify this register, so that ordinary people could be familiar with the rights and obligations that affected them, as they were entitled to.

Plain English movement was born as a result. The movement aimed to simplify legal English, prevent it from being the privilege of a small group of people who were either legal

experts or legal professionals, and at the same time enable average people to come to grips with the task of comprehending legal texts, which occasionally seemed insurmountable.

However, in order to perceive the need for such an action to be taken, one must get a closer look at the linguistic background as well as linguistic features of legal English, which is an analysis belonging to the field of stylistics. The analysis is going to be performed on the written medium of legal English. It is the language of legal textbooks and legal science, as well as the language in which laws, statutes, sentences, appeals, contracts, agreements and other legal documents are written.

2. LEGAL ENGLISH AND LEGAL PROFESSION

As spoken and written media of legal English consist of several genres, legal English depends on the situation in which it is used. The spoken language varies, from the cross-examination of a witness by an attorney, over procedural instructions delivered by judges, to lawyers' interpersonal communication. Legal texts, on the other hand, consist of case law, law reports and prescriptive legal texts. They comprise international treaties, constitutions, orders, regulations, insurance policies, wills and contracts. Moreover, the spoken language of lawyers is creative, especially when a lawyer addresses the jury, and written legal English is conservative and formal.

The term *legalese* is used to denote the graphic medium of legal English, which lay-persons usually regard as baffling. Another term for the written language of lawyers is *legalspeak*. Both terms are used with virtually the same meaning, but the slight difference is that *legalspeak* may have a negative connotation in certain contexts.

Legal professionals always used language in accordance with the special needs of their profession. Since all legal documents are being interpreted, the ultimate objective of the profession requires the existence of legal documents in which clarity and precision would be visible. However, the efforts to achieve this are by no means easy. The endeavor to create unambiguous sentences which would leave no room for doubt had a reverse effect. As a matter of fact, legal drafters have created an artificial language that is incomprehensible for ordinary people. The majority of people are not legal experts, so they are forced to ask for clarification. As they are concerned with law every day, their ignorance became an important issue. Firstly, legal language is imbued with difficult terms, including ancient phrases, obscure words and terms derived from Latin and French, which, along with native terms used to describe the same legal concept, create a large number of synonyms. Secondly, long and complex sentences, which are usually written in the passive voice, often comprise several clauses and contain a lot of repetitive words. In addition, due to insufficient punctuation and unusual noun and prepositional phrases, a language full of verbosity is produced. The absurdity is that all these features undermine clarity.

Furthermore, as legal English has been developing over several centuries, it changes at a slow pace. Modern legal drafting underwent minor changes which primarily affected certain types of forms and documents. Thus, legal English is still preserved in its form and content because some types of laws and legal documents firmly resist changes.

Getting acquainted with Common Law may help realize the potential difficulties, as well as wide-spread calls for changes. In addition, understanding of its history sheds light on foreign influences which shaped the language of the law.

3. LEGAL ENGLISH AND COMMON LAW

In general, the language of the law is the product of historical events and the specific nature of the legal system itself. There are two major legal systems in the world: Common Law and Civil Law. Common law, which is also known as case law or precedent law, is a legal system originated in England which was adopted by former members of the British Empire including the United States, which adopted not only this legal system but also the language of this system.

Common Law is a system based on judicial precedents, i.e., judicial decisions made by individual judges. The judges' decisions, once they are made, become obligatory in similar court cases. The judicial precedents arise from the belief that the judicial decision is binding for all courts when they make decisions on the same types of disputes in the future, for they should rule and deliver judgments in the same manner.

Civil Law is the legal system of the countries of the European Continent. It is the heritage of Roman law and traces its roots back to Justinian Code. Unlike Common law, it is based on codification and laws which are passed by the national parliaments.

