

# LEGAL ENGLISH: A SPECIAL VARIETY OF ENGLISH

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## ***Abstract***

English language as the language of colonization assumed different status especially after independence in Nigeria. It is for instance, the official language in many Anglo-phone. African countries; it is also the language of Administration, Education and the Judiciary to mention a few. Various environments where English is used paved way for the varieties of English all over the world. Each variety of English has its distinct and unique nature which makes it different from other varieties or Englishes'. Legal variety of English is one of those distinctive varieties. To interpret legal variety, one needs to be versed in the legalese. Since everybody can never be versed in the legalese, this study provides an ample chance for any reader that may have or has any business to transact in law.

## ***Introduction***

Legal profession is no doubt, a product of its history. That legal English remains problematic and incomprehensible to a layman would be as a result of its history. Although, this claim seems not obvious to some people, it is thereby assumed that the complexity and incomprehensibility of legal English to a layman is caused by the monopolistic use of language by legal practitioners.

Historically, legal English is said to have mainly originated from Anglo-Saxon, Latin, French and Norse. Peter Tiersma who is a Professor of Law and a degree holder in Linguistics documented the historical development of legal English in two of his research works: *Legal language and The Nature of Legal language* published in 1999.

Peter Tiesma (1999) documented that legal English generated its words from Anglo-Saxon mercenaries, Latin-Speaking missionaries, Scandinavian raiders and Norman invaders, all of who left their marks not only on England but on the language of its law. The Anglo-Saxon words include "bequeath", "goods", "guilt", "manslaughter", "murder", "oath", "right", the "riff", "steal", "swear", "theft", "ward", "witness" and "writ".

The Christian missionaries landed in 597 and introduced Latin. Its impact attracted the advent of the legal word. 'clerk' Mainly, 'Christianity was introduced to reinforce writing which later had a

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tremendous impact on law, although, Latin was complex to the most population.

Furthermore, French also had its own impacts on law. It was these that led to the coined phrase 'Law French'. Every effort to abolish its spread proved abortive. Eventually 'Law French' disappeared and possible reasons for its retention were seen. These include claims that it allowed for more precise communication, especially with its extensive technical vocabulary; the danger of having laymen read legal texts without expert guidance, the conservatism of the profession; and a possible desire by lawyers to justify their fees or charges and to monopolise the provision of legal services.

Law French left some impact like the addition of initial 'e' to words like 'squire' creating 'esquire'; adjective that follows nouns (Attorney General), simplification of the French verb system so that all verbs eventually ended in 'er', as in 'demurrer' or 'waiver', and a large amount of technical vocabulary, including many of the most basic words in our legal system.

As a result of the stages which the field of law has passed through, it thus remains problematic to a layman, law students and highly challenging to the legal practitioners. Law, being a professional discipline establishes a boundary between itself and some other areas of specialization via its intrinsic and fundamental features. Similar to this, it suggests that lawyers engage in discriminatory practices which limit other professionals from understanding the legal gimmicks.

More importantly the capability of a qualified legal practitioner is measured by his ability to manipulate language so as to claim proficiency in dealing with cases. Via these legal terms, lawyers seem to possess some linguistic sense of belonging. Words are tools of lawyers and judges. The accuracy and effective use of language in putting across a case might lead to an application of an inapplicable principle of law to persuade or manipulate the judge in favouring the defendant.

Tiersma (1999) also explained that legal language could be best described with the relatively new term *sublanguage*. He further explained that a *sublanguage* processes its own specialised grammar, limited subject matter, contains lexical, syntactic and semantic restrictions, and allows 'deviant' rules of grammar that are not acceptable in standard language. As regards its history, legal language could be regarded as a

complex reflection of the past linguistic habits that have developed over many centuries and which lawyers have learnt to use quite strategically.

Schame (2006) described legal profession as a profession of words with reference to David Mellinkof (1963). The legal profession is recognised all over the world as “Honourable Profession”, and this makes the members to be referred to as ‘learned’ due to their ability to organize words that are beyond the comprehension of a layman. To substantiate this claim, Tiersma (1999) cited a sentence constructed by a lawyer:

I Helen Hoover, of the Town of Goleta, country of Santa Babara and State of California, do hereby make published and declare this as and for my last Will and Testament, hereby revoking all wills and codicils theretofore by me made.

This could be simply stated as: I declare that this is my will and revoke any previous wills.

Peter Tiersma wrote about the suggestion of some critics in *The Nature of Legal Language*; some critics suggested that the long retention of legalese is not just due to the profession’s general conservatism, but comes from what might be called a ‘conspiracy of gobbledygook’. However, David Mellinkoff (1963) later wrote a classic critique of the language of law inside which he criticised the suggestion of these critics as follows: ‘*what better way of preserving a professional monopoly than by locking your trade secrets in the safe of an unknown tongue?*’

On the other hand, different opinions had been gathered from like-minded individuals who opined that lawyers discriminate via the use of some legal register or terminologies. They thus claim that monopolistic nature of law is characterized by the attitude of those involved that is, the lawyers.

Furthermore, another set of people opined that the lawyers must not be held responsible for the seemingly monopolistic nature of the field of law because law possesses what should be regarded as ‘intrinsic values’. Obviously the two opinions are highly controversial.

### ***Characteristics of Legal English***

Legal English being a special language as identified by Nablings (1981) possesses its own fundamental features. These characteristics differentiate it from ordinary English. Despite the fact that Legal English

characteristics are identified independently by different writers, there still exists harmony among the identified features. Peter Tiersma who is a professor of law and a degree holder in Linguistics identified some noticeable characteristics of legal language that stand as obstacles to laymen's comprehension.

Thus, Tiersma (1999) stated that 'legal language' is often full of wordiness, redundancy, and special vocabulary, and it often contains lengthy, complex, and unusual sentence structures'. In view of this, he affirms that there exists a strong relationship between legal language and legalese. In justifying his claim, Tiersma referred to legalese as 'an English term first used in 1914 for legal writing that was designed to be difficult for laymen to read and understand. The implication being that this abstruseness is deliberate for excluding the legally untrained and to justify high fees'. Moreover, Tiersma explained that legalese is characterized by long sentences, many modifying clauses, complex vocabulary, high attraction and insensitivity to the laymen's need to understand the legal gist. Consequently, one may infer conclude that the seemingly monopolistic nature of the field of law is characterized by the attitude of those involved (legal practitioners). And perhaps that is why lawyers are accused of monopolizing the legal practice.

Mellinkoff who was a law Professor identified some legal language feature with reference to the experiments conducted by two psycholinguists, Robert and Veda Charrow. The experiment was about two jurors who were saddled with listening to a tape recording of jury instructions. The jurors were asked to paraphrase what they heard to the best of their abilities. Disappointingly, almost half of the information was missing from some of the paraphrases. Mellinkoff (1963) therefore asked what exactly was responsible for the misinterpretation and incomprehensibility. Later, he concluded that the difficulty was due, not much to vocabulary items, but mostly to particular grammatical constructions, such as the occurrence of multiple negatives and excessive use of passive sentences and of nominalizations.

Richard C Wydick (1998) who was also a Professor of Law and author of a popular manual condemns that abstruse style is so typical of many legal practitioners. While doing this, he did not separate himself from the practice, hence he repeatedly used the personal pronoun: 'We', apparently including himself:

We lawyers do not write plain English. We use eight words to say what could be said in two. We use arcane phrase to express common place ideas, seeking to be autious, we become verbose seeking to be precise, we become redundant. Our sentences twist on, phrase within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic four understanding characteristics, it is wordy, unclear, pompous and dull.

However, the critic referred to by Richard was none other than Mellinkoff who was an early advocate for simplicity and clarity in legal expressions.

Also, Tiersma (1999) identified 'archaic legal English lexicon' as one of the characteristics of legal English. He explained that archaic legal terms are typical of legal English. Peter stated that "The touch of archaism is not in vain, it is done on purpose. There are reasons behind this tendency towards words'. He thus backed his point by saying that legal language often strives, towards great formality; its nature gravitates towards archaic language.

Similarly Sabra (1995) identified archaic use of 'shall' as a common feature of legal language. Tiersma explained that the modal word 'shall' poses a level of difficulty in both interpretation of clauses containing it and in the translation of such clauses. Traditionally, the modal 'shall', in legal texts carries an obligation or a duty as opposed to its common function; expression of futurity.

Sabira (1995) furthermore identified redundancy as another quite noticeable feature of legal language. He explained that in legal writing, draftsmen avoid the use of anaphoric devices or referential pronouns, such as the personal pronouns (he, she, it, etc). For example: "The lessee shall pay to the lessor at his office", Here, it would be confusing whether the intended office is the one of lessee or that of the lessor.

At this juncture, citing of constitutional book is pertinent and necessary as it will substantiate the claim that legal language contains redundancy (unnecessary repetitions), complex sentence structures etc. A typical example of sentence structure where redundancy can be found is that of section 121; subsection 1 of 1999 constitution of the Federal Republic of Nigeria:

The Governor shall cause to be prepared and laid before the House of Assembly at any time before commencement of revenues and expenditure of the state for the next following year.

