



Legal Drafting in English

*The big picture on  
the small print*



EVERSHEDS

# Legal Drafting in English



**William Caxton**

*(c1415/22-c1492)*, Introduced the first printing press to England, credited with standardising the English language

This publication forms part of Eversheds' pioneering set of publications aimed at helping our clients with international legal issues in areas such as compliance, contracts and class actions. Designs have been inspired by great pioneers from the past.

## Introduction

This Eversheds guide to legal drafting in English is not a dictionary, grammar book or academic tome. Neither is it a comprehensive look at aspects of English in a legal context. Instead, it is a pioneering attempt to provide some practical assistance to busy lawyers around the world whose native language is not English but who, in the course of their daily work, need to read, write, negotiate and converse in "legal English".

One of the first problems we faced was the fact that there are many equally valid versions of "legal English", including UK and US English. These are not only different from each other but are evolving all the time, adding new words with new connotations, such as cybersquatting, mobbing, pretexting and wikispamming. They are also based upon very diverse legal systems: compare and contrast California, Scotland, New South Wales or India, for example.

Historically, English was not an ideal choice to be an international legal language. For example, modern legal "English" is mainly a mixture of Old French, plus some Latin, Greek, German, Dutch, Old Norse and a variety of other languages. Many of these have contributed "legal English" terms which have no recognizable connection with modern law in the UK or the USA (or anywhere else where English is the language of law) but which survive to confuse even native English speakers.

Modern day English only started to take shape about 400 years ago, at about the same time that certain modern legal concepts were also starting to appear. Thus, for example, many terms in modern legal English are based upon ancient French legal terms that have changed both their legal and their linguistic meaning.

This kind of historical evolution is not unique to "legal English". There are also quite a few French terms used in modern legal Dutch, Russian and Turkish. Similarly, the Spanish term for the Internet sign "@" (aroba) is actually based upon an old Arabic word which has nothing to do with electronics.

However, in comparing "legal English" to many other legal languages it seems quite clear that English has by far the most terms that, for historical reasons, are mismatched and misleading. An enormous number of words and phrases used in legal English have multiple and misleading meanings which seem designed to confuse non-English speakers.

Even native speakers can have problems in relation to terms such as the UK "company secretary" and the US "corporate secretary". These are two very different things and neither should be confused with "secretary" (a person who types letters and does other tasks in a business office) and "Secretary" (a government official in many countries).

The difficulties of “legal English” are made even worse, due to the fact that it is always used alongside non-legal English, which has many special problems all of its own. Both are very fast moving targets that are not easy to pin down or to simplify. The Oxford English Dictionary (which is 20 very large volumes long) adds about 4,000 new English words every year. No book the size of this one could possibly contain all the rules and suggestions needed to work securely with international legal English, but we hope that this pocket-sized selection and miscellany will nevertheless provide you with many useful insights as to some of the most commonly encountered.

We’ll be highlighting common problems and things to watch out for, as well as examining some error patterns that will help you to sense when you may need to use a word or phrase with extra caution or should simply seek an alternative one.

We have set up the information in a variety of user-friendly ways, including some charts and a detailed index. The pages include some “false friends” you need to watch out for, “worst mistakes” to avoid and some meanings which are better “found in translation”. There is also a Bibliography, suggesting some reference materials suitable for more detailed study.

In putting this guide together we have, once again, relied on the skill, general knowledge and research abilities of our consultant Geoffrey Morson. I’d like to thank him for his hard work and total dedication to the project and would advise you to take the chance to talk to him if you ever meet him at a conference or seminar. If encyclopedias could talk then they would be called Geoffrey.

Please do share your comments and suggestions with us about this guide. We always try to be pioneering at Eversheds and this is a prototype for providing our clients and contacts with knowledge that has real worth and helps them on an everyday level.

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## English speakers worldwide

- 600 million use English as mother tongue
- 800 million more learn and use English as second language
- 330 million use English in India alone
- In China, 175 million people were studying English in 2005 and 20 million more business users of English are emerging each year
- 70 countries use English as an official language in government, courts, media and education
- English is the working language in international industry sectors such as finance, petroleum, aviation and the Internet

### A note about English spelling

The “bad” news is that English, in its many local and international varieties, has an enormous number of irregular and unpredictable ways to spell many words. The “good” news is that English speakers are not very fussy about such issues and that few words used in legal English, even if spelled “improperly”, will lead to real error or misunderstanding.

**Drafting tip:** When using bilingual dictionaries, remember that most cannot be relied upon to take into account all the different meanings of English words. For example, in British English, the noun a “remit” is often used, quite informally, to describe someone’s area of responsibility or to describe a specific task that has been given to them. This meaning is rare in US English. It is, however, encountered in Australian English, Indian English and New Zealand English.

Let’s say that your native language is Portuguese. When you first encounter a phrase such as “that is outside my remit”, a good British-English to Portuguese dictionary may tell you that this means “isto está fora da minha alçada”. Thus, in your mind, the noun “alçada” = the noun “remit”. Few bilingual dictionaries will also alert you to the fact that “remit” here is a British usage, not a US one. However, in legal Portuguese, “alçada” also means “jurisdiction”

and “competence”. If you then use the word “remit” generally to mean “jurisdiction” or “competence”, people in the US and in the UK will probably be confused.

There are many such examples, involving all languages. Always try to use the English word that is the most neutral and the most universally accurate and understood. When in doubt, look up the same word in a British and in a US dictionary and compare the meanings and examples given, by both. Also, go back and use your British-English to Portuguese dictionary, the other way around. Look under “alçada”, in the Portuguese part: if the English translations for the word do not include “remit” that is a good sign that “remit” may have a very special and limited meaning.

Another easy thing to do is to check in a good mono-lingual thesaurus (please see Bibliography).

## Some drafting advice, from past masters

靡祥誤寀晟祥佼，晟祥佼寀岍祥儉。

*“If your words are not correct, your business will not be successful.”*

K’ung Ch’iu [Confucius] (Chinese philosopher, 551-479 BCE). Analects.

**Ich kann das Wort so hoch unmöglich schätzen . . .  
Geschrieben steht: Im Anfang war der Sinn.**

*[I cannot rate the Word in first place . . . in the beginning is Meaning]*

Johann Wolfgang von Goethe (1749-1832), Faust Part I, lines 1,120-1,122.

**Nostre parler a ses foiblesses et ses deffaults,  
comme tout le reste. La plus part des occasions  
des troubles du monde sont Grammariens.**

*[Our speech has its own weakness and defects, like the rest of us. Most of the difficulties in this world arise from disputes about “grammar” (the meaning of words).]*

Michel de Montaigne (1533-1592), Essays, Book II, Chapter 12 (Apology for Raymond Sebond).

### Two different approaches to drafting

*KISS*. Keep It Simple, Stupid (American saying)

When I use a word, Humpty Dumpty said, in a rather scornful tone, it means just what I choose it to mean.

Lewis Carroll (British author, 1832-1898), in *Through the Looking-Glass* (1872).

### Legal English that is internationally used and understood:

antitrust, balanced scorecard, B2B (business to business), cash flow, CEO, class actions, copyright, corporate governance, director, dotcom, due diligence, dumping, EBITDA, financing, franchising, GAAP, golden share, hacking, hedge fund, IAS, Internet, insider trading, IPO, joint venture, leader, leasing, leveraged buy-out (LBO), LIBOR, lobbying, management, marketing, M&A, MBO, money laundering, option, outsourcing, peer-to-peer (P2P), raider, self-dealing, SIX SIGMA, spam, whistleblower, WWW.

Some words and phrases in legal English “catch on” so well that they become part of local standard vocabulary. For example, in German the English term “corporate governance” is used even in the official German-language text of important rules and laws such as the German “Deutscher Corporate Governance Kodex” and the Austrian “Österreichischer Corporate Governance Kodex”. It is also used in the Polish

“Dobre Praktyki w Spółkach Publicznych 2005 opracowane przez Komitet Dobrych Praktyk Forum – Corporate Governance” and the Dutch “De Nederlandse corporate governance code Beginselen van deugdelijk ondernemingsbestuur en best practice bepalingen”, which also uses the English term “best practice”.

In other languages, an easily recognizable local translation of “corporate governance” is used: εταιρική Διακυβέρνηση (Greek) and Guvernanta Corporativă (Romanian). The terms used in Azerbaijani and Estonian are not so easily recognizable (“Korporativ İdarəetmə” and “üldjuhtimine”) but they are merely a word for word translation of “corporate” + “governance”. Two different terms are used to translate these into Chinese (“公司治理” or “公司管制”). Four such terms are used in Thai: “การกำกับดูแลกิจการ”, “บรรษัทภิบาล”, “ธรรมาภิบาล” or “ธรรมาภิบาลภาคเอกชน”.

## Some colorful legal phrases:

Beige Book, blackacre, black letter law, blacklist, blackmail, blackout period, Blue Book, blue-pencilling, blueback, blue chip, blue ribbon jury, Blue Sky laws, brownfield, under color of law, colorable title, golden rule, golden share, golden handshake, golden parachute, greed card, greenmail, greenwashing, Gretna Green marriage, green belt, Green Paper, green shoe, evergreen contract, evergreen prospectus, greenhouse gas emissions trading, Gray's inn, pink ceiling, Purple Book (UK Pensions Regulator), Purple Book (FIDIC), Red Book of the Exchequer, red herring, redline version, red tape, white collar crime, White Paper, white knight, white shoe, yellow journalism, yellow dog contract

## Legal drafting for new legal concepts

New ideas with legal significance come from all over the world but they often find an internationally recognized formulation in English that is then either translated into local languages or simply becomes part of the local vocabulary, in English. In many cases, it takes time to determine which term will become the most used. An example of such a fairly new term is "data breach security notification". Here is how the term is currently translated in various European languages.

**Czech:** oznámení o porušení bezpečnosti dat

**German:** Offenlegung von Sicherheitsverletzungen (persönliche Daten)

**Finnish:** "ilmoitus tietoturvaloukkauksesta" or "tietoturvaloukkausta koskeva ilmoitus"

**French:** notification de violation de sécurité (données personnelles)

**Italian:** notificazione di violazione di sicurezza (dati personali)

**Maltese:** Notifika ta` ksur tas-sigurtà tad-*data*

**Norwegian:** "avviksmelding" or "varsel om uautorisert utlevering av personopplysninger"

**Slovakian:** oznámenie o porušení zákona pri zabezpečovaní ochrany údajov

**Slovenian:** varnostno obvestilo o vdoru v varovane osebne podatke

**Spanish:** notificación de violaciones de la seguridad (datos personales)

### Try to keep your English legal vocabulary up with the times

If Samuel Johnson (1709-1784) were alive today, how would he have defined the Internet? Certainly not as a “global reticulation, decussated electronically with interactive interstices among the cyber-spatial intersections”.

*“Be not the first by whom the new are tried, nor yet the last to lay the old aside”.*

Alexander Pope, British poet (1688-1744).

Legal English tends to be “lazy”. Thus, “data breach security notification” may even become further watered down, for example, to “data breach notice” or “data security notice”.

### A note about Scottish legal English

A fairly large number of terms are still found in Scotland that would be generally unfamiliar elsewhere, in legal English. Some examples include: backhand rent, bairns’ part, brieve, brocard, causal system of transfer, consignation, diligence on the dependence, fishing diligence, fitted account, irritancy, name and arms clause, perquisition, poinding the ground, pollicitation, privative jurisdiction, Sewell motion, tacit relocation, taxative plan, tocher band, violent profits, vitious intromitter, warrandice.

## Bluffer’s guide

### Some Australian legal terms

*Greenwood duty.* An obligation owed to a bank by a customer to notify the bank of any suspected forged cheques.

*Owelty.* Sum of money payable as part of a partition of land among co-owners.

*Westpac letters.* Confidential communications between Westpac Bank and its lawyers, in a famous Australian legal case.

### Some Canadian legal terms

*Cut-off lands.* Lands that were formerly appropriated by a Province for the use and benefit of Indians.

*Faint pleader.* A collusive, false or fraudulent method of pleading in litigation.

*Perverse verdict.* A verdict in which a jury refuses to follow the Judge’s direction on a point of law.

*Systems action.* Litigation in which a person or group with a general public interest attacks the conduct of a governmental authority on the grounds that it acted unconstitutionally or unlawfully.

### Some Indian legal terms

*Commodate.* The loan of a specific chattel, to be used free of charge, under certain conditions.

*Cowle.* A type of long term lease of real property.

*Escaped assessment.* An item of revenue that has not been subjected to taxation.

### Some Irish legal terms

*Fennelly Order.* An interlocutory order directing an employer to continue to pay an employee's salary and restraining the employer from dismissing the employee.

*Isaac Wunder Order.* An order which requires a litigant, who is found to have initiated proceedings which are an abuse of process against another party, to apply to the court for its prior consent before that litigant can issue fresh proceedings against that same party.

*O'Byrne letter.* The letter which is normally sent by a plaintiff in an action where there are two or more defendants and he wishes to have evidence to ground a subsequent application to the court, for an order that the unsuccessful defendant pay the costs of a successful defendant.

### Some UK legal terms

*Calderbank letter.* An offer by a party to settle claims asserted against it, made without prejudice except as to the award of litigation costs.

*Foss v. Harbottle Rule.* This rule states that where a company has been harmed, the company itself (not the shareholders) is the proper claimant to pursue a legal remedy in court.

*Leapfrog appeal.* An appeal directly from the High Court to the House of Lords, regarding a matter of general public importance.

*Newton hearing.* If a defendant has pleaded guilty to the offence but there is a factual dispute between the prosecution and defense versions of events that would affect the appropriate sentence in the case, the Court must hear evidence on the disputed points, at a so-called Newton hearing.

*Purple Book.* A joint study by the UK Pensions Regulator and the Pension Protection Fund which focuses on the risks faced by defined benefit (DB) pension schemes, predominantly in the private sector.

*Quistclose trust.* A specific type of trust which arises in relation to sums which are advanced by way of credit to a person for that person's own use and for a specific purpose.

*Scott Schedule.* A schedule of items in dispute between the parties, usually divided into columns, describing the contentions of each party item by item, with an additional column for use by the Court.

### Some US legal terms

*Deep Rock doctrine.* A legal doctrine by which a remedy may be available for improper conduct in connection with a loan to a corporation by a controlling shareholder.

*Diversity of citizenship.* Doctrine by which US federal courts have original jurisdiction over cases and controversies among citizens of different US states.