The language of Common Law was formed under the impact of specific historical circumstances. It was strongly influenced by Latin and French, which used to be languages of the law. Common law was initially unwritten. It was passed down over generations orally through legal practitioners and supplemented by the king's edicts in England. The body of written rules and customs existing during the Anglo-Saxon period was named Anglo-Saxon law, which the Anglo-Saxons wrote down in their mother tongue. Afterwards Latin became the language of the law. The Christianization of Anglo-Saxon England in 597 led to its massive use. Latin became not only the language of the Church but also the language of education and science, as well as the language of court decisions. But the crucial event was the Norman conquest in 1066. The Normans, as a new ruling class, spoke French, which had a decisive role in the development of the English legal language. French became the language of both law and courts in the late thirteenth century. Acts of Parliament were written in Norman French. Legal studies and court reports were written in the same language in the sixteenth and the first half of the seventeenth century. Finally, the decision of the Parliament ended the use of Latin and French in legal proceedings in 1731. However, their influence remained.

4. LEGAL ENGLISH AND PLAIN ENGLISH MOVEMENT

Plain English movement, whose goal is to introduce clearer language, has been gaining momentum in recent decades. The idea was that drafting in plain English would root out miscomprehension.

The development of Plain English movement was marked by several events. Plain English Campaign started in 19th century. In 1979 Cutts and Maher launched a Plain English Campaign in England, which expanded enormously (Cutts and Maher 1984). Cutts left the Plain English Campaign and formed the Plain English Commission in 1994 (Butt and Castle 2001: 61-63). Plain English campaign and Plain English movement led to Plain English legislation, which was realized in several countries. For example, it was applied by the companies which are registering securities in the US. New York enacted America's first general plain language law in 1978 and American legislative writing

manuals advocated the use of plain language principles. England, on the other hand, has its own plain language movement. The Lord Chancellor's Department issued a document in 1998 compelling the omission of Latin and French tags and the use of native terms instead. In 1999 the English court system implemented new rules of civil procedure abolishing some legal terms for modern equivalents (Tiersma 2000: 220-227). Outside of the US, Australia is considered to be the leader in the movement (Tiersma 2000: 221). Legislative texts following the principles of Plain language were enacted in several countries including South Africa, Australia and Canada (Williams 2004: 111).

The guidelines and articles written in favour of the Plain English movement are useful because they offer recommendations for the improvement of legal writing and drafting in accordance with this movement.

An initiator of Plain English writing style was Mellinkoff (1963) whose book *The Language of the Law* paved the way for others to support the Plain English writing style. Mellinkoff's analysis, in which the language of the law was characterized by pomposity and wordiness, was later elaborated on many occasions, and its significance lied in the fact that it served as an initial reproach of Legal English style.

Thus, initial research of legal language was carried out by Mellinkoff (1963), Crystal and Davy (1969) and Gustafsson (1975). They were concerned with common features of legal English, with the emphasis on style, syntax and terminology. This type of approach was followed by Hiltunen (1990). Subsequently Bhatia (1993) and Trosborg (1997) included discourse analysis and genre analysis of legal texts, focusing on lexico-grammatical and rhetorical features (Giannoni and Frade 2010: 8). Plain English movement exponents (Garner 1986, 2002; Rylance 1994; Tiersma 2000; Butt and Castle 2001; Haigh 2004; Schneidereit 2004; Williams 2004), not only depicted the linguistic features of Legal English, but also gave concrete proposals regarding Plain English writing style, as they were seriously alarmed by the state of affairs in legal writing. Some of these accounts are going to be presented here.

The consequences were inevitable. Changes have affected legal acts in the area of insurance, commerce and banking, like leases, credits or loan contracts, where clients are average citizens. Some companies rewrote their policies in everyday English and made their contract short and clear. (Vystrčilova 2000: 92).

Generally, Plain English movement affected only specific transactions regulating the rights and obligations of consumers, which should naturally be stated plainly. It is not affecting statutes or certain branches of law, like the criminal code, although there is a great need for it to be available for ordinary citizens.

Examples of terms which ought to be replaced by more familiar forms are presented by means of contrastive pairs, e.g.:
Pleading – statement of case
Plaintiff – claimant
Minor/infant – child
Writ – claim form
In camera hearing – in private hearing
Ex parte – without notice
Inter partes – with notices
Subpoena – witness summons

In addition, a lot of books have been written on how to improve legal writing and drafting in terms of comprehension. Although they have targeted stylistic markers of general features in Legal English which should be altered and simplified, they depend to a large degree on the legal document at issue, as well as the audience that is concerned with it.

5. GENERAL FEATURES OF WRITTEN LEGAL ENGLISH IN THE LIGHT OF PLAIN ENGLISH MOVEMENT

The complexity of general features of written legal English gave rise to the demands for change. Accounts given by the chosen authors can be summarized in a bid to demonstrate whether the progress made in reforming legal English is significant or sporadic.

5.1. Lexical features

The changing perspective of legal English vocabulary comprises archaic, technical and foreign words and phrases, as well as binomials. However, some of them are unnecessary. It is argued that the choice of words plays an important part in the ultimate goal of carrying out legal writing in Plain English. The avoidance of complex, technical, foreign, redundant, rare, or jargon words and expressions is considered desirable.

However, some authors go beyond this division. Garner (2002: 29) considers "several types of words in legal prose: fancy words, vague words, euphemisms, timid phrases, empty dogmatisms, and neologisms."

a) Archaisms

Archaic words are being used less frequently than other terms, so they became rather obscure in the course of time. The examples include adverb *hereinafter*, verb *darraign*, noun *surrejoinder*, and adjective *aforesaid*. (Williams 2004: 112).

Archaic terms belonging to formal style which are used by lawyers are called legalisms and lawyerisms, such as *pursuant to (under, in accordance with), prior to (before), subsequent to (after), vel non (or not, or the lack of it)*. (Garner 1986: 663)

The native expressions beginning with *here* and *there* (*therein, hereunder, thereof, thereto*) are regarded as rare and obscure in everyday English. There are plenty of suggestions to delete some of the given terms *(hereby, hereunder)* or replace them with more familiar forms *(hereinafter /below, herein /in this Agreement, hereinbefore/ above, hereto/ to this Agreement)*, which are taking their hold. (Rylance 1994: 183). The same goes for prepositions: *abutting/next to, anterior to/before, prior to/before*. (Garner 2002: 191-192)

Claims that archaisms can easily be simplified are justified by the fact that an average person is usually ignorant of their meaning. Such is the case with circumlocutions which characterize legal writing and can be seen in prepositional phrases (*in the event that* instead of *if*). Some of them can be simplified as well: *adequate number of /enough, at the time when/when, for the duration of/during, during such time as/while, the reason being that/because.* (Garner 2002: 191-192)

b)Technical terms

Technical terms or terms of art are pure legal terms. *Tort* is a typical example. Some of them are familiar to laypersons (*patent, share, royalty*), while others are generally only known to lawyers (*bailment, abatement*). (Haigh 2004: xvi). In the latter case the problem of miscomprehension of legalisms emerged.

Apart from pure legal terms, there are also common words with uncommon meanings, i.e., polysemous lexemes which have specific meaning within legal English, e.g., *attachment, action, consideration, execute, party*. These are the words legal professionals use as technical terms for their purposes in specific contexts. They are idiosyncratic because they have precise definitions in the domain of legal science.

However, a special attention must be paid when legal meaning differs from the general meaning (*consideration, construction, redemption, tender*), or when everyday words are used in apparently peculiar contexts (*furnish, prefer, hold*). (Haigh 2004: xvii)

Nevertheless, terms of art are different from legal jargon. Words that are not precise enough belong to the legal jargon, which is a specialised language that enables a professional group to communicate quickly and efficiently. In this way internal communication of lawyers is improved, but individual meanings of terms become obscure for non-lawyers, who face the difficult task of deciphering them.

Legal jargon has a number of specialized terms that lawyers invented to ease their communication, varying from slang or near-slang (*horse case*) to almost technically precise terms (*res ipsa loquitur*), but the legal jargon has not reached the level of professional, technical terms. (Garner 1986: 476). In addition, legal jargon has idioms. *On all fours* is an idiom used for the facts of the case that are corresponding to the previous case. Other examples of the jargon are *boilerplate clause, corporate veil, bequest, emoluments*. (Haigh 2004: xvi)

Mellinkoff (1963) has claimed that legal English contains argot. But what is described by Mellinkoff as argot is what today would be called slang: the language of trade, occupation or profession. Slang is another kind of informal sub-language which is present in law despite the fact that formal and stilted utterances are predominant. Lawyers use shortening (clippings), i.e., short terms within their slang, including *depo (deposition), hypo (hypothetical example), punies (punitive damages), in pro per (in propria persona), rogs (interrogatories)*. While the above mentioned examples are informal, other terms, such as *pro tem (pro tempore)*, can be found in the formal language of lawyers. (Tiersma 2000: 137)

c) Foreign words

There is a considerable amount of foreign words and phrases in Legal English, which are mainly of Latin and French origin. Some of them look distinctively strange. Foreign words derived from Latin or French underwent either the process of transliteration or the direct borrowing process.

The examples of native terms in legal English from the Anglo-Saxon period are: *bequeath, goods, guilt, manslaughter, murder, oath, right, sheriff, steal, swear, theft, thief, ward, witness, writ*. However, foreign words became overwhelming. Latin introduced the practice of using the following expressions: *versus, pro se, in propria persona, caveat emptor, obiter dictum, Amicus Curiae,* which sometimes have a specific meaning. Words of

Latin origin are *negligence, adjacent, frustrating, inferior, legal, quit, subscribe*. The French influence reflects not only in the words of French origin (*appeal, attorney, claim, complaint, counsel, court, damage, default, defendant, demurrer, evidence, indictment, judge, jury, justice, party, plaintiff, plea, sentence, sue, verdict*), but also in the use of adjectives standing behind the nouns which they modify in phrases such as, *attorney general, court martial, fee simple absolute, letters testamentary, malice aforethought, solicitor general*. There are derivatives with the 'ee' suffix denoting a person as a recipient of action, which are also of French origin (lessee (=the person leased to), asylee, condemnee, detainee, expellee, tippee. (Crystal and Davy 1969:123-215)

The question is if this multitude of expressions could be avoided, and if one should use *inter alia*, for instance, when *among other things* is equally appropriate.

d) Synonymy

Due to French and Latin influence, English abounds in synonyms. At least three lexical sources gave rise to a great number of synonyms existing side-by side. (The Anglo-Saxon word *bid* versus the Norman French word *offer*). (Vystrčilova 2000: 91)

What complicates legal drafting is the existence of a number of synonyms referring to the same legal concept, like in the following examples produced by Haigh (2004: 40):

Assign – transfer
Breach – violation
Clause – provision – paragraph – article
Contract – agreement
Default – failure
Lessee – tenant
Promise – assurance   – undertaking
Void – invalid – ineffective

The widely held opinion is that one term should be chosen. However, consistency is hard to achieve, because a legal document must be effective and legal drafters are primarily concentrated on attaining this.

A great number of synonyms prompted the emergence of idioms such as:
Able and willing,
Dispute, controversy or claim

The accumulation of synonyms within the idioms in cases where one word would be enough is also a prominent feature in legal English. Most common types of synonym pairs and synonym strings, which are also named doublets and triplets, are binomials. Binomials have two lexical units (nouns, adjectives, adverbs or prepositions), which are usually joined by a conjunction *and* (*act and deed, custom and usage, leave and license, legal and valid, object and purpose, over and above, pains and penalties*). As in legal English they consist of two words with the same conceptual meaning, one of them is redundant and does little to the meaning itself.

The parallel use of two terms with the same conceptual meaning, usually taken from different languages, reflects the uncertainty of the legislator as to whether they have the same meaning or not. In such cases it was the safest to use both. So there was a tendency to put each alternative in the idiom. It resulted in a large number of doublings (*breaking*

and entering, goods and chattels, made and signed, will and testament), in which the English word was complemented with its French or Latin equivalent.

However, as there are examples of legal idioms with the combination of two or more items coming from the same lexical source (*hold and keep, aid and comfort*), the motives for their creation could also lie in excessive rhetoric.

Numerous suggestions are aimed at putting an end to this stylistic tradition and utilizing one word instead of redundant legal binomials (Garner 1986, 2002; Rylance 1994; Haigh 2004). These recommendations suggest that the function of synonym pairs was to stress wordiness and empty rhetoric. Thus, the same meaning can be communicated through a single word:

> Able and willing (=able)
> Agree and covenant (=agree)
> All and sundry (=all)
> Authorise and direct (=authorise)
> Cancel, annual and set aside (=cancel)

In addition to vocabulary, the Anglo-Saxon influence in modern Legal English reflects in the use of alliteration (*rest, residue and remainder, any and all, each and every).* Alliteration is the phenomenon of two or three words in a phrase beginning with the same sound or the repetition of a particular sound in the first syllables of a group of words. A phrase with alliteration which has survived to this day is *to have and to hold.* However, the function of alliteration was not only a poetic one. It served as a tool for remembering words more easily in a society imbued with illiteracy.

e) Repetition of words

The absence of anaphoric reference in legal English prompted the repetition of words. Anaphoric reference is being avoided despite the fact that it is used in other registers by means of personal pronouns, demonstrative adjectives and demonstrative pronouns. The nouns are being repeated instead of the pronouns; for it is not always clear which word in the text a certain pronoun refers to, which legal writing does not tolerate. Therefore, the repetition is used in order to avoid ambiguity.

5.2. Syntactic features

a) Sentence length

The length and complexity of sentences are the most obvious syntactic features. Plain English movement disputed the structural complexity in legal writing and explored the opportunities for the shortening of sentences.

Specific sentence structure is caused by the fact that in the past every part of a legal document used to consist of a single sentence. Sentences included a great deal of information, repetitiveness, long noun phrases with plenty of modification, peculiar word order, prepositional phrases, as well as coordinate and subordinate clauses.

As a result, lawyers are advised to measure the sentence length, or cut out superfluous words and sentences, or even delete redundant words and phrases (Rylance 1994: 18). Only words that support the arguments given in the text add value to the sentence.

However, when extra words are needed to maintain clarity, and when long sentences arise as a result, a possible solution is to utilize tabulated sentences (Rylance 1994: 18).

b) *Nominalization*

Nouns derived from verbs are often used instead of verbs, such as *to give consideration* instead of *to consider*, *to be in opposition* rather than *to oppose*, *to be in contravention* instead of *to contravene, to be in agreement* instead of *to agree*.

Nominalization is a morphological process that is to be avoided because it makes the text long and non-dynamic (Haigh 2004: 44). However, it is hard to eradicate nominalization, as lawyers do not say *to arbitrate*, but *to go on arbitration*, because the arbitration is a legally defined procedure and should be considered as such.

c) *Impersonal style*

"Dependent on which party they represent, lawyers make frequent use of features that reduce the agent in his identity while emphasizing the action – a matter of strategy which has the impeding of comprehension as a consequence." (Schneidereit 2004: 3)

The use of passive voice and peculiar use of pronouns are characteristics of a highly impersonal style of writing (Williams 2004: 114).

Passive voice is inherent in legal language, but it is also overused in all types of legal documents. Legal drafters instinctively stick to it, so both laws and court decisions generally contain a verb in the passive, especially when obligation or condition is imposed. They tend to create the impression that such rules are infallible as they occur without the influence of the human agent. The legal drafters are encouraged to modify the texts by transforming passive voice into active, because the passive is justified only when the doer of the action is unknown or intentionally left out. The same goes for law.

The omission of personal pronouns is another feature. Omission of the first person singular is motivated by the efforts of judges to achieve maximum objectivity. The omission of the second person singular is the characteristic of the written will. In this case, the first person singular is used instead.

The second person singular is also omitted when there aren't direct orders and warnings or it is considered that legal rules should be impersonal. Thus, the use of the third person singular and plural is predominant. *Everybody, everyone, every person* is used when a provision applies to all, and *no one, nobody* is used in prohibitions. The intent is to create the impression that law is impartial, but such generalizations are vague, and their efficiency is often disputable.

6. Conclusion

One cannot conclude that lawyers use the language primarily to make it obscure to people who are not knowledgeable about law. The obscurity of legal English has grown out of legal tradition as a by-product of traditionally entrenched concepts.

Despite the efforts to reform, changes in legal language are not considered to be radical. Although legal writing in plain English is promoted, plenty of issues still remain to be improved, and this goal is attainable.

The general linguistic features of Legal English are changing. Legal English is undoubtedly better, but it is a common conclusion that those changes are going at a very slow pace, and it is still quite common to see typical binomials in legal documents.

Plain English movement primarily affects legal drafters, as they are encouraged and advised to shorten and simplify their sentences. Taking into consideration the intentions of a client, a document that a lawyer prepares, as well as government forms, ought to be accurate, complete, clear, precise, concise and simple.

The elaborated proposals to reform legal language highlight the demands to create modern legal writing. Whether legal English can be simplified or not is highly disputable because all of its difficulties are deeply rooted in tradition. Therefore, these conditions are not easily met, and tradition often prevails. However, it is also true that traditional features in legal texts can cause great confusion.

Owing to its obscurity, legal language has strengthened the role of lawyers and given them the power they long for. That is one of the reasons why it exercises some resistance to changes. Although some changes have been made, endeavours to bridge the gap between everyday English and legal language are not scarce, as legal English remains to be a highly specialized sub-language.

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ENGLESKI JEZIK PRAVNE STRUKE – PERSPEKTIVA KOJA SE MENJA

Maja Stanojević

U radu je predstavljen engleski jezik pravne stuke i potencijalne teškoće prisutne u njemu koje otežavaju razumevanje. Obrađivaće se jezičke karakteristike pisanog medijuma engleskog jezika pravne stuke. Predstavljeni su prikazi pojedinih autora koji su shvatili nužnost reforme ovog jezika. Stoga on predstavlja pregled različitih shvatanja vezanih za upotrebu jednostavnog jezika.

Rad prikazuje kako se opšte jezičke karakteristike engleskog jezika pravne struke, definisane u skladu sa principima koji se tiču pisanja jednostavnim jezikom, menjaju. Složenost engleskog jezika pravne struke leži u činjenici da je prožet legalizmima, tj. zastarelim stručnim terminima, i preteranom upotrebom sinonimnih, suvišnih i nejasnih izraza, kao i dugim i složenim pasivnim rečenicama.

Problem je kako pojednostaviti i razjasniti pisane pravne dokumente tako da ih obični građani, kao pravna lica koja poseduju malo ili nimalo znanja o pravnim pitanjima, mogu razumeti. Međutim, rezultati ovih nastojanja još uvek nisu obuhvatili sve grane prava i sve vrste pravnih dokumenata, tako da ima još dosta prostora za napredak. Zbog toga je rad usredsređen na predočavanje onih stilističkih markera opštih lingvističkih odlika koji mogu podstaći pravnike širom sveta da pišu jednostavnim engleskim jezikom.

Ključne reči: *engleski jezik pravne struke, stil pisanja jednostavnim engleskim jezikom, jezičke odlike.*