Redundancies are words, phrases, clauses or sentences which if removed from a construction cannot affect ideas conveyed or change the intended meaning. Thus, as in the case of the sentence adopted from the 1999 constitution of the Federal Republic of Nigeria “next” and ‘following’ could be categorized as redundancy in the sense that either of the two words can be used independently without affecting the intended meaning.

As regards the construction of lengthy sentences, 1999 constitution of the Federal Republic of Nigeria is a good specimen. Part two: Concurrent legislature list; section 4 of the 1999 constitution is adapted to substantiate the claim that legal sentences are often lengthy and verbose’:

The National Assembly may make laws for the Federation or any part thereof with respect to such antiquities and monuments or located, be designed by the National Assembly as National Antiquities or Monuments but nothing in this paragraph shall preclude a House of Assembly from making laws for the state or part therefore with respect to antiquities and monument not so designated in accordance with foregoing provisions.

Apparently, this sentence construction is lengthy and as such, it is unusual of non-legal construction. However, the sentence is not only lengthy but also seems to have neglected the necessity of a layman’s comprehension. Thus, for a layman to understand such construction, there will be a need to seek expert’s interpretation.

#### ***Differences between Legal English and Ordinary English***

Legal English is quite different from ordinary English because of its intrinsic values. The way some words are used in legal English is quite different from the way they are used in ordinary English. As regards ordinary English, when “do is used in a declarative sentence, it is normally to add emphasis, this is not its function in legal language. For example, ‘people of California do enact... in this sentence, it marks that something is performed. The fuction of ‘Do’. Hence, the use of ‘Do’ is

anachronistic and unusual in this usage, it should be avoided; 'hereby' is easily understandable and meaningful. "The people of California hereby enact simply means that the legislature engages in the act of acting.

Furthermore, 'shall' is also used in unusual sense in legal language. It is commonly said that legal use of 'shall' does not indicate the future, but the imposition of obligation. But the word shall appear to function in promises or declarations. In reality, 'shall' seems to mark that the phrase in which it occurs is a part of the content or proposition of a performative phrase. Thus, in a contract, the parties perform the act of promising by signing the contract; the content of their promising is indicated by 'shall'. However, 'shall' has the function of indicating that the document in which it occurs is legal, which may help explain its perverseness in legal language. Generally, the meaning of 'shall' can be communicated more comprehensibly by 'must' or 'will' or 'is'.

### ***The Semantics of Legal Register***

In terms of meaning, legal interpretation differs in several ways from ordinary meaning. In ordinary English, what really matters is what a speaker means by an utterance (speaker's meaning), rather than what a word or an utterance means (word or sentence meaning). With statutory interpretation, courts now often look to the intent of the speaker (legislature intent). The reason for the legal interpretation to place less emphasis on the speaker's meaning is the problem of collective authorship, as well as the fact that one or more of the authors may be dead or otherwise unavailable.

A common criticism of the legal vocabulary is that it is full of antiquated features. These include archaic morphology such as 'further affiant sayeth not', the legal use of words and phrases such as: 'same', 'said', 'aforesaid', 'such and to wit', use of subjunctive especially in the passive such as 'be it known' and words like 'herewith', 'hereunder', 'whereto' although the expressions should be preserved because they are somehow more precise. In addition, concerning conservatism, the legal language is strictly conservative just like the religious language whose adherents are reluctant to change or even translate for fear of changing the meaning. The fact that courts have authoritatively interpreted a term does inspire caution. Furthermore, using proven language over and over can be economical. A less palatable reason is that because archaic language is hard for the most people to understand, lawyers sometimes

have a financial incentive to use it to justify high fees. Yet, when dealing with new legal concepts from which there is no existing word, lawyers do not hesitate to create novel terminology. As a result of these conflicting motivations and goals, legal language is an odd mixture of archaic with very innovative features.

### ***Linguistic Description of the Legal Register***

According to Danet (1985) and Hiltunen (1990), the stylistic or linguistic features typical of legal language are as follows:

1. ***Technical Terms***: Every profession and occupation has its own special or technical vocabulary or 'terms of art' e.g. 'warranty' 'deed', 'criminal' proceedings', 'grantee', 'devisee', etc.
2. ***Common Terms with Uncommon Meanings***: The legal variety of English uses familiar words but different meanings from that of general meanings e.g. the word 'assignment' does not suggest 'task or duty' in legal world but means transference of a right, interest or title. Similarly, the use of 'shall' refers to an obligation or duty not to the future.
3. ***Archaic Expressions***: This is typical of legal documents; most of legal documents contain archaic words originated from old English and may have originally been introduced as ambiguity resolving elements or means of abbreviation. Furthermore, these archaic words add to the degree of formality of legal documents.
4. ***Doublets or Words Pairs***: According to Danet (1985) many of the doublets or words pairs root in Norman Period. They are 'fixed' in the mind as frozen expressions, typically irreversible. Examples are 'last will and testament', 'give and bequeath', 'aid and abet', 'lease and desist', rules and regulations, etc.
5. ***Formality***: Almost every expression in legal English has a high degree of formality. For example the preference of 'shall' and 'will', positions of people and institutions involved have capitalized initial letters. For instance, Grantor', 'Devise', 'Contractor', "Attorney". Even some of the documents are capitalized. Examples are: 'Warranty Deed', 'Last will' and 'Testament" etc.
6. ***Frequent Use of 'Any'***: This word is considered redundant the way it is used in legal discourse. Examples are as follows: 'any child or children', 'any encumbrances', any other assets, etc. However, Hiltunen (1990) concludes that adjectives in legal English are fairly



scarce because they are often imprecise and vague. Nouns tend to be abstract rather than concrete because they frequently do not refer to physical objects, and verbs are selected from a fairly small number of lexical sets.

### ***The Syntactic Features of Legal Discourse***

Danet (1985) claims that 'syntactic features are probably more distinctive of legal English than are lexical ones and certainly account for more of the difficulties of layperson in comprehending it. Consequently, he identifies eleven features:

1. Nominalization: This feature is considered by many linguists; Urbanova (1986) happens to be one of them. Examples are: "make such provision for the payment" instead of "provide for the payment", or "give time for the payments of any debts to pay" etc.
2. Passives: Passives are characteristics of formal documents. Sometimes an active verb may be suitable in a sentence but the use of the passive makes it more formal. On the other hand, it is sometimes impossible to use the active voice because there is no specific agent in a sentence, thus, the passive is the only choice.
3. Whiz deletion: It suggests the omission of the wh-forms plus some forms of the verbs 'to be', e.g... herein (which is) contain or implied.
4. Prepositional Phrase: This is typical of legal discourse. In legal documents, prepositional phrases often string out one after another. Consequently, Danet (1985) claims that 'prepositional phrases are often misplaced'.
5. Sentence Length and Complexity: This particular aspect is typical of legal English. According to Gustafsson (1975) an average sentence contains 55 words (twice as many as in scientific English for example).
6. Unique Determiners: The distinct representatives are those of 'such' and 'said': they are used in a specific way only for the legal discourse. They mean this, the, 'the particular, the one that is being concerned and no other. For example, the said property.
7. Binomial Expressions, Parallel Structures: According to Danet (1985) the register is striking for its use of elaborate parallel structures' and that 'binomial expressions are a special case of parallelism'. Gutafession (1975) describes these items as 'sequence

of words belonging to the same form class, which are semantically related. Furthermore, Gustafsson (1975) claims that binomial expressions are part of the sentence. Some instances of binomials are; 'liable and responsible', 'engage and participate', 'goods and materials', 'generally and specifically, etc.

### ***Prosodic Features***

1. *Assonance, Alliteration and Phonemic Contrast*: Expressions like 'rules and regulations' 'contain or constitute' have alliteration /r/ and then /k/.
2. *Rhyme, Rhythm and Meter*: However, some instances of rhyme and rhythm may be found in binomial expressions e.g. 'whatsoever', and 'whosoever', employ and 'rely', in whole or in part, benefits from or interests under, etc.
3. *Discoursal Level Features*: This focuses on cohesion. Many scholars identify that legal register is low in cohesive devices because of the lack of clear sentence boundaries which is a phenomenon rather problematic in legal English. However, cohesion in legal documents is distinctive (Akinbode, 2006, 2008).
  - (a) *Anaphora*: The scarce use of reference and common repetition often makes legal texts 'heavy and monotonous'.
  - (b) *Conjunctions*: Words such as hereinafter, aforesaid often contribute to cohesion.
  - (c) *Substitution*: This is generally considered rare in legal English, though some instances can be found.
  - (d) *Lexical Cohesion: According to Danet (1985)*: There is apparently repetition due to the avoidance of pronouns in legal sentences.

### ***Conclusion***

Legal register and discourse are a special variety of English which is used to transact any legal business and used by legal luminaries who are versed in the language. Legal register is restrictive and anybody who is legally untrained would definitely find it difficult to interpret it. However, it should be learnt as a special variety of English especially by Language and Linguistics Students.

### ***Recommendations***

1. Legal register should be taught in the secondary schools through the vocabulary Development lessons as well as lexis and structures exercises.

2. Legal register should be taught at the tertiary level of education through the Use of English and Communication Skills programmes.
3. Linguistics and Language lecturers should teach legal register as English for special/specific purpose at the tertiary level of education.
4. Legal luminaries are also advised to use simple expressions that would allow them to be understood by laymen.

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