*Erie doctrine.* Legal rule under which, when a US federal court has diversity of citizenship jurisdiction, it must apply the substantive law of the US state where the federal court is located.

*Free writing prospectus.* A written communication, including an electronic communication, that constitutes an offer by a seasoned issuer, outside the statutory prospectus.

*Markman hearing.* A procedure under US patent law whereby the Court interprets the claim before the question of infringement is submitted to the jury as finder of fact.

*Mary Carter Agreement.* An agreement by some defendants to settle with the plaintiff and agree to receive a percentage of any recovery against the non-settling defendants.

*Zubulake standards.* Rules by which "missing" electronic messages and other e-documents may be assumed to have negative impact upon the legal position of the party who has a duty to retain and produce them in the litigation.

### Some international English maritime legal terms

*Cabotage.* The carrying of goods or passengers from one port or place to another in the same country.

*Cesser clause.* Clause in a voyage charterparty which stipulates that the charterer's liability ceases once the cargo has been shipped.

*Clause paramount.* Clause inserted in a contract of carriage to indicate that the Hague Rules or Hague-Visby Rules are applicable to the bills of lading issued.

*Demurrage.* A fee paid by the charterer to the shipowner when the ship is detained beyond the specified date agreed in the charter party. The opposite of "despatch".

*Laytime.* Time allowed by the shipowner to the voyage charterer to carry out the cargo loading and/or discharging operations, of an "arrived ship". Variations include: average laytime, reversible laytime, non-reversible laytime, all purposes laytime.

*New Jason clause.* Protective clause which may allow the shipowners to recover in general average even when the loss is caused by negligent navigation.

*P&I Club.* Protection and Indemnity Association/Club of shipowners to offer mutual indemnity against third party claims and against risks not normally covered by marine insurance.

*Worldscale.* Codename for Worldwide Tanker Nominal Freight Scale, a system which publishes annually revised scales of freights based on the cost of operating a standard tanker to and from certain known ports.

## Clichés and other ambiguities

Here are some terms that are often overworked. They may be useful in journalism and commercial advertising but may lead to ambiguity if used in a legal context. It is better to seek a word that more accurately describes what the writer particularly has in mind: about-face, actualize, amenity, appropriate, available, background, ball park, benchmark, best practice, blueprint, bottleneck, bottom line, bottom up, breakdown, breakthrough, carve out, catalyst, ceiling, contact, cosmetic, cutting (leading) edge, deliverables, dialogue, dichotomy, downside, downsize, embrace, enhance, envision, facilitate, feedback, game plan, hard, harmonization, highlights, holistic, impact, implement, interface, key, launch, mandate, meaningful, metrics, mindset, mission, networking, on message, paradigm, plan of action, prioritize, proactive, progress (verb), ramp up, target (targeting), reposition, reticent, revisit, roll-out, scenario, scoping, skill set, soft, stakeholders, strategic, synergy, transparency, user-friendly, value-added, vision, watershed.

Please remember that the most litigated words tend to be the common words (= "ordinary" words). See page 113.

### A note on Greek legal terms and modern legal English

It might seem natural to expect that an English legal term such as "pyramid selling scheme" would involve similar terms in other European countries, especially Greece, if the English words are derived from Greek. However, even though "pyramid" is a Greek word (as is "scheme"), for "pyramid selling scheme" the Greeks themselves say "σούστημα χιονοστιβάδας" (which means "snow ball system" and comes from French "boule de neige"). Similarly, the common term in German is "Schneeballsystem". Thus, the English term comes from Greek but the Greek, German and French ones do not!

**Drafting tip:** Just because an English legal term comes from a classical language (Greek, Latin), do not assume that it is the term most widely used elsewhere. In US English, the term "pyramid scheme" (or Ponzi scheme) is the more familiar term: a "snow ball scheme" is a far less well known expression in the USA and may merely create a general impression that a "scheme" of some kind is about to "snow ball" (to grow rapidly). Black's Law Dictionary (Bibliography, page 122) offers more than 40,000 US legal definitions, including pyramid scheme, Ponzi scheme, endless-chain scheme, multi-level distribution program, chain-referral scheme and pyramid distribution plan . . . but not "snow ball" system or scheme.

Hungarian terminology here follows the Greek ("piramisjáték"), as does Finnish ("pyramidimarkkinointi"). But the "snow ball" approach is preferred in Estonian ("lumepallisüsteem") and Turkish ("kartopu sistemi").

## Selected criminal law terms (and their approximate equivalents): UK, US, Canada, Australia

UK	US	Canada (French terms omitted)	Australia
Criminal Defence Service	public defender	Legal aid	Legal Aid Office
CPS (Crown Prosecution Service)	DA (District Attorney) (state and federal)	Crown Prosecutors' Office or Office of the Agents of the Attorney General (provincial); Office of the Director of Public Prosecutions (federal)	Director of Public Prosecutions
dawn raid	search and seizure	search, raid	dawn raid
"dog handlers" (police unit which uses trained dogs)	K-9 unit	dog handlers	dog squad
drink driving, excess alcohol	drunk driving, DUI, DWI	driving while ability impaired by alcohol	driving while under the influence (DUI), drink driving
grass (police informant)	stoolie, stool pigeon	informant	informant
GBH (grievous bodily harm, of various degrees)	assault and battery (of various degrees)	assault causing bodily harm (with or without weapon); aggravated assault	GBH

Selected criminal law terms (and their approximate equivalents): UK, US, Canada, Australia (continued)

UK	US	Canada (French terms omitted)	Australia
identity parade (suspects are shown to the victim, for possible identification)	lineup	lineup	lineup
loitering with intent	vagrancy	causing a disturbance by loitering	loitering
PACE rights or caution (warnings that must be given before and during an arrest)	Miranda warning (rights)	Charter rights (from the Canadian Charter of Rights & Freedoms)	Caution
"Previous" (written record of a person's prior criminal convictions)	rap sheet	previous record, criminal record	prior conviction or priors
Queen's evidence (avoiding or reducing punishment by testifying for the Government)	state's evidence	Crown or prosecution evidence	Queen's evidence
TDA (take and drive away) or TWOC (Taking WithOut Consent)	GTA: grand theft auto (theft of a car)	motor vehicle theft	TDC (taking and driving a conveyance)
witness box	witness stand	witness box	witness box

**Drafting tip:** All English speaking countries have more or less the same type of procedures and legal institutions, as well as many legal terms which are the same or very similar. However, as shown by the Chart on pages 22-25 (a very selective listing), legal terminology may differ from place to place. Also, even very familiar or similar terms may have unexpected or very different meanings. For example, in the USA, the federal court of original jurisdiction (the civil and criminal trial court) is called the "District Court", everywhere in the country, and the same federal District Judge hears both civil and criminal matters. In most US states, it is easy to ascertain which state court is the principal state court of original jurisdiction, for civil matters, for criminal matters or for both. However, the state court terminology can be confusing. In some states, the main state court of original jurisdiction is called the Supreme Court!

## Eurospeak

**Drafting in Eurospeak.** These include words and phrases that are mainly rooted in EU law and have no traditional stand-alone meaning as legal terms in English. Before using them in a context which may involve "legal English", please be sure to verify their meanings. Examples: abuse of dominant position, *acquis* (*acquis communautaire*), harmonization, request for preliminary ruling (by the European Court of Justice), safeguards, single passport, subsidiarity and many more.

### **A note about errors in legal English**

About 80-85% of misunderstandings come from problems with vocabulary: using words and phrases with the wrong meaning. Only about 10% of the problems arise from grammar and syntax and about 5% from problems with spelling, plurals, pronouns, genders, conjunctions and prepositions. Hence, if you focus carefully on vocabulary, most common problems can be avoided.

## False Friends

This is a selection of words that can easily give rise to misunderstandings, mainly because they look like other words.

### A

**Accounting, accountability** = legal responsibility (answerable, liable).

**Accuse** = Never means "acknowledge" (as in French "accuser réception").

**Action** = anything done, any deed, a lawsuit. Never means "share in a company", as in French "action".

**Act** = anything done, a law, a statute. It never means "legal files, records and dossiers" as in German "Akte" or French "acte notariale".

**Actor.** Never means "plaintiff in a lawsuit", as in Italian "attore".

**Administrator.** Never means "company director", as in French administrateur. Cf., administrator of a will (testament), administrator in bankruptcy. Never "council of administration" as in French "conseil d'administration".

**Admission.** Cf., "confessing" and "listing" of securities and admission of a partner to a business.

**Adulterate.** Cf., French = altérer.

**Advice vs avis.** Cf., advice, advise, notice, notify. There are too many variants to list here.

**Advocate, lawyer, attorney, counsellor at law, barrister.** It is prudent to refer to a local dictionary (or the local bar rules) to be more sure of the specific meaning.

**Affirmative.** Cf., affirmative defense.

**Afford,** means both "provide for", "give", supply" but also means "be able to pay for".

**Agree.** Never means "to recognize" or "to register", as in French "agréer".

**Aid.** What is known in the EU as "state aid" or a "subvention" may be understood in the USA as "government support", "government grants".

**Anonymous.** "anonymous society" does not work in legal English for "publicly held company". A company is never anonymous: it always has a name. The identity of its shareholders may be kept confidential, but they are rarely "anonymous". Cf., street name.

**Appearance.** Legal and non-legal meanings, which are very different.

**Appraise vs apprise.** Appraise means several things, including the process of forming an opinion about the monetary value of something. For "apprise", "inform" is better.

**Appreciate** means both “to increase in value” and, more vaguely, “to be grateful”, “to understand” . Cf., “appreciable” (does not mean “can increase in value”).

**Assembly** vs meeting vs congress. A formal meeting of corporate shareholders is a “meeting”. It would not usually be called an assembly.

**Assess.** May mean “place a money value upon” or may simply mean “form an objective opinion”. Cf., “assessment” (for tax purposes).

**Associate.** Never means “partner” (in a law firm), like the French word “associé” and, in fact, the English word “associate” refers to a lawyer employed by a law firm, not one of its partners (owners).

**Atomic** = Never means “personal” or “private”, as in Greek ατομική ιδιοκτησία (meaning “private property”).

**Attorneys’ fees.** This term may simply refer, in general to the fees paid to attorneys, by a client (that is, the client’s fees, to its own lawyer). More usually, the connotation is “who will pay the attorneys’ fees of the opposing side, in a lawsuit” (that is, the attorneys’ fees, of the opposing client).

**Attribution.** In legal English, attribution never means “jurisdiction”, as sometimes in French.

**Audit** (is related to “auditor”). Compare French “réviseur”. The word “reviser” has no specific meaning in legal English.

**Audience, audition.** In US English, “audience” never means “right of a lawyer to appear and plead in court” but it does have this meaning in the UK (right of audience).

**Authority.** It may mean a “lawful right to do something” but it may also refer to certain governing bodies, with specified powers.

**Average.** The correct term in English is “general average” (not “common average”, as in French “avarie commune”).

## B

**Bail** never means a real property lease agreement, as in French “bail”. Cf., bailment.

**Beg the question.** This has nothing to do with asking (or evading) a question but means to reach a decision based upon an assumption which is unproven.

**Beneficial.** Cf., related party, affiliated, connected. Cf., independent, biased. Beneficial also means “capable of being of benefit”.

**Bill** = a proposed law, a list of legal claims (bill of particulars), a list of items to be paid for, a negotiable commercial instrument (bill of exchange).

**Block** (noun). It means a group of buildings or building units. It never means “pad of writing paper”, as in French “bloc”.

**Bona fides.** Good faith, honesty, sincerity. It never conveys the means of creditworthiness, as in German "Bonität". Cf., Spanish "bonificación".

**Brief.** A lawyer's "brief". Never as in "brevet" (French for "patent"). Briefcase = "serviette" (French) but serviette = table napkin, in US English.

**Bursar, bursary.** Nothing to do with a stock exchange, in English.

## C

**Cabinet.** This term never means "law firm" or "law office". Cf., "studio legale".

**Camera, in chambers.** Cf., chambers (of a barrister).

**Cargo** = property to be transported. Never means "burden" (as in Spanish "carga de la prueba" = burden of proof). Compare: "discharge". Compare: "supercargo".

**Charter.** Company "charter", charter of corporate ethics, charter party.

**Chattel.** Cf., cattle.

**Checking account** (US). This is usually called a "current account", in the UK.

**Citation.** Means name and other details of a published court case (name, where published) and also means a summons to appear in court regarding a (minor) criminal matter.

**Civil state.** No connotation of a person's vital statistics, as in French "état civil".

**Class action.** Nothing to do with social class, school class. Not related to "classeur" as in French. "Action": not a share in a company but a lawsuit.

**Client, clientele.** The word "mandant" conveys no sense in modern legal English of "client". Cf., German "Mandant".

**Collegial.** Terms such as "collegial organ" (sometimes used in translations of laws referring to the managing bodies, council and shareholders of companies formed under the laws of non-English speaking countries) have an intelligible meaning in English BUT they do not correspond to any familiar terms in legal English: Say, instead, "board of directors", supervisory board, etc., depending upon the context.

**Common carrier.** In the US, this term includes providers of telecommunications services.

**Common law vs civil law vs *jus communis* (*lex communis*).** Many dictionaries published in non-English countries assert that the law of “Anglo-Saxon” countries such as England and the USA is based mainly upon unwritten “common law”, that most law in those countries is created by Judges based upon prior court decisions and that very little of the law is contained in statutes or codes. Such assertions are very difficult to reconcile with reality. The current edition of the “Statutes of England” (published by Halsbury’s) comprises 50 very large volumes. The federal laws of the United States are contained in more than 100 volumes of the US Code, plus more than 100 volumes of the Code of Federal Regulations. All the laws of California are contained in 29 Codes and in 28 volumes of the Code of Regulations. Much of Australian law is in codes and the rest is in statutes. The laws of India are either in statutes or codes, with the original Indian Penal Code dating back to 1860. The laws of Canada are in hundreds of statutes and numerous Codes. And so forth. Any modern distinctions between “common law” and “civil law” need to be considered situation by situation. The notion that Judges in “common law” countries are not bound by statutes and codes (and only consider prior case law), but that civil law judges are so bound (and do not consider prior case law), is puzzling.

**Drafting tip:** Only a very small number of countries in Europe can be described as “common law” countries. Moreover, at least 90% of the laws affecting businesses in Europe, including those “common law” countries, is based upon supreme EU law (Treaties, Regulations, Directives, and, very importantly, upon case law precedents created by the European Court of Justice, declaring what it has decided is the “common law” for the EU, as well as national courts in EU countries, doing the same thing). Therefore, at least in most parts of Europe, traditional distinctions between “common law” and “civil law” need to be approached with care.

**Compare.** Nothing to do with buying, as in Italian “comperare”.

**Competence** vs “competencia” (Spanish) vs Kompetenz (jurisdiction, German). Not “disloyal competition” but “unfair competition”. Distinguish: competition, competence and jurisdiction.

**Compensation.** Various meanings. Compensation and remuneration can be used interchangeably to mean “payment for services rendered” but remuneration is never used to mean “damages” whereas “compensation” is often used to mean “damages” (especially in the term “compensatory damages”).

**Completion** (UK), **closing** (US). These both refer to the final paperwork and signing and delivery of documents in a business transaction.

**Compound, composition.** To “compound” can mean to “settle or compromise a debt” and can also mean to “increase”, such as to make a crime worse (compounded felony), to have more interest on money (compound interest), to suffer a greater injury (compound fracture). A composition with creditors is a form of settlement by an insolvent debtor.

**Concourse.** Various meanings but never “competition” as in Spanish “concurso” and never “bankruptcy” as in German “Konkurs”.

**Concussion** = to suffer a severe injury from being hit hard on the head (can also refer to severe injury to the head or spine, due to violent shaking). Never means “improper use or collection of public funds”, as in French and various other Romance languages. Please see box on page 116 and compare US slang “shake down”.

**Confer,** defer, postpone. “retarded” = mentally deficient and is pejorative: it should not be used as “late” or “delayed” (payment).

**Conjuncture.** Various meanings but never “economic situation” or “business outlook”, as in German “Konjunktur” and French “conjoncture”.

**Construction.** Also means “legal interpretation of a text”.

**Contingent.** Never means “incidental” or “in connection with customs duties”, as in French.

**Contributor.** Never means “taxpayer”, as in Italian “contributore”.

**Control** vs “controls” (internal controls).

**Convenience.** Flag of convenience. Cf., French “pavillon”, “drapeau”.

**Conversion** vs inversion. No meaning like Spanish “inversión” = investment. Conversion in legal English means taking the property of another, without permission.

**Convict** (verb) vs a convict (noun). Please see page 111.

**Convocation.** Should not be used as “call for a meeting of shareholders”.

**Criminal,** penal, felony, misdemeanour, delict. Delict is old fashioned, but understood. Compare: jail, prison, incarceration, imprisonment, penitentiary.

**Custom** vs duty vs douane vs “made to order” vs usual. Please see box on page 38, for examples in Russian.

Many words in legal English need substantially different foreign words, in a proper translation. For example, the English legal term "custom" requires 7 different Russian terms, depending upon the context. Thus, it is almost inevitable that the English terms may result in confusion, when going from other languages into English and vice versa.

#### Seven different meanings of "custom": Russian examples

**business custom** = деловая практика = business practice.

**custom duty** = таможенная пошлина = tax (on imported goods, at the таможня = customs-house).

**legal custom** = юридический обычай = (well-established) legal habit and usage.

**custom made goods** = товар, изготовленный по заказу = goods, manufactured by order (of someone).

**custom** = клиентура = clientele, customers.

**customary** = принято = the usual, proper thing to do.

**customer** = покупатель = buyer.

## D

**Damage** vs damages. Unfortunately, in legal English, "damage" means "harm" and "damages" means "money awarded to a harmed person, to compensate them for their harm". The two words are so similar that confusion is easy. Cf., warranty, indemnification.

**Dawn raid (UK)**. US = "search and seizure".

**Decision**. Also: Cf., French "scission", Spanish "escisión", which have meanings unrelated to "decision".

**Deed** = anything done (more formal than "act", "action", "activity"), a legal document transferring or proving ownership of real property (also called a "title deed" or "deed of title"). The similar legal document for personal property is usually called a "bill of sale". A "deed poll" is a document providing proof that a person has changed their legal name.

**Definite vs definitive**. Definite means "certain", "specific", "exact". Definitive means "final".

**Delay**. Not a deadline as in French "délai".

**Demurrer, demurrage, despatch**. Please see box on page 19.

**Deposit**. Cf., French "dépôt" and US "the depot" (pronounced "deep-o"). Cf., "deposition" (often abbreviated to sound like "deppo").

**Director**, directive, directory, "directoire". It is useful to look in a dictionary or in local laws, to see how the terms are used, since they may overlap or be misleading. For example, a person who is a company "director" in the UK, may be a company "officer" in the US.

**Discharge** = perform an obligation, unload a cargo, release pollutants, terminate someone's employment.

**Disclosure** (UK) vs discovery (US). Fishing expedition. Cf., "divulgarion" (a very formal word, which should not be used in connection with discovery or disclosure which occurs during the course of litigation).

**Disinterested**. Distinguish between "unbiased", "impartial", "neutral", "unprejudiced".

**Dismissal** (of lawsuit, of director, of employee). Cf., dismissive, resignation, removal.

**Diversity**. Means much more than "different". For example, a "diversity policy" refers to the hiring and promotion of employees. See also "diversity of citizenship" (page 18).

**Draft**. Different meanings, including French "brouillon" and military conscription. Exposure draft = discussion draft, preliminary draft.

**Due** = "owing", "obligatory". Also merely means "suitable", "appropriate".

**Duty** = an obligation of any kind and used in connection with certain special taxes (customs duties). Compare "levy".

## E

**Enhanced**. May mean "made better", "improved". May also mean "made worse", "made more burdensome". Enhanced conflict of interest provisions (Sarbanes-Oxley, Article 402). Enhanced sentencing guidelines. Compare "aggravating [attenuating] circumstances" (in setting a criminal penalty). Cf., Law French "hancement".

**Estimation**, estimate, evaluation.

**Etiquette**. Simply means "polite manners". Never means "ticket" or "tag" or "label".

**Excision**. Means a cutting out: never means "split" or demerger and the modern meaning is unrelated to the English term "excise (tax)". Cf., Spanish "excisión" = demerger = French "scission".

**Expertise**. Expertise never means "valuation", as in French "expertise".

**Exploitation**. Good meaning and bad meaning. Beware. An "exploit" is usually neutral, however, and means something else!

**Faculty** vs German "Fakultät" (law faculty, law school). Cf., French facultative = English "optional".

**Fee.** This term has many different meanings in English. There is however no term in English such as "honoraires", meaning professional fees. Compare: fees, salary, wages, perks, emoluments, compensation, remuneration . . . royalties (fees for special types of income, from oil wells and copyrights and patents).

**Fiscal.** Never means "public prosecutor" as in Spanish "fiscal".

**Fix, fixture.** Fix = to repair, to establish a price, a policy. Fixture = personal property attached to the building in such a way as to become part of the real property. Fixture, in the maritime sense, is the employment of a vessel.

**Forfeit,** forfeiture vs "forfait". Forfeit and forfeiture refer to a loss, usually as some kind of penalty. Forfait financing is the selling, at a discount, of medium-term accounts receivable, bills of exchange or promissory notes of a foreign buyer.

**Forward looking statements** = financial projections, estimates of future financial performance.

**Founder.** Founder of a company (promoter). The word is strange, since "to founder" means to sink or become a wreck (of a ship, or a business).

**Fraction** vs infraction vs faction.

**Franchise.** Nothing to do with French: Franchissement(s) de seuil(s) = a stock market term referring to shareholding thresholds of insiders. Franchise is never used in legal English in connection with the voting of company shares: Cf., French "franchise".

**Fund,** to fund, found, foundation. The word "fund" carries no implication whatsoever of "stock exchange", as in many European languages. Funds = money.

## I

**Ignore** = to know but to pay insufficient attention.

**Incumbency.** Used of a person who is currently a director or officer of a company ("incumbency certificate") (US) = "evidence of authority" (UK).

**Induction** (UK) (refers to training needed by a new company director). In the US usually means forced conscription into military service (the "draft").

**Initiate.** Cf., French "délit d'initié" (= insider trading).

**Instruct a lawyer** (UK). Never in US usage: a lawyer is hired or engaged.

**Intervene/intrude/intercede/interfere.** In French, "intervenir" is used (correctly) to mean "act in the role of" (for example, a mediator) or "advise or speak professionally" (for example, as a lawyer). In English, to say that you "intervene" as a mediator or "intervene" as a lawyer is misleading.

## J

**Joint stock company** vs joint and several vs joint property (joint tenants). Cf., tenants in common.

**Jubilation.** This, in English, is a public rejoicing, often with religious connotations. It has nothing specific to do with "retirement bonus", as in Spanish "jubilación".

## L

**Lack,** omission, defect. Patent defect. Latent defect. Cf., "patent", "letters patent".

**Leave** (noun). Can mean "holiday", "absence from work" but can also mean "permission", as in "leave to appeal" (a Court order), "AWOL" (absent without leave from the military). A "school leaver" (UK) is a graduate. A garden leave (UK) is a term used to describe a situation in which the employer keeps paying the employee, even though the employee does not work.

**Liberation.** No meaning of paid-up capital, as in French "libération du capital".

**Law,** rule, act, enactment, code, codified law, statute, regulation, decree, ordinance, promulgation, consolidated laws.

**Leading question,** leading case, leading counsel.

**License (licence)** = to permit, allow, authorize, give permission. Never means "to terminate employment", like French "licenciement".

**Legal opinion.** (1) of a court = decision, ruling, judgment, order; (2) of a law firm Opinion (legal opinion).

## M

**Model code,** model contract, model law (not a "law"), utility model. Module, framework . . .

**Moot, mute, mete, meet** . . . Metes and bounds, moot court, meet and proper . . . "moot" point vs "mute" point.

**Motion** Cf., "removal to federal court" = procedure to transfer a state court case to federal court (US).

## N

**Neighbouring rights** (copyright)

**Non-profit,** not for profit, charitable, benevolent, eleemosynary, tax-free.

**Notice,** notification, signification. Note: signification in English never means "service" as in French "signification" (delivery of court documents).

**Numerary.** Cf., French "numéraire" = cash money. Supernumerary, supercargo.

## O

**Officer**, director. Cf., directeur, officier, official, officious and French "d'office".

**Opposable**. No specific legal significance in English. Compare French "opposable" and "inopposable". Cf., oppose, opponent, adversary.

**Option**, optional, optative, facultative.

**"Organs"** of a company. This sounds strange in English: say, for example "the directors", depending upon what is meant. Cf., "company organs" and "managing bodies (organs) of a company".

## P

**Paragon**. In English, a paragon never means a "receipt" as in Polish "paragon fiskalny".

**Penitentiary (US)**. A prison.

**Perfect**, perfected security interest. A parfait is a type of ice cream.

**Perception** = the act of being aware or conscious of something. It never means "imposition (of a tax)", as in French "perception".

**Perquisition**. Has a meaning in English but never means "dawn raid". Cf., requisition.

**Policy**. Various meanings. Cf., policing, the Police. Please see note on page 93.

**Poll**. Poll tax. Opinion poll. Polling place. Deed poll.

**Pollicitant**. No such word in legal English. However, "pollicitation" is still found in some modern Scottish legal dictionaries as meaning "a promise".

**Prayer for relief**. Not a religious term. This simply means the formal request to a Court, for the various legal remedies specified in the complaint.

**Pre-emption**. It generally (in US usage) means that federal law prevails. It never means "right of first refusal", like the French "préemption". Cf., French "emption" (droit d'emption). There is no such term in legal English.

**Preliminary ruling**. Under Eurospeak.

**Prime**. Not like French "prime" (noun).

**Privilege**. It usually refers to a special right (as in attorney-client privilege) but it never means "lien" or "encumbrance", as in French "privilège". In the US phrase "privilege of doing business" (legal right and ability of a US corporation to conduct business in a US state other than the specific one in which it is incorporated), the word "privilege" means little more than "permission". The US Constitution refers to "privileges and immunities".

**Proceed**, proceeds, precede, precedent.

**Process**, proceedings, procedure. A "process" is not a court trial.

**Procurement**. Usually means large scale government contract business. Never means "prosecutor" as in "procurateur".

**Promotion**, promote, promoter.

**Proxy** (plural = proxies). Can mean the document (power of attorney to vote shares in a company) or the person so designated. Cf., prexy (slang for President of a US college). The terms "procurator" and "mandate" are overly formal, if what is meant is "power of attorney". Note that the person appointed under a "power of attorney", is simply an "agent" (not necessarily a lawyer). The word "attorney" in this specific context retains its Old French connotation.

## Q

**Quote**, quoted (listed), quotation, "quotidien".

## R

**Realize**. Virtually never means "effectuate [= cause an idea to be turned into reality]" as in French "réaliser" and German "realisieren". Cf., Polish "realizować".

**Realtor** (US). Do not confuse with "relator", a person entitled to bring a *qui tam* lawsuit.

**Reckless**. Cf., "negligent", neglect, negligible. Cf., French "négliger". "If you are reckless, it may lead to a wreck."

**Recourse** Cf., remedy.

**Redact** (US) vs French "rédaction". In the US, to redact is to present an edited version of a document, often under Court supervision.

**Reduction** (price, costs, fees). Never "sinking" as in German "Senkung", let alone "rash sinking" [rasche Senkung = price reductions very quickly].

**Redundant**. Not a US usage. It is a UK term (euphemism) meaning "discharge of employees".

**Refer**. Cf., referral, referee and French "référé"

**Related party**. Connected party, affiliate. Cf., "beneficial" (US).

**Release**. Not "to lease again" but to discharge from an obligation. Cf., Press release vs SEC Release vs release of a convicted prisoner.

**Remedy**. Cf., legal redress, redress, recourse.

**Remit** (noun) (UK, Australia) vs remittance vs remittitur.

**Removal.** Removal of director, removal to federal court (US), removal from an official record (= expunge).

**Remuneration,** compensation, pay, salary. Do not confuse "remuneration" with "enumeration".

**Repealed.** vs "no longer in force". Cf., "appeal" and "repeal".

**Reported case** = a decided court case that has been published. "reported" says nothing about whether the case has been written about or commented upon, for example, by academicians.

**Requisite,** required, requisition, requirements.

**Resemble** = appear to be like something else. Never means a gathering of people, as in French "rassemblement".

**Resiliation.** No such word in legal English. Say: "cancellation", "revocation", "termination".

**Retirement** vs retraite (retreat). Retreat = nothing to do with treating again.

**Restrictions,** restrictive practices, prior restraint, restraint of trade, restraining order. Cf., "French astreinte". Retainer. Retaining wall.

**Retreat.** Never means "retirement (from employment)", as in French "retraite".

**Revenciation.** No such word in legal English. Say "claim".

**Review** vs revise. These both come from the same Latin word and ought to mean the same thing but they do not. Review = look at carefully. Revise = modify.

**Riparian.** Nothing to do with French "repère".

## S

**Schedule** (= timetable). Also means annex, exhibit, attachment, table, "annexure" . . . UK and US pronunciations of "schedule" are different.

**Scheme,** plan, project, proposal, plot. Cf., plot of land.

**Secure transaction** (vague, non-legal meaning) vs secured transaction (very specific meaning, in US law, under the Uniform Commercial Code).

**Securitization.** But "titrisation" in French, etc.

**Security for costs** (UK). Rare in US legal English.

**Senior,** subordinated, junior . . . debt, claim.

**Sensible** vs sensitive. Cf., French and German.

**Settlement.** Can mean compromise, payment, transfer of property to a trust (by a settlor but never "settlee") and a group of houses (usually in a place never before inhabited, by "settlers").

**Severance pay** vs severability clause.

**Society.** It never means "general business corporation" or "limited company".

**Specific performance.** This term sounds as if it means some kind of determined way in which to do something. Actually, it is a litigation term and means that a Court orders a person to perform a contract, rather than merely pay money for breaching it.

**Speeches.** "Speeches" (UK) are what in the US would be called "arguments", of the lawyers to the Court (or jury). Closing speeches vs closing arguments. But "for the sake of argument" = "for the sake of discussion".

**Stock,** stocks, stocks and bonds, bond, security/securities.

**Stock split** (US). Share subdivision (UK). Subdivision Map Act (US).

**Stock** = shares in a company. Also, inventory of merchandise, "standard" . . . stock company = a theatrical term.

**Street name** (US). Securities held in the name of a broker or agent, rather than in the name of the real owner (the "beneficial" owner).

**Studio legale.** In English, there are film studios, artistic studios, studio apartments but never a "law studio". A "study" (US) is a small personal library of books and similar materials, kept by a person in a special room at home (also called a "den").

**Submission, submissions.** Submission can mean giving in to superior force. In legal English it usually means a type of argument advanced to persuade a Court.

**Subscription.** Various meanings, including as in French "abonnement".

**Subsidiary, subsidiarity, subsidize.** Cf., mother and daughter companies (non-US usage).

**Summary.** Summary judgment. Summary proceedings. Summary of a law case. Summary duties of a corporate secretary. Cf., "summing up" (judge, advocates).

**Supreme,** supremacy clause, "supreme" court. See box on page 26.

**Surety.** Never means "criminal police", like in French "Sûreté".

**Syndicate.** Investment group vs French "syndicat" = labor (trade) union, syndicalism = trade unionism.

## T

**Tentative.** Cf., French = an attempt.

**Timbre.** This is a musical term. Never means "stamp" as in stamp duty or French "timbre postale". Timber = wood, lumber, construction materials made from trees.

**Transaction** = a business matter of any kind. Never means "settlement (of a dispute)", "compromise", as in French "transaction".

**Treaty.** Private treaty (UK).

**Trespass.** Never means "death", as in French "trépas".

**Trial** (lawsuit decided by a court/jury) vs trial balance, trial regulations, trial guidelines.

**Trustee.** Not the person for whose benefit a trust is created (that is the beneficiary). The creator of the trust is a trustor or settler. A "trusty" is a convicted criminal in a prison, who has special privileges.

## V

**Values.** Never means "negotiable stocks and securities" as in German "Wertpapiere".

**Vest, vesting.** Cf., investment, divest. A "vest" is a type of clothing.

**Visa.** Various meanings but rarely used in legal English as "view of a legal document".

## W

**Waiver** (verb: give up a right or claim), waver (verb: be indecisive), wafer [= computer chip].

**Warrant,** warrants, guarantee, guaranty, surety, but "unwarranted" may often merely mean undeserved, inappropriate.

**Unidentical “twins” (do not be confused by their apparent similarity, in appearance or meaning):**

- Ability/capacity
- Accord/agreement/convention/treaty
- Adhesion/cohesion
- Ambivalent/ambiguous
- Assessment/evaluation
- Assign/sign/resign/consign/design
- Assure/insure/ensure/re-assure/re-insure
- Charge/discharge. *Note also UK vs US usage*
- Debt/debit
- Derogation/variance/exception
- Detainer/retainer
- Edit/redact
- Esteem/estimate
- Jail (gaol)/prison
- Preferred shares/preference shares
- Relevant/prevalent
- Sample/specimen
- Tax/taxation/taxed costs
- Wrongful/illegal.

See also pages 62-68

**Chart of selected English language legal and business terms sometimes encountered in French usage, in English, alongside their formal French language equivalents**

English	French
Blue chips	valeurs vedettes
Business plan	plan de développement
Computer	ordinateur
Copyright	dépôt légal, droit d'auteur
Factoring	affacturage
Hardware	matériel informatique
Holding	société de portefeuille
Job	travail, emploi, boulot
Leader, manager	Chef, gérant
Leasing	crédit-bail
Management	gestion d'entreprise
Marketing	commercialisation
Meeting	réunion
Mobbing	harcèlement psychologique au travail
Outsourcing	externalisation, délocalisation, sous-traitance
Planning	urbanisme, programme
Road show	présentation aux investisseurs
Software	logiciel
Speech, presentation	discours, allocution

## Found in translation

There are many English terms that are “lost in translation” but there are also some such legal terms whose legal meaning may be found better in certain foreign language non-literal translations (that is, not word for word translations from English to the foreign language but explanatory paraphrases).

UK or US legal term and main meaning	Real meaning of the English words (which provide no real clue to the legal meanings)	Sample Foreign Legally Equivalent Terms	Real meaning of the non-English words
Audit	He heard (Latin)	French: vérification de comptes	Verification of the accounts
Collateral = property which may be seized and sold by a creditor	Something on the side, something incidental, involving an unintended and undesired effect	Finnish: hallintapannti	Control + security
Damages = harm, injury + money to compensate for harm and injury	Harm, injury	German: Schadensersatz	Compensation for an injury
Dawn raid (UK) = any government search of a premises, seeing evidence (usually in an antitrust context). US = “search and seizure” (all contexts)	“very early morning” plus “raid”	German: Betriebsdurchsuchung, Hausdurchsuchung	business (house) + thorough search
Whistleblowing	Making a noise by blowing on a whistle	French: alerte professionnelle German: firminterner Warnsystem	French: Creating an alert regarding ethical and professional matters German: internal warning system in a company

## General Drafting Recommendations

### “Should” vs “if”

Should is usually intelligible to native English readers, even though it may mean “must”, or may mean “there are very strong reasons to do” or may mean “in case that” (more often so, in UK than in US English). Many ambiguities can be avoided by using “if”, when the intended meaning is “if it ever happens that . . .” Compare: (a) “should litigation be necessary to resolve any dispute arising under this agreement . . .” and (b) “if litigation is necessary to resolve any dispute arising under this agreement . . .”

### Should, shall, ought, must, may, can, might, will, would

These little words can be confusing, because they sometimes mean different things. For example, “may” means “permission” but it also means “probability”.

#### In general, you can avoid problems if you:

- Use “can” to mean possibility
- Use “must” to mean obligation
- Use “may” to mean permission
- Use “might” to mean probability

### Verbs

English tends to “like” verbs instead of nouns.

Many nouns in English can be used as verbs, especially where the main idea is to express action.

English also likes to simplify, without losing the basic meaning. Please compare these two sentences:

“The injured football player was taken from the field on a stretcher”.

“The injured footballer was stretchered off the field”.

Both sentences are correct but the second one expresses the same idea by making “stretcher” into a verb and by using one word to describe the injured person instead of needing two words.

## Distinguishing between similar-looking, similar-meaning or similar-sounding words

**Word: Acquiesce**

*Meaning:* Agree or accept without showing much resistance

*Other word: Assent, agree*

*Meaning:* Express acceptance or compliance, willingly

**Word: Adopted**

*Meaning:* That which (or who) has been adopted

*Other word: Adoptive*

*Meaning:* That (or who) is doing the adopting

**Word: Adverse**

*Meaning:* Bad, opposing, unfavorable

*Other word: Averse*

*Meaning:* Unwilling, hesitant, reluctant

**Word: Affect** (verb)

*Meaning:* Make a difference, cause a result

*Other word: Effect* (noun and verb)

*Meaning:* Result or impact (noun); cause, bring about (verb)

**Word: Amnesty**

*Meaning:* A general pardon for crimes and the time within which the pardon is available (compare "clemency", "immunity")

*Other word: Moratorium*

*Meaning:* A period of time when activity stops, such as the suspension of debt payments (compare "standstill")

**Word: Archetype**

*Meaning:* The original model from which copies are made

*Other word: Stereotype*

*Meaning:* Something which is standard, not unique or original

**Word: Authorized**

*Meaning:* Permitted, proper

*Other word: Authoritative; authoritarian*

*Meaning:* Possessing authority; abusing authority

**Word: Biannual**

*Meaning:* Occurs twice a year

*Other word: Biennial*

*Meaning:* Occurs every two years

**Word: Canvas** (noun)

*Meaning:* Coarse cloth used for painting, for sails of ships, for tents

*Other word: Canvass* (verb)

*Meaning:* Gather political support, gather opinions

**Word: Censored**

*Meaning:* Banned by the censor

*Other word: Censorious*

*Meaning:* Making criticism, usually on minor grounds

**Word: Complement**

*Meaning:* That which helps make complete

*Other word: Compliment*

*Meaning:* Praise, approval

**Word: Correspondent**

*Meaning:* A person who writes letters

*Other word: Co-respondent*

*Meaning:* Various legal meanings (usually negative)

**Word: Current**

*Meaning:* Now (at this time); a stream of water or electricity

*Other word: Currant*

*Meaning:* A type of raisin

**Word: Demur**

*Meaning:* Legal meanings, including disagree, claim that the plaintiff has no actionable claim

*Other word: Demure*

*Meaning:* Modest, shy

**Word: Discrete**

*Meaning:* Separate, distinct from other objects

*Other word: Discreet*

*Meaning:* Able to keep secrets

**Word: Discriminating**

*Meaning:* Thoughtful, showing good taste, behavior and judgment

*Other word: Discriminatory*

*Meaning:* Prejudiced, showing irrational and unfair taste, behavior and judgment

**Word: Economic**

*Meaning:* Relating to economics

*Other word: Economical*

*Meaning:* Careful with money

**Word: Elicit**

*Meaning:* Evoke, call forth, cause

*Other word: Illicit*

*Meaning:* Illegal, impermissible

**Word: Enormity**

*Meaning:* Extreme wickedness

*Other word: Enormousness*

*Meaning:* Vast size or extent

**Word: Every day**

*Meaning:* Happens each and every day

*Other word: Everyday*

*Meaning:* Ordinary, usual, common

**Word: Exceptional**

*Meaning:* Not ordinary, outstanding

*Other word: Exceptionable*

*Meaning:* Objectionable, deficient

**Word: Fewer**

*Meaning:* Used when referring to plural numbers of inanimate objects or animate beings

*Other word: Less*

*Meaning:* Used when referring to a smaller quantity

**Word: Flammable, inflammable**

*Meaning:* Easily set on fire

*Other word: Inflammatory*

*Meaning:* Easily leading to protest or offense

**Word: Fortuitous**

*Meaning:* Occurring by chance or hazard

*Other word: Fortunate*

*Meaning:* Lucky

*Word:* **Fraction**

*Meaning:* A part of something, usually very small

*Other word:* **Infraction**

*Meaning:* Minor breach of a law or rule (compare "misdemeanor")

*Word:* **Imply**

*Meaning:* Hint at, suggest

*Other word:* **Infer**

*Meaning:* Draw conclusions from facts

*Word:* **Insidious**

*Meaning:* Maliciously cunning

*Other word:* **Invidious**

*Meaning:* Causing envy or bad feelings

*Word:* **Junction**

*Meaning:* A joining up in place

*Other word:* **junction**

*Meaning:* A joining up in time. Not to be confused with "joinder of parties" (in litigation)

*Word:* **Lay** (verb)

*Meaning:* Place at rest

*Other word:* **Lie** (verb)

*Meaning:* Be at rest. Also: to tell an untruth

*Word:* **Liable to (for)**

*Meaning:* Liable to = likely to; liable for = legally responsible for

*Other word:* **Subject to**

*Meaning:* Ruled by, conditional upon, may be ordered to

*Word:* **Militate against**

*Meaning:* Operate against, have weight against (some action or idea)

*Other word:* **Mitigate (against)**

*Meaning:* Make less harsh, lighten

*Word:* **Neglectful, negligent**

*Meaning:* Careless, inattentive

*Other word:* **Negligible**

*Meaning:* Of very little importance

*Word:* **Ordinance** (US)

*Meaning:* A law (usually local in effect, such as a parking ordinance)

*Other word:* **Ordinance**

*Meaning:* Military artillery and ammunition

*Word:* **Prescribe**

*Meaning:* Lay down as a rule, order

*Other word:* **Proscribe**

*Meaning:* Prohibit, ban, oppress

*Word:* **Prosecute**

*Meaning:* Bring before a court of law (usually in a criminal context)

*Other word:* **Persecute**

*Meaning:* Regularly attack unfairly

*Word:* **Quash**

*Meaning:* Make invalid

*Other word:* **Squash**

*Meaning:* Crush something until it becomes flat

**Word: Regardless**

*Meaning:* Without regard to, without considering

*Other word: Irregardless*

*Meaning:* No such word in English but compare "irrespective"

**Word: Sanction** (verb and noun)

*Meaning:* Punish, punishment

*Other word: Sanction* (verb and noun)

*Meaning:* Permit, permission

**Word: Valuable**

*Meaning:* Having worth, having monetary value

*Other word: Invaluable*

*Meaning:* Of very great value, beyond monetary price

**Drafting tip:** All of the words listed on pages 62-68 have multiple meanings, or unexpected meanings, or confusingly similar meanings. When using these words, you may benefit from consulting a good dictionary, to verify the meanings. Please see Bibliography.

*Note: allot (meaning to divide and distribute) has two "l"s. "a lot" (meaning a large quantity) should be two words. "alright" (meaning OK) has one "l" and should be one word. "all right" (meaning all is correct) is two words and has two "l"s. Similarly, "altogether" vs "all together".*

**Drafting tips:**

**(1)** Please note the differences: anything/any thing, awhile/a while, everyday/every day, something/some thing, sometime/sometimes/some time. There are many more (the meanings are all slightly different).

**(2)** Prefixes and suffixes. "Anti-" usually means "against, contrary to" ("anti-competitive"). "Ante-" usually means "prior in time" ("antecedent"). "Pre-" also usually means prior in time and is often used in that way without the hyphen (-). However, there are numerous instances in which "pre" can be misleading. For example, in the e-commerce word "pretexting", the sense is not a text sent prior in time but a text from a person pretending to be someone else (from "pretext", meaning "an explanation which is not true or which conceals the truth").

Many English words can have their meaning changed (and made less clear) by adding "less" to the end or by adding "un" to the beginning. When in doubt, you may wish to consult a dictionary or find another word. "Unuseful", for example, may merely imply that something was not very useful, that it did not have much good effect but did have some effect. To say that something is "useless" means that it is utterly without value or effect and may even have caused some harm. The word "unuseable" may merely imply that the thing was not useful in a particular instance but might have a possible use for something else. For more examples, please see "Euphemisms and Other Watered Down Expressions", on page 92.

A word about "whilst" and "as". In standard British English, "whilst" is often used to mean "during the time that". This usage is very rare in the USA (Americans would use "while"). "Whilst" and "while" can also mean "although", "despite the fact that". When you have those meanings in mind, use "although" or "despite the fact that". The conjunction "as" is often used in British English to mean "because": Example: "As no other student seemed to know the answer, Mary spoke up and had the correct information." The meaning will be clearer to more people if you use "because", or "since", rather than "as".

Many misunderstandings can be avoided if you: Use "as" for comparisons ("5 is not as many as 6"), use "while" for descriptions of passing time ("while waiting for my friend"), use "because" to express causation ("because the train was late I missed my connection") and use "since" to mean "from the time that" ("it has been many months since my last trip to Brazil").

Many misunderstandings or ambiguities occur from using the word "since": it can imply the passage of time OR can imply causation.

Example: "All the employees have been careful about what they say to strangers since the internal investigation began". That could mean they have

been cautious from the time that the investigation began or have been cautious because of the investigation. The intended meaning (whatever it actually is) can easily be expressed and might include both the temporal and the causative factors: "Because of the internal investigation, all the employees have been careful about what they say to strangers since it began.", OR, "Because of the previously announced internal investigation, all the employees have been careful about what they say to strangers since before it began." OR (the most likely intended meaning) "Since the internal investigation began, all the employees have been careful about what they say to strangers." Even more explicit: "Since the time the internal investigation began, all the employees have been careful about what they say to strangers." If you only mean "time" say so: if you only mean "causation", say so: if you mean both, say so.

Example: "Since the internal investigation began, the employees have not been talking to strangers".

Please note the difference: putting "since" at the beginning of the sentence and using "began" (past tense of "begin") and "have not been talking" makes the temporality very clear and "not been talking" is much stronger and more explicit than "about what they say".

## Misplaced commas and the like

There are many pieces of litigation that turn upon the placing (or omission) of a comma in a statute or contract. There is no single or simple rule for avoiding all such problems, although a good way to start is to read out the proposed language and see how it works with some real dates and times, by way of example, and then set out some such examples in the agreement.

There have also been many cases litigated about the proper meaning of "and" and "or". For example, in the English case of in *Re Diplock (aka Ministry of Health vs Simpson)* [1951] AC 251, the dispute was about the meaning of the word "or" in the phrase "charitable or benevolent", in connection with a trust. An estimated 70,000 words in the various judicial opinions were used to reach a decision . . . that "or" meant "or".

In their *Principia Mathematica* (3 volumes, 1910-1913), Alfred North Whitehead and Bertrand Russell took 362 pages, seeking to prove that  $1 + 1 = 2$ . Fortunately, most legal issues involving the meaning of "and" and "or" are considerably less complex and can be based mainly upon common sense.

### A note about tenses

Many languages (but not English) use the present indicative tense (in statutes and codes) to mean that something is required by law.

Example: "Après leur approbation par l'assemblée générale, les comptes annuels et les comptes de groupe, accompagnés des rapports des réviseurs, sont publiés dans la *Feuille officielle suisse du commerce*." *Swiss Code of Obligations, Article 697 h*.

Literally translated this means "After being approved by the General Meeting of Shareholders, the annual report and group accounts, accompanied by the auditors' report, are published in the Swiss Commercial Gazette" but the real meaning is ". . . the annual report and group accounts, accompanied by the auditors' report, must be published . . ." The present indicative "is" and "are", in English, carry no meaning of something being legally required and may be merely descriptive. When writing in legal English, if you mean "must" (something is required) you should use the word "must" (or an equivalent word such as shall, required, mandatory, obligation).

### Drafting tips:

**(1)** Use of the present indicative to mean “must” is by no means consistent or universal in laws that are not drafted in English. Thus, in the very next sentence of Article 697 h of the Swiss Code of Obligations quoted above, the equivalent non-English word meaning “must” is used in the French (“*doivent*”) and Italian (“*devono*”) versions but the German version retains the present indicative “is” (“ist”). Thus, when drafting in legal English, it is often a good practice to think through in your own language the literal meaning of the English words you intend to use and, if a key concept such as “must” or “may” is missing, this will often be a clue that it should be added, so that the intended meaning is clear in English.

**(2)** In some languages (for example, Czech, Dutch, French, Latvian and Polish), publications exist which are aimed at helping native speakers of those languages to avoid some of the common pitfalls awaiting them in legal English. Please see the Bibliography, pages 125-127

## Politely correct vs politically correct

There are numerous English words and phrases that, in a contract or statute, would be not only acceptable but may be needed to convey a specifically intended legal meaning. However, in ordinary conversation, correspondence and negotiations, such words can sound harsh and even impolite. For example, “we insist”, “we refuse”, “we demand”, “this is unacceptable” . . . all sound harsh in English. For such purposes, it is normal to use terms such as “we ask instead that”, “our business is such that we need”, “we are not able to agree to such a term because”.

Politically correct (“PC”) is something quite different. There are certain terms which should always be avoided, mainly being terms that involve gender, sexual orientation, skin color, religion, national origin, physical or other disabilities, etc., when these are irrelevant to the intended legal meaning. Instead, however, here are some examples which are gender unbiased and may be used very generally: chair or chair person (on a committee, in a company), foreperson (on a jury), Judge, jury person, president and many others. When in doubt, use the most neutral term that conveys the intended meaning. However, there is also another extreme: a term like “cowperson” (rather than the familiar terms “cowboy” or “cowgirl”) or “Big Person” (instead of “Big Brother”) do not sound PC in English: they just sound ridiculous. See, further, Maggio, *The Dictionary of Bias-Free Usage* (in the Bibliography, at page 130).

## Rules of construction (legal interpretation) and legal maxims

Many jurisdictions which use legal English in their laws and courts have what are known as rules of construction and legal maxims. Most are based upon common sense and general experience with commercial and legal language. Here are a few examples from the California Civil Code.

"The law respects form less than substance."  
Article 3528

"Particular expressions qualify those which are general." Article 3534

"An interpretation which gives effect is preferred to one which makes void." Article 3541

However, it is always better to have good legal drafting than to rely upon being "saved" by such rules.

## A few words about prefixes, hyphenation, gender, plurals and declension

### Prefixes

English has many words that use prefixes. Most come from Greek or Latin (such as "con", "in", "pre", "un") but many others come from German ("be", as in "befriend", "bestow", and "for", as in "forbid", "forlorn"). Most of the words so created follow the sense that is indicated by the relevant prefix. However, there are exceptions and these need to be kept in mind. For example, the prefix "in" usually means "not" (incompetent = not competent). However, sometimes "in" means nothing: thus "flammable" and "inflammable" both mean "very likely to burn" (the opposite is "non-flammable"). In the word "invaluable", the "in" prefix really means not capable of being valued, beyond value. There are many words (inform, intelligent) where the "in" prefix conveys no sense of "not" or "non". Such words involve a different prefix, also spelled "in", but which means "in", "into". In many words, either of the "in" prefixes can appear as "im" ("impossible" = *not* possible, but "impleader" = procedure to bring a third party *into* a lawsuit).

There are also some words (injustice, unjust) where the noun takes "in" and the adjective takes "un" and the meaning in both cases is "not".

One prefix that is particularly confusing is “re”, which has a variety of meanings (mainly “back” and “again”, such as in rebate, reform, replace, return). However, there are many such words in which the original meaning is mainly lost (recourse, remove, rely, reprisal).

**Drafting tip:** Making mistakes as to the meaning of prefixes can sometimes lead to serious errors. Thus, if in doubt, either look up the word in a good dictionary or use separate words (“not just”, “not flammable” . . . or “will not burn easily”).

### Hyphenation

English has a great number of polysyllabic words and there are fairly simple rules about where to hyphenate them and any good dictionary will show the proper choices. More complicated are the many cases in which English allows the user to “make up” their own words, by joining two or more nouns (and adjectives and verbs), separated by a hyphen: Examples: data base, database, data-base.

**Drafting tip:** The good news is that “mistakes” using hyphens will not often lead to confusion or mistakes about the intended meaning. The term “database” will be understood, however written. However, such clarity may be lost when hyphens are used in compound phrases. Thus, a “fast talking person” could mean a person who is talking fast right now or can mean a person who is capable of talking fast. Most ambiguities can be avoided very simply, for

example, “a person who is able to talk fast”. Writing “fast-talking person” tends to convey that meaning but is not as clear as “a person who is able to talk fast” or “a person who is talking fast right now”, depending upon what specific meaning is intended. A “fast talking person”, without any context, implies a person who speaks dishonestly, with an intent to deceive.

### Gender

Almost all words in English are gender-free (neutral). Thus, a table is simply a table, not feminine (as in French) or masculine (as in German). A very small number of words in English are assigned a gender (a ship is “she”). See, further, under “Politely correct vs politically correct”, page 75).

**Drafting tip:** Some European languages make no distinction regarding the gender of a pronoun describing the gender of the owner of something or the person doing something. Thus, in French “son livre” can mean “his book” or “her book”: the masculine “livre” is the decisive gender. In yet other European languages, the gender of the noun and the gender of the pronoun are independent. Thus, in German, “ihr Buch” can only mean “her book”, even though the word “Buch” is neuter (not feminine or masculine). “His book” is “sein Buch”.

Thus, if you find yourself using “his” and “her” when referring to nouns (inanimate objects), you might want to consider saying “it” or leaving out a

reference altogether. Example: not “the table which she is broken” but “the table which is broken” or “the broken table”. Many his/her issues can be resolved quite simply, by using “their”, instead. “Their” can be singular or plural, masculine or feminine, or completely indeterminate: “Who left their law book on the table?”, not “Who left his or her law book on the table?”. It is very clear from the context that there is just one book and just one owner, whose gender is irrelevant.

## Plurals

Most English words form the plural by adding “s” to the end. There are a few exceptions, which are easy to remember: child/children, man/men, mouse/mice. Some words are invariable: sheep is singular or plural. A few words (like “people”) can be tricky: the usual plural is “people” but the term “peoples” is used when referring to the people of many different countries. A few other words have alternative plurals, depending upon their meaning: thus, the “computer mouse” is acceptable as “computer mouses”, in the plural. More troublesome, perhaps, are words that are plural or which “feel” plural. For example: “data” is a plural noun. The “United States of America” is plural (but is often treated as singular). Hence, should you write the “data are” or the “data is”? The “USA are” or the “USA is”? There are no absolute rules for such things and in most cases using either the plural or the singular will be acceptable. If in doubt, you can consult a detailed grammar or book on style (please see Bibliography, pages 124-125).

In Indian legal English, one may encounter sentences such as: “The government plans to enact many legislations this year” and “a legislation on this subject is about to be prepared”. These uses of plural and singular “legislation” would appear unfamiliar to English speakers from the UK or USA and to English speakers from anywhere who have learned UK or US English, or varieties in Australia and Canada. However, these Indian usages are correct because they are completely clear, to all English speakers, as to their meaning (“new laws”) and are thus they are just as correct as “much legislation” and “a piece of legislation”, which would be the more usual terms outside of India.

## Declension

English has almost lost its “case” system (nominative, accusative, dative, genitive). It survives in a few isolated phrases such as “To Whom It May Concern” and “in the olden days”.

**Drafting tip:** There are complicated rules about when to use “whom” and “whomever”, instead of “who” and “whoever”, and not even scholarly commentators agree about those rules. Using one or the other makes no difference to the meaning and it is usually safe to use “who” or “whoever”. In most cases, “who” is the only word that is needed.

## Spelling

There are hundreds of words that have different UK and US spellings. Both should be considered as valid. Moreover, UK spelling is usually the norm in many English-speaking countries, other than the USA. It is desirable to use the local spelling which corresponds to the transaction in question but "mistakes" should not be grounds for serious concern, since there are very few instances in which a different spelling will cause confusion. For example, all English speakers will recognize that a "harbour" is a "harbor" and that an "organisation" is an "organization" and that a "theatre" is a "theater". More worrisome are some words that look alike but have very different meanings. For example, in US English "to table a proposal" means "to defeat it", to "kill it", to "postpone it". In the UK, "to table a proposal" means to open it up for discussion. Somewhat along the same lines, in US English a "theater" is a place where plays are performed (just as in UK English, "theatre"). However, in the UK, "theatre" also refers to the place where medical operations are carried out in a hospital (the colloquial US term would be "operating room"). In the UK, "a surgery" means "the office of a medical doctor or dentist" and also means "a regular meeting between a British Member of Parliament and their local constituents (voters)". These meanings of "theatre" and "surgery" would probably be surprising to many American English speakers: for them "surgery" just means a medical operation. Please see the Bibliography, page 129, for suggested additional reading.

## Common grammatical mistakes

Here are some very common mistake patterns, by non-native English speakers, worldwide, with their technical grammatical names. If you find yourself using these patterns, you may wish to refer to any detailed English grammar for guidance (or to specific bilingual English grammars, such as the ones in French, German, Italian, Spanish and Thai, referred to in the Bibliography, page 130).

*"There are a lot of victims died in that crash".*  
Defective post-modifying clause.

*"The victims were not willing to sue surprised everybody".* Independent clause used as subject of the sentence.

*"In the Civil Code, it divided land and other property into two parts".* Failure to use pseudo-passive tense.

*"Many of my clients they like to receive bills monthly".* Subject pronoun duplication.

*"That fatal injury was happened late last night".*  
Misuse of intransitive passive.

*"In the examples in the statute it shows that claims cannot be made".* Periphrastic topic construction.

"Last week, I write a letter to my client." Adjacent default tense error. Note: this type of problem is very frequent given the large number of English verbs that are irregular (sing, sang, sung, but never "singed" . . . there is an English word "singed" but it means to get burned).

"Yes, although I filed the lawsuit on time, but I had to amend it later". Co-occurrence of connective pairs.

"I really am not sure where is to find a translation of that law". Inversion in subordinate finite who/which/what/where clause.

"The town has been mentioned in municipal records as long ago as 959." Duplication of past tense and progressive past.

"He gave the book to you and I." Non accord of required accusative for personal pronoun.

"By winning the case, the money was recovered by the law firm". Dangling gerund.

"To avoid mistakes, attention must be paid to details." Dangling infinitive.

"I send another message to quickly cancel the first one". Split infinitive.

"The chief cook and bottle washer resigned". Omission of necessary words (did one person resign or did two?)

"Joe introduced Mike to his business partner". Confusion of antecedent pronouns (did Joe introduce Mike to Joe's business partner or did he introduce Mike to a person who became Mike's business partner or did Joe introduce Mike to Joe's own business partner, who then also became Mike's business partner?)

"The reason why the claim failed was made clear by the Judge" . . . . "Prejudice is where you make up your mind in advance" . . . . "Fear is when something happens that makes you want to run away". Structural mismatches (reason + why; prejudice + where; fear + when).

"Neither man nor animal nor plant is immortal". Excessive negatives.

"He sincerely wishes to write well and therefore great efforts must be taken by him". Lack of co-ordination between gerund and infinitive (or between phrase and clause or between passive and inactive sentence construction).

"The Judge criticized my client and myself". Superfluous reflexive pronoun.

"Justice favors only the diligent". Misplaced or overworked adverb (adverbs of limitation, including "almost", "always", "ever", "merely", "only", "quite", "still", "usually", should be placed as closely as possible to the word or word group which is limited). Compare: (a) Only justice favors the diligent; (b) Justice only favors the diligent; (c) Justice favors

the diligent only. All four examples are grammatically “correct” but each has a different emphasis and meaning. The intended meaning, probably, is: “Justice favors the diligent” = “In general, the judicial system tends to achieve the results desired by those who are diligent and timely in the pursuit of their legal rights and remedies”.

### Other common grammatical danger zones

Confusing the relative pronouns “who” and “which”, overuse of verbs with high semantic generality (do, have, make, get), abuse of verb+ing construction (“I was not liking the way the Judge asked that question”), abuse of infinitive (“the Judge will make you to pay a fine”), uses of non-existent plurals (luggages, informations), use of adjectives instead of adverbs (“I hope to win the case easy”). Please also see box on page 81 [Indian usage of singulars and plurals].

Another danger zone is the *literal translation of local metaphor, idiom or proverb*. Thus, Polish people count rams (“liczenie baranów”) to try to go to sleep (English speakers count genderless “sheep”). Chinese people “fight poison with poison” (以毒攻毒)(but English speakers “fight fire with fire”). In English, “clothes make the man” but, in Slovenian, “clothes do not make the man” (“*obkela ne naredi človeka*”).

In this class of danger zones can also be placed *literal translation of journalese*. Thus, in German, it is perfectly correct to talk about a “rasche Senkung

der Preise”. This looks like a “rash sinking of prices [or even “prizes”]” or “a rash of sinking prices” but is merely a “sudden drop in prices”. In English, something “rash” is something done too boldly, too quickly or without careful thought about its consequences. A price cannot “sink rashly”.

As a general rule, it is prudent to avoid literal translations of local metaphors, however colorful they are or however well known in their own language.

In French, it may be said (usually ironically) that a person will “tirer sa révérence”. This is not “to pull [or “to tire”] his/her reverence”, which makes no sense in English.

**Drafting tip:** If the text you are dealing with does not make plain sense to you, in plain English, consider re-writing it, no matter how eminent or how unanimous the voices to the contrary.

## Legalese

English, unfortunately, contains an enormous number of terms called “legalese” (words and phrases in legal documents which are deliberately not expressed in plain English). Many of these terms, frankly, sound pretty good (and the ear easily becomes accustomed to them) but most of them have no useful meaning. Here are some of the most commonly overworked of such “legalese” terms. It is generally prudent to avoid using them and use, instead, a plain word or phrase that expresses the specifically intended meaning. Please note: “legalese” is not the same as “correct legal language”, which is definitely a goal worth attaining (and more likely to be attained without legalese) and which often does require the careful use of special legal terms.

### Legalese using mystical or unusual words

aforementioned, ambit, by these presents, is dispositive of, to wit, the instant case, witnesseth, purview . . . and many others.

### Legalese using more words than needed

aver and allege, because of the fact that, cease and desist, in point of fact, null and void, transfer and assign, bargain sell and convey . . . and many others. See “Verbiage”, on page 91 and Chart on page 103.

See, Bibliography, pages 124-125, for some reference works which have the space to devote more detailed attention to this topic, particularly, Garner, *A Dictionary of Modern Legal Usage* (2nd edition, Oxford University Press, 2001).

Similarly, with Latin: English and non-English speakers should be aware that, just because a word or abbreviation is Latin (such as “circa”, “e.g.”, “i.e.”, “viz.”, “in re”, “sub nom.”, “infra”, “supra”, “passim”, and many more) and is often used in modern legal English, that this does not mean that these terms are used today in other languages, even ones like the Romance languages, that are more closely related to Latin than English is. The text will be much more clear by using plain English, wherever possible: approximately, for example, in the case involving . . .

### “The exception proves the rule”

This is a very common expression, often used in a legal context. It looks as if it means “the exception to a rule is persuasive proof that the rule is correct”, which is illogical. Actually, the word “prove” here means “to test”, as in old French (“prover”) and as in modern English “proofreading” and “prove a will” (“probate”) and “the proof of the pudding is in the eating”. Hence, the correct meaning of the phrase “The exception proves the rule”, in modern English, is that exceptions are a test as to whether the rule is actually (and usually) correct or not. That is at least a logical statement, if not always an accurate one.

See, also “beg the question” (page 31).

**Drafting tip:** It is prudent to avoid English idioms, maxims, proverbs and colloquial expressions, unless you are absolutely sure (1) that your intended meaning is the actual meaning and (2) that this specific intended meaning will be the only meaning understood by others, many of whom will not have English as their mother tongue and may misinterpret such special English terminology. The English phrase “out of sight, out of mind” merely means that people tend not to think about things or about other people, who are absent. The word “mind” here is used in its old sense (think about, pay attention to), as today in “mind the step”, “mind your own business”, “childminder” and “reminder”. There are many stories about how early computers translated this phrase into other languages as the equivalent of “invisible and insane” or as “sightless idiot”. People can easily make such mistakes, too.

### Euphemisms and watered down expressions

Euphemisms are ways of saying things so that they sound more pleasant than they really are. Some examples of euphemisms: kidnapping (literally, stealing a young goat, but actually the criminal abduction of a human being); doctoring the books (literally, making accounting records more healthy but actually the falsification of financial records); enhanced criminal sentence (literally, improved criminal sentence, but actually a more severe prison term and/or monetary penalty), product recall (literally, asking customers to send back products but actually a procedure for removing potentially dangerous products from the marketplace).

Watered down expressions are terms that, although very commonly used, have lost very specific meanings and thus can easily lead to confusion, especially in a legal context. Some examples: best efforts, subject to contract, consent not unreasonably withheld, as soon as practicable, upon reasonable notice, due process, with all deliberate speed, due diligence, fit for purpose, marketable, merchantable, holder in due course, background, insolvent, in the ordinary course of business, feasibility study, user-friendly, for good cause, material adverse change, and ordinary wear and tear excepted.

**Drafting tip:** There are two main problems with euphemisms and watered down expressions. (1) They are often unclear or ambiguous in specific legal contexts and can lead to misunderstandings. (2) Using them may cause you not to focus your attention on words and expressions that, although less colorful, may be more accurate.

### Verbiage

Using more words than are needed to express ideas.

**Drafting tip:** Avoid verbiage. Calvin Coolidge (US President from 1923-1929) was famous for being a man of few words. On one occasion, a person sitting next to him at a lengthy, formal dinner said to him: “Oh, Mr. President, I am so happy to be sitting next to you. I have made a bet with my friends at home that, during dinner, I can get at least three words out of you”. Coolidge replied: “You lose”.

### Euphemisms and other watered down expressions

Some “food for thought”. “Industrial action” (UK) or “job action” (US) are terms which refer to various measures taken by employees to reduce productivity in a workplace, including “strikes” (total refusal to work, total inaction). In criminal law, “diminished responsibility” (or “diminished capacity”) is a legal defense by which the defendant admits doing the criminal act but seeks totally to avoid criminal liability and punishment for doing so because of “diminished mental state” or “severe mental impairment”. In the phrase “representations and warranties”, the term “warranties” means that certain things are being formally promised, guaranteed and described as completely true and legally binding: What are the “representations”?

## History and legal words

Almost all the words and phrases mentioned in this guide to Legal Drafting in English have interesting histories. Here are just two examples:

**Boutique.** This word today is generally used in English to mean a small shop that sells special “up market” goods. However, it is also used in terms such as “boutique law firm”, meaning a law firm that has a highly specialized area of practice. There is even an International Network of Boutique Law Firms (the “INBLF”), based in the USA but worldwide in scope. Historically, however, the word “boutique” (derived from a Greek word) had nothing to do with law or law firms or shops selling luxury products.

**Policy.** Today, this word has many meanings, including an insurance “policy” and various types of government “policy” and corporate “policy”. There are two different Greek words at work here and, hence, two very different English words. In Scotland, the term “policy” is sometimes encountered meaning the grounds and gardens of a great estate, as well as “urban renewal”. In American English, the term “policy” (“policy racket”) was formerly encountered in connection with illegal gambling and lotteries (from the “policy”, or receipt given to the customer at the “policy shop” by the “policy writer”) but is now better known as “the numbers game” or “digits” (also from a Greek word). Black’s Law Dictionary (see Bibliography, page 122) still lists “policy” as including “a type of lottery in which bettors select numbers to bet on . . .”.

**Drafting tip:** Each time you use a legal word in English, there is a history (often a long and complicated one) and the meaning of the word today is very often affected by that. Also, just because a term is listed in a good dictionary is not enough to be sure that the term is in current use. Usage and mutual understanding are the fundamental keys to all aspects of legal English. When in doubt, use another term or state clearly the specific definition for the word that YOU intend it to have.

Most of the problem words you need for legal English are collected in the various Eversheds dictionaries. See, Bibliography, page 121.

## New words

Here are some new words in English, that may have various legal implications:

**advergaming** (Internet method of marketing products by offering free games online)

**blegging** (using a blog to ask for donations of money)

**blook** (a book on a blog or website)

**bluesnarfing** (using one Bluetooth™-enabled mobile phone to steal contact details from another one)

**bot army** (computer groups used to mount denial-of-service attacks)

**copyfighting** (disputes between copyright owners and users)

**data smog** (unwanted or useless information via the Internet or text messaging)

**disemvowel** (removing vowels in a text message, to make it shorter)

**dooced** (be dismissed from employment because of what one has written on a website or blog)

**e-mail bombing** (malicious use of volume e-mails to overload a target company's e-mail system)

**freemium** (business practice of offering some basic services free but requiring payment for others)

**gling** (various gadgets associated with computers, including swipe cards and mouse pads)

**globespeak** (shorthand English used in e-mails and text messages)

**google bombing** (attempting to influence the search engine ranking of a website)

**homesourcing** (paying employees to work from home)

**neuromarketing** (researching the brain patterns of consumers, in order to reveal their preference for certain products and services)

**podslurping** (using portable media devices to steal confidential business data)

**pretexting** (using false pretenses to obtain someone's personal details, for purposes of identity theft)

**phishing** (using fraudulent e-mails to try to extract confidential financial information from bank customers)

**reBay** (resell something previously purchased via eBay)

**shoulder surfing** (trying to obtain a person's PIN by looking over their shoulder while they access a cash machine)

**smirting** (flirting among employees, while smoking outside a no-smoking workplace)

**wikispam** (commercial links posted on a wiki site).

And many more.

## Pioneers

Law French (a special form of Norman French) was used in the Courts of England from 1066 until well into the 18th century.

Many Law French terms survive today in modern legal English:

**attorney:** someone appointed to act for another person. Note: the term used to have a much broader meaning, including the lieutenant governor of a region. Modern US real estate leases often have an "attornment clause" (the agreement of the lessee to accept a new lessor, if the lease is transferred).

**bailiff:** originally the marshal of the court but now someone who serves documents for the Court (UK) or someone who keeps order in the Court (US).

**cestui que trust:** the beneficiary of a trust.

**cy-près doctrine:** the power of a court to transfer the property of one charitable trust to another charitable trust when the first trust may no longer exist or be able to operate.

**defendant:** the party against whom a civil or a criminal proceeding is brought.

**escheat:** ownership of unclaimed property passes to the State. Note: the term is unrelated to "cheat" (meaning to act dishonestly).

**estoppel:** a party in Court may not contradict a position previously taken by them, regarding a matter in dispute.

**laches:** Loss of legal rights through a failure (laxity) to act.

**mortgage:** a “dead” pledge of real property as security for a debt. In the USA, what was historically called a “chattel mortgage” (a pledge of personal property as security for a debt) is nowadays more commonly called a “security interest”. In California, what in most other states would be called a “real estate mortgage” is known as a “deed of trust”.

**Oyez (“hear ye!”),** a traditional cry used to open court proceedings, still used in parts of the United States.

**plaintiff:** The person who begins a lawsuit, seeking relief from the Court. Still used in the US but “claimant” in the UK. Both terms are derived from Law French. Note: In some proceedings, a “plaintiff” may also be called the “applicant” or the “petitioner” or the “libellant” (in US admiralty law). Those terms also come from law French.

**tort:** Civil wrong, other than a breach of contract.

**treasurer:** Person who looks after the financial affairs of a corporation or association or of an entire country.

**trove (also “treasure trove”):** A treasure or thing of value, found by chance.

**voir dire:** The questions a prospective juror must answer in order to determine their qualification to serve on the jury (mainly US).

**Drafting tip:** When using a term in modern legal English that is (or seems to be) derived from Law French (see partial list, above), it is often advisable to check in a modern legal Dictionary (please see Bibliography) that the modern meaning is what the user intends and expects it to be. Most of these terms have been in use for almost 1,000 years: they have often changed their meanings, or have lost some of their original meanings or have added some new meanings that are often very unexpected. For example, “establishment”, in English “Law French”, originally meant law, order, ordinance, custom. All those meanings have been lost.

Many Law French words survive but may be hard to recognize in their modern form: for example, “cassation” survives as “quash”: cassation does not survive in legal English. Also, it is common for a Law French word to have more than one modern descendant, with quite different meanings: for example, the modern English word “purchase” derives from Latin “perquisitum” and refers to the act of buying things. However, the modern English term “perquisite” (often seen abbreviated to “perks” and which comes from the same Latin word) means a benefit paid to someone in addition to their salary (and should not be confused with “pre-requisite” or “requisition”, let alone with modern French “perquisition”, which refers to a formal search for evidence, such as in = “perquisition” (Italian “perquisizione”) = dawn raid (UK), search and seizure (US).

In modern English usage, the word “perquisition” has no legal meaning (although it may sometimes be encountered in Scots law).

These are just some examples, among many, many hundreds of others.

### Note

An unexpected word order may also be a warning that a Law French term is involved, even within modern English legal terms. For example, a “sum certain” (noun + adjective) means an amount of money that is known, exact, precise: the French word order is a clue (noun + adjective). Change the word order to “a certain sum” and the meaning becomes very different = an amount not yet known, an amount still to be determined, an amount which is uncertain. Similarly, the term “fee simple” is doubly confusing: fee here does not mean “payment for services” but means “real estate” and “simple” means absolute ownership, unconditional ownership (of the real estate). Similarly: the modern US legal terms “Attorney General” (noun + adjective) and “Solicitor General” (noun + adjective) are both derived from Law French and have specific modern meanings. “Court martial” is yet another term whose word order shows that it originates from Law French. But compare: “martial law”.

Finally, some of the old Law French terms survive within “living documents”, such as the US Constitution. It refers, for example, to “letters of marque and reprisal”. All three of those words do not mean what they seem to: (1) letters means “authorization”, (2) marque means “marking something or someone for special, aggressive attention” (as in “marksman”, a person who shoots accurately at distant objects or persons, and “the mark”, a term used by street criminals to describe their intended victim) and (3) reprisal (literally “taking back”) means “attacking foreign citizens and seizing their ships”: therefore, all together “letters of marque and reprisal” = legal piracy. Yes, there were “spin doctors” back in the days of Law French, too. Compare, letter of credit, letters testamentary, letters patent, letters of administration, letter rogatory, all of which are still used in legal English and have specific modern meanings.

## Plain speaking

### More drafting advice, from past masters

**“ . . . con palabras significantes, honestas y bien colocadas, salga vuestra oración y período sonoro y festivo, pintando en todo lo que alcanzáredes y fuere posible vuestra intención, dando a entender vuestros conceptos sin intricarlos y escurerlos”**

*[be sure that your words are the proper ones, well placed and meaning the right thing, expressing your intentions when writing them down and saying what you wish to say, without any complexity or obscurity.]*

Miguel de Cervantes Saavedra (1547-1616),  
Don Quixote, Prologue.

**Drafting tip:** There may be “no better exercise” than to take the text of your proposed letter or draft agreement, in English, and translate it back into your own language, at least mentally, if not on paper. Are you finding any English words or sentences unclear or “strange” in your own language? Are you finding it difficult to find one exact word for each of the English words? Are you sensing a need to change the word order or sentence patterns or add or delete subordinate clauses or to change verbs into nouns (or nouns into verbs), in order to make the ideas come out “right”, in your own language? Can the ideas be expressed in shorter, less complicated English sentences? All these are signs that the English version may need some further attention and may even be wrong and misleading.

There are many instances in which your English can be simplified, at the same time that your intended meaning becomes more clear. Here are some suggestions.

Avoid	Use
As a consequence of	Because of
By means of	By, using, with
By virtue of	By, under
For the purpose of	To, in order to
For the reason that	Because
In accordance with	By, under
In addition to	Besides
Inasmuch as	Because, since
In association with	With
In case of	If, if there is
In the absence of	Without
In the course of	During, while
In the event of	If, if there is
In the nature of	Like
In view of	Because of
Prior to	Before
On the grounds of	because
Subsequent to	After, later than
With the exception of	except
In close proximity	near
In a cautious manner	carefully
On a temporary basis	temporarily
In all probability, in all likelihood	probably
At this point in time	now
At present	now
Due to	Because of

Avoid	Use
Adjust, modify, alter	Change
As a consequence, in consequence	therefore
Deleterious, noxious, detrimental	Harmful
stop	Desist, cease and desist

**Avoid:** antichresis, emphyteosis, habilitation, homologation, majoration, pollicitation, reactualisation, reclusion, reconduction, redhibition, refection, reinsertion, rememberment, resiliation, resorption, synallagmatic, titularisation, tractation, ventilation . . .

There are no such legal terms in English.

**Say, instead:** collateralization, long-term lease, authorization, ratification, surcharge, termination, bilateral, offer, updating, imprisonment, cancellation, continuation, repairing, reemployment, restructuring, reduction, tenure, negotiation, analysis . . .

**Avoid:** circa, ergo, a priori, a fortiori, a posteriori, . . . and other Latin terms, where possible. Also avoid padding and verbiage, such as: by the way, former and latter, above-mentioned, hereinafter . . .

Many foreign words and phrases are used so often in modern English that it may be quite acceptable for you to include them in your speech, your business correspondence and (sometimes) even in your legal agreements. Here are some common examples:

Ad hoc, ad litem, aide mémoire, alias, alibi, alma mater, alter ego, alumnus/alumna, amicus curiae, a priori, apropos, artiste, belles lettres, blasé, bona fide, bona fides, bon vivant, bourgeois, carte blanche, caveat emptor, cf., certiorari, chic, cliché, connoisseur, crescendo, critique, curriculum vitae (CV), débâcle, de facto, déjà-vu, de jure, delirium tremens (DTs), détente, dictum, dilettante, dolce vita, Doppelgänger, double entendre, doyen, dramatis personae, en bloc, en masse, entente, erratum (errata), Ersatz, esprit de corps, ex gratia, exposé, ex post facto, fait accompli, faux pas, fiasco, fiat, forte, furore, gauche, glasnost, gourmet, habeas corpus, habitué, haute couture, hors d'oeuvre, in absentia, in camera, incognito, incommunicado, in limine, in propria persona ("in pro per"), inter se, inter vivos, joie de vivre, junta, Kitsch, lis pendens, memorabilia, mens rea, modus operandi (MO), moratorium, nolo contendere, non sequitur, NB (nota bene), de novo, nul point, obiter dictum, ombudsman, pari passu, passé, pendente lite, per capita, per diem, per se, persona non grata, per stirpes, placebo, prima facie, pro bono (publico), pro forma, pro hac vice, pro rata, pro tanto, protégé, pro tem (pro tempore), quasi, quid pro quo, raison d'être, rapporteur, rapprochement, res ipsa loquitur, risqué, scierter, sic, sine die, sine qua non, status quo (ante), sub judice, subpoena, subpoena duces tecum (SDT), sui generis, syllabus, ultra vires, verbatim, vice versa.

These terms are not “legalese”. Each has a specific and (usually) clearly understood meaning, whose usage (in examples) you can confirm by consulting any good English dictionary. Many of these terms, however, could easily be replaced by English terms but are so common that they may be unavoidable, in the proper context.

The following foreign words and phrases (although often used in English, as English) are usually best avoided, either because they are pretentious or because they may not be widely (or correctly) understood:

ab initio, ad hominem, ad infinitum, ad nauseam, aficionado, a fortiori, à la carte, ancien régime, antebellum, aperçu, apologia, atelier, au courant, au fait, avant la lettre, badinage, bagatelle, beau monde, bête noire, billet doux, bon mot, boudoir, bravura, brio, camaraderie, canard, carpe diem, casus belli, cause célèbre, caucus, chagrin, chef-d’oeuvre, chiaroscuro, claque, cognomen, cognoscente, compos mentis, contretemps, cordon bleu, cordon sanitaire, coup de grâce, coup de théâtre, cri de coeur, cui bono, de bene esse, démarche, demi-monde, dénouement, de rigueur, dernier cri, dirigisme, divertissement, douceur, droit de seigneur, du jour, echt, éclat, élan, embarras de choix, embarras de richesses, émigré, eminence grise, en clair, encomium, en famille, enfant terrible, ennui, entente cordiale, entrée, entre nous, ergo, eureka, ex ante, ex officio, factotum, femme fatale, fin de siècle, gaucherie, Gemeinschaft, gemütlich,

Gestalt, gourmand, grand guignol, grande dame, gravitas, guru, haute cuisine, hors concours, hors de combat, hubris, ibidem (ibid.), idée fixe, idiot savant, imbroglia, in flagrante delicto, infra dig., in haec verba, in loco parentis, in situ, inter alia, interregnum, ipso facto, kaput, kudo, lacuna, largesse, leitmotiv, lingua franca, manqué, marginalia, matériel, mea culpa, mêlée, metier, modus vivendi, mores, mutatis mutandis, nemine contradicente (nem. con.), ne plus ultra, noblesse oblige, nolle prosequi, non est factum, nouveau riche, objet d’art, oeuvre, outré, panache, paparazzi, par excellence, passim, peccadillo, pièce de résistance, pied-à-terre, pique, post hoc, Putsch, QED (quod erat demonstrandum), quondam, rara avis, Realpolitik, recherché, reductio ad absurdum, sang froid, savant, savoir faire, Schadenfreude, Schmaltz, shibboleth, sobriquet, soi-disant, sotto voce, Spiel, sub rosa, tabula rasa, terminus ad quem, terra firma, terra incognita, tête à tête, toties quoties, tour de force, troika, trompe l’oeil, vade mecum, vendetta, vis-à-vis, viz. (videlicet), volte-face, vox populi, voyeur, Wanderlust, Weltanschauung, Weltschmerz, Zeitgeist.

**Drafting tip:** It is “OK” to be creative in English and the language is very “open minded” about such innovations. However, it is probably safer to be conservative and use plain language. Whenever there is a legal context, there will always be a conservative way of expressing the intended meaning.

## More on “politically correct” speech

Any concern about saying “him” instead of “her”, or about using the cumbersome and unnecessary “him or her” can usually be avoided simply by making the relevant noun in the sentence plural, instead of singular.

**Example:** The company expects that each employee will do his/her duty.

**Or:** The company reminds each employee that s/he is expected to do her/his duty.

Both of the above formulations are intelligible but are very clumsy.

**Instead, say:** The company expects that all employees will do their duty . . . or . . . The company expects all employees to do their duty.

Please note that “duty” remains singular, even though many people are being described. That each may have a different “duty” to the company is implied.

## Spelling, punctuation and pronunciation

Unfortunately, English spelling is “historical”, meaning that it is full of words whose correct spelling must be memorized. Moreover, UK and US spelling is often different. However, different UK and US spelling will rarely have any bearing upon the meaning. This may affect your use of electronic systems such as “spell checks” and searches. Here are some common examples:

adviser, advisor

analyze, analyse

annex, annexe

any time, anytime, sometime, some time

check, cheque, crossed cheque (UK)

judgment, judgement

organize, organise

imperfect . . . (not unperfect)

injustice but unjust

inquiry, enquiry, request, investigation. General and legal meaning, public inquiry (UK)

moneylaundering, money laundering

program, programme

trademark, trade mark, trade-mark, service mark

trade name

trade dress

## Plurals

Appendix, appendices, index, indices. Data is almost always used in the plural. "data are" is more correct, but "data is" is acceptable.

**Please note:** In the UK, these ( ) are called "brackets". In the US, they are called parentheses. In the US, "brackets" probably will be understood to mean these: [ ] (in the UK = "square brackets").

Quote marks: UK = "speech marks" and US "quotes, quotation marks"

UK "full stop" = US "period" = ".", at the end of a sentence.

## Pronunciation

Quite a few English words are spelled the same way but have different meanings and pronunciations. Some examples:

Complex vs complex. A COMplex (noun) is a group of psychological tendencies and related mental abnormalities. A COMplex (noun) is also a group of similar objects, such as an "apartment complex". Something that is comPLEX (adjective) is "complicated".

ConVICT (verb) vs CONvict (noun)

DEsert vs deSERT (the army) and dessert and deserted (abandoned). Just deserts. Deserving disserving

InVALid (adjective) INvalid (noun)

Miscellany. MisCELLany (UK pronunciation)  
MiscellANY (US pronunciation)

ReFUSE (verb) vs REfuse (noun)

Resort and re-sort (two words with unrelated meanings)

PERfect (adjective) vs perFECT (verb)

SusPECT (verb) and SUSpect (noun)

## Times and numbers

Business day. Be sure that this means what you expect. In many legal systems, there are laws about counting of days, such as “exclude the first calendar day and then start counting”. If you have a special definition or counting system in mind, describe it in your agreement.

Mensual, not legal English, say “monthly”.

Annually, within one year, one year from today . . .  
bi-annual, biennial.

## Vogue words

New English words whose legal meanings are evolving:

- astroturf lobbying
- cyberfraud
- don’t ask, don’t tell
- drug court
- hacking
- identity theft
- matrix scheme
- media ride-along
- mobbing
- pretexting
- private attorney general
- racial profiling
- soft money.

## Worrisome words

The words which have the greatest tendency to lead to litigation are some of the most common words.

**Most litigated:** reasonable, agree, timely, offer, notify, send, receive, and, or, best efforts (reasonable endeavors), (not) unreasonably withheld, consent, representation, condition, material knowledge, material adverse effect, notice, effective notice, prior notice, constructive notice, notification, termination, expiration, effective date, timely . . . .

### Some “false friends” with legal connotations, as between Greek and English

Greek term	Looks/sounds like English	Meaning
αίρεση	heresy	Means “heresy” but also means approval, condition, proviso, clause, sect, cult
άτομο	atom	Means “atom”, but also means person, individual
έδρα	(cath)edral	Means “seat”, but also means registered business office, teacher’s desk
έργο	ergo	Means work, duty, achievement, theatrical play, piece of art
θέατρο	theatre	Means “theatre” but also means hypocrisy
μάρτυρες	martyrs	Means “martyrs”, but also means witnesses in a legal case
κόμμα	comma	Means “comma” (,), but also means political party
ομολογία	homologue	Means admission, confession, bond (debenture)
οργή	orgy	Means anger, rage, fury, exasperation
πάθος	pathos	Means suffering (in plural, “πάθη”)
παροχή	parochial	Means supply, consideration, performance
σύμφωνο	symphony	Means agreement, contract
τράπεζα	trapeze	Means bank (financial institution), table (but only in translating King Arthur’s Round Table)

**Drafting Tip:** Many legal terms in the Romance languages may look similar to English ones but many others look and are very different from their English counterparts. For example, some Spanish antitrust terms look quite similar to English ones: abuso de posición dominante, acuerdos horizontales, acuerdos verticales, adquisición de control, cártel, concentraciones conglomeradas, dumping social, importaciones paralelas, mercado relevante, oligopolio, prácticas colusorias, prácticas restrictivas, prácticas concertadas, precios predatorios, sanciones, trato discriminatorio.

But: ancillary restraints = restricciones accesorias, antitrust = derecho de la competencia, asset acquisition = adquisición de activos, bundling (tying agreements) = contratos vinculados, disparagement = denigración, franchising = franquicia, gifts and bonuses = obsequios y primas, golden share = acción de oro, investment = inversión, merger = fusión, misleading advertising = publicidad desleal (publicidad engañosa), selling at a loss = venta a pérdida, state aid = ayudas públicas, unfair competition = competencia desleal, trademark = marca.

The terms joint venture, know-how, leverage and rule of reason may be encountered in Spanish, in English.

These patterns of the familiar and non-familiar are found in French (in great numbers), but also in Italian, Portuguese, Romanian and Spanish. Here is a sample:

<b>English</b> – contract <b>concussion</b> = severe injury to the head
<b>French</b> – contrat* <b>concussion</b> <sup>♣</sup> = theft of public money or property
<b>Italian</b> – contratto* <b>concussione</b> = abuse of public office
<b>Portuguese</b> – contrato* <b>concussão</b> = head injury and embezzlement
<b>Romanian</b> – contract* <b>concusiune</b> = fraudulent levying of governmental fees
<b>Spanish</b> – contrato* <b>concusión</b> <sup>♣</sup> = extortion

\* Very similar to English “contract”

♣ French: commotion (cérébrale)/Spanish: commoción = English “concussion” (head injury)

Some Turkish legal terms are similar to English ones (\* connotes a secondary meaning).

Turkish	English
deklarasyon*	declaration
kalifiye	qualified (competent/licensed)
kontrat	contract
legal	legal
moral	moral (ethical)
moratorium	moratorium
objektif	objective (unbiased)
obligasyon	bond (financial instrument)
organizasyon *	organization
otorite	authority (power)
parsel	parcel (of land/plot of land)
patent	patent (right)
prosedür	procedure

#### A note about telling the time

In the UK, the term “half eight”, when referring to the time of the day (or evening), usually means “8:30”. If your native language is German, then “half eight” will usually mean “7:30”. In Australia and the USA, this usage of “half” is very uncommon: Americans and Australians would say “eight thirty” or “seven thirty”.

**Drafting tip:** In any drafting situation where a precise time is important, it is advisable to use a 24 hour system and refer to the specific time zone intended (GMT, CET, PST, UCT, ACDT, etc.).

#### A note about counting

In all English speaking countries, "one million" means 1,000,000 (1 + 6 zeros). In British English, "0" is often referred to as "nought". In the USA, it is "zero".

A "billion" in the UK = 1 + 12 zeros but in the US = 1 + 9 zeros.

US trillion = 1 + 12 zeros but a UK trillion = 1 + 18 zeros.

**Drafting tip:** When using large numbers, it is advisable to use mathematical notation or, more simply, to specify which version of English is to govern.

#### A note on weights and measures

In most English speaking countries, the metric system is the system in general use. In a few others (mainly the US, the UK, Liberia, and some small Caribbean countries), there may be a combined use of the metric system and a local non-metric system. There are differences even within the non-metric systems. Thus, in the UK, a tonne is 2,240 pounds and a hundredweight is 112 pounds in weight. A US ton is 2,000 pounds. The term "hundredweight" is uncommon in the US. A US gallon is 231 cubic inches by volume. A UK gallon (Imperial gallon) is 277.42 cubic inches (about a fifth more than a US one). In the UK, the weight of people is often stated in "stones" (1 stone is 14 pounds). This usage is rare in the US. Perhaps even more surprising for those used to the metric system, not even all "pounds" are alike in weight. A pound of feathers means "pound under the avoirdupois system", which equals 453.59 grams. A pound of gold means "pound under the troy system", which equals 372.24 grams. Thus, a "pound" of feathers weighs more than a "pound" of gold.

**Drafting tip:** When using weights, measures and units of length and volume, it is advisable to specify which version of English is to govern or to include a metric conversion table making it clear what specific values are intended.

## Some Welsh legal terms derived from Law French

Welsh Term	Meaning
adfocad	advocate
aseini/aseinwr	assignee/assignor
carchar	jail, prison
consesiwn	concession
cwstwm ac ecseis	customs and excise
cympowndio fflewniaeth	compound a felony
discesiwn	discretion
ecwiti	equity
estopail	estoppel
ffi syml	fee simple
gwarant i arestio	warrant of arrest
llythyr credyd	letter of credit
morgeisi/morgeiswr	mortgagee/mortgagor
opiniwn cwnsler	counsel's [barrister's] opinion
preifatrwydd ystad	privity of estate
Prif-Ystus	Chief Justice
pwrkaswr/fendwr	purchaser/vendor
siarter-barti	charter party
ysiêd	escheat
yswiriart/aswiriart	insurance/assurance

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Eversheds **European Dictionary of Selected Legal Terms** (3rd edition, 2006). ISBN 0-9545356-0-X. 172 pages (1,000 important and often misunderstood legal terms in UK and US English, translated into French, German, Italian and Spanish). Version including Polish (forthcoming).

Eversheds **Global Compliance** (May 2007). Guide to corporate governance and compliance in 80 countries worldwide (from Albania to Vietnam, including all EU member countries).

Eversheds **Litigation in Europe** (March 2007). Guide to litigation (and class actions) in 30 European countries, with local language terms for "class action" and "product liability".

*English-to-English Legal dictionaries (with detailed explanations of legal words and phrases)*

**Black's Law Dictionary** (8th edition, Thomson West, 2004). 1,810 pages. ISBN 0-314-15199-0 (the most comprehensive one volume dictionary devoted to US legal terms, with more than 40,000 terms). (The 5th edition of this Dictionary has been translated into Czech, as "Blackův právnický slovník" (2 volumes, 1993, ISBN 80-85605-23-6)).

Bygh et al., eds., **Butterworths' Australian Legal Dictionary** (Butterworths, 1997). 1,344 pages. ISBN 040930722X.

Dukelow et al., **The Dictionary of Canadian Law** (2nd edition, Carswell, 1995). 1,375 pages. ISBN 0-4595-528-99.

Gifis, **Law Dictionary** (Barron's, 1996). 643 pages. ISBN 0-8120-3096-6 (about 3,000 key US legal terms defined, many with citations to relevant US court cases).

Garner, **A Dictionary of Modern Legal Usage** (2nd edition, Oxford University Press, 2001). 951 pages. ISBN 0-19-51436-5 (very detailed guide to legal language, mainly addressed to a US readership, with many useful word lists and explanations).

**Judicial Dictionary: A Complete Law Lexicon** (Butterworths India, 2001). 1,071 pages. ISBN 81-87162-61-9 (dictionary of legal terms used in India, with many detailed articles on legal drafting).

The Law Society of Scotland's **Glossary: Scottish and European Union Legal Terms and Latin Phrases** (2nd edition, LexisNexis, 1988).

Martin, **Complete A-Z Law Handbook** (Hodder Arnold, 2005). 299 pages. ISBN 0-3408-726-83 (legal dictionary and writing guide for UK law students).

Murdoch, **Dictionary of Irish Law** (Tottel, 4th edition, 2004). 1,243 pages. ISBN 978 1 84592 370 9.

**Oxford Dictionary of Law** (Oxford University Press, 2006). 608 pages. ISBN 019280698X (about 4,300 legal terms, mainly focussed on UK law and usage). (The 1997 edition of this dictionary has been translated into Bulgarian, as the "Оксфордски енциклопедичен речник по право". (Ciela, 1998) 628 pages. ISBN 954-649-182-9).

**The Oxford Essential Dictionary of Legal Words** (Oxford University Press, 2004). 400 pages. ISBN-10: 0425197069.

**Stroud's Judicial Dictionary of Words and Phrases** (Sweet & Maxwell, 2000). 3 volumes, 2,975 pages. ISBN 0-421-70760-7 (detailed dictionary of UK legal terms, many with examples from decided court cases).

**Words and Phrases®** (Thomson West, 2007). 122 volumes. (This is a massive research tool, under US law, taking up more than 20 feet of shelf space. It gives details of US judicial interpretations of thousands of words and phrases, from the 19th century to today).

*General Books about legal writing style and legal drafting*

Butt et al., **Modern Legal Drafting** (Cambridge University Press, 2006). 240 pages. ISBN 0-521-67452-2 (plain language approaches to legal drafting, written by two law professors in Australia and New Zealand).

Chartrand et al., **English for Contract and Company Law** (Thomson, 2003). 208 pages. ISBN 0-421-798-0-X (basic guide to legal English, with self-testing and sample readings).

Edwards, **Legal Writing: Process, Analysis, and Organization** (Little Brown, 2002). ISBN 0-73-5524-394.

Garner, **The Elements of Legal Style** (Oxford University Press, 1991). 236 pages. ISBN 0-19-5058-607.

Garner, **The Redbook: A Manual on Legal Style** (2nd edition, West Group, 2006). ISBN 0-31-4168-915.

Neumann, **Legal Reasoning and Legal Writing: Structure, Strategy, and Style (Legal Research and Writing)** (Aspen, 2001). ISBN 0-73-5520-046.

Wydick, **Plain English for Lawyers** (Carolina Academic Press, 1998). ISBN 0-89-0899-940.

*Books specifically designed for non-English speakers*

Beaudoin, **Les Mots du Droit** (Edition Yvon Blais, 2004). 307 pages. ISBN 2-89451-724-6 (annotated dictionary of selected legal terms and common difficulties encountered when translating from English into French).

Berezowski, **Jak Czytać i Rozumieć Angielskie Umowy?** (Beck, 2007). 278 pages. ISBN 83-7483-41307 (detailed practical guide in Polish to legal drafting in English: assumes that the reader already is fluent in English).

Cheng, ed., 英汉-汉英双向法律词典(修订增补本) **An English-Chinese and Chinese-English Two-Way Law Dictionary** (Revised and Enlarged Edition) (Law Press China, January 2007). ISBN 7-5036-6679-7 (useful for Chinese readers because it gives detailed explanations of many terms in legal English and useful for English readers because it also offers a list of some relevant Chinese terms in Chinese characters and in pinyin transliterations).

Chromá, **Nový úvod do právnické angličtiny** [New Introduction to Legal English] (4th edition, Univerzita Karlova, 2003). 2 volumes (562 + 554 pages). ISBN 80-246-0720-4 + 80-246-0738-7 (designed for speakers of Czech).

Gubby, **English Legal Terminology: Legal Concepts in Language** (Boom Juridische Uitgevers, 2004). 263 pages. ISBN 90-5454-499-6 (detailed guide to legal English and UK legal concepts, addressed to speakers of Dutch).

Gubby, **Practical Legal English: Legal Terminology** (Boom Juridische Uitgevers, 2006). 136 pages. ISBN 90-5454-6468 (short guide to legal English, addressed to speakers of Dutch).

Houbert, **Guide Pratique de la Traduction Juridique: Anglais-Français** (Maison du Dictionnaire, 2005). 283 pages. ISBN 2-85608-186-X (although mainly designed to assist in translating from legal English into French, the book contains numerous suggestions and examples of general application). The book can be used together with the author's **Dictionnaire des Difficultés de l'Anglais des Contrats** (2000).

Jakubaszek, **Legal English: Textbook** (Beck Poland, 2004). 160 pages. ISBN 83-7387-202-7 (textbook designed for teaching legal English to law undergraduates in Poland). There is also a related Workbook, by the same author. ISBN 83-7483-368-8.

Krois-Lindner et al., **International Legal English: A Course for Classroom or Self-Study Use** (Cambridge University Press, 2006). 320 pages. ISBN 0-521-67517-0 (detailed textbook designed to prepare students to pass the ILEC examination (International Legal English Certificate)). There is also a companion Teacher's Book. 295 pages. ISBN 0-521-68556-7.

**Latvijas Republikas tiesību aktu tulkošanas rokasgrāmata** [Translation Handbook for Latvian Legislation] (2004) 94 pages. ISBN 9984-657-01-9.

Шевелева, **Английский для юристов** [English for Lawyers]. ISBN 978-5-238-01190-5 Твердый переплет (2007) (textbook designed for teaching legal English to law undergraduates in Russia).

Tozzi + Přidalová, **Legal English** (Linde, Prague, 2004). 191 pages. ISBN 80-7201-507-9 (textbook designed for teaching legal English to law undergraduates in the Czech Republic).

*General English language books specifically designed for native English speakers*

Allen, **English Phrases** (Penguin, 2006). 805 pages. ISBN 0-141-00672-2 (more than 6,000 common English phrases and idioms explained and illustrated, from "A1" to "zero tolerance").

Allsopp, **Dictionary of Caribbean English Usage** (Oxford University Press, 1996). 697 pages. ISBN 0-19-866152-5 (collects more than 20,000 words and phrases, illustrated by many quotations and examples, including legal examples).

**American Heritage Dictionary of the English Language** (Houghton Mifflin, 2000). 2,074 pages. ISBN 0-395-82517-2 (very detailed dictionary of US English).

Baumgