

CHARACTERISTICS AND FEATURES OF LEGAL ENGLISH VOCABULARY

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În articol sunt abordate caracteristicile, trăsăturile lingvistice ale englezei juridice și dificultățile potențiale care împiedică înțelegerea acesteia. Abordarea se axează pe modul în care caracteristicile generale lingvistice ale englezei juridice, definite în conformitate cu principiile englezei generale, au tendința de a se schimba. Complexitatea englezei juridice constă în faptul că aceasta este saturată de legalisme ca: termeni tehnici arhaici, folosirea frecventă a sinonimelor, a expresiilor neclare și de prisos, precum și a frazelor lungi și complexe scrise la diateza pasivă. Fiind un limbaj instrumental, limbajul englezei juridice este diferit de cel al englezei generale. El are propriile caracteristici în gramatică, vocabular și în logică. Scopul nostru este de a arăta tendința de a simplifica atât engleza juridică scrisă, cât și cea verbală, astfel încât cetățenii de rând care au slabe cunoștințe în domeniu să înțeleagă sensul acesteia.

Legal English is one of legal languages. It is the language of the law of England, America, and some other countries whose official language is English. Language is the medium of communication, and of course laws are expressed by language. To know the features and the stylistic characteristics of Legal English is of great significance to learners of Legal English including those who are fond of it, or workers of legal profession, such as lawyers, judges and translators. And of course, knowing the stylistic features will help them learn much more conveniently and efficiently. According to linguists, stylistics is not to list the kinds of styles, but to observe and describe the language features of main styles, that is, the morphological, lexical, syntactic, and textual features. Concerning the morpho-lexical features of legal English we can say that the range of vocabulary is very wide. Large proportion of words are highly formal. There are many archaic words, borrowed words, technical terms. Collocations are those in which synonyms or near-synonyms are combined in binomials. The syntactic features of legal English: adverbial elements are very often coordinated; legal English is highly nominal; the insertion of premodifying elements is restrained; verbal groups used in legal language are notable for the high proportion of non-finites. Long sentence, repetition of lexical items, complete major sentences, complex sentences are another syntactic features that can be met in a legal text. The textual features of legal English are: fewer patterns of spacing (especially old legal English), fewer punctuation, clear logical sequence and initial capitalization.

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. According to Mellinkoff -the initiator of “Plain English” writing style, the language of the law is characterized by pomposity and wordiness. But it should be understandable for each ordinary citizen. [10, 25] As a result of some researches, Mellinkoff noticed that “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. He listed some examples of terms which ought to be replaced by more familiar forms by means of contrastive pairs:

e.g.:

Pleading – *statement of case*

Minor/infant – *child*

In camera hearing – *in private hearing*

Inter partes – *with notices*

Plaintiff – *claimant*

Writ – *claim form*

Ex parte – *without notice*

Subpoena – *witness summons* [10, p.34]

We can distinguish two types of legal English: spoken or written media legal English and legal texts. 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" [5, p.24].

There are some general features specific for Written Legal English. The complexity of these general features of written legal English gave rise to the demands for change. They are:

➤ **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" [9, p.142].

Some authors go beyond this division. For example, Garner considers several types of words in legal prose: fancy words, vague words, euphemisms, timid phrases, empty dogmatisms, and neologisms [6, p.73].

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 the adverb: *hereinafter*, verb: *darraign*, noun: *surrejoinder*, and adjective: *aforesaid*.

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).

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. The same goes for prepositions: *abutting/next to*, *anterior to/before*, *prior to/before*" [9, p.149].

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). In the latter case the problem of miscomprehension of legalisms emerged" [9, p.150].

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*" [11, p.36]. 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*). 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. Other examples of the jargon are: *boilerplate clause, corporate veil, bequest, emoluments*" [11, p.52].

Mellinkoff 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 [10, p.102].

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*). 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" [8, p.97].

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. 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: *Assign – transfer; Breach – violation; Clause – provision – paragraph – article; Contract – agreement; Default – failure; Lessee – tenant; Promise – assurance – undertaking; Void – invalid – ineffective* [8, p.32].

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" [5, p.13].

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" [5, p.15].

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" [7, p.168].

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.

➤ **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. Only words that support the arguments given in the text add value to the sentence.

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. 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” [1, p.20].

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. The use of passive voice and peculiar use of pronouns are characteristics of a highly impersonal style of writing. 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.

In conclusion we can say 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” [3, p.53].

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.

Legal English or legalese is characterized by its density and obscurity. The special features present in most of the legal texts make impossible for ordinary people to understand the content of contracts, testaments and sentences. That is why in the recent years a movement called “Plain English Campaign” has appeared defending the view that legal texts should be made understandable to everybody.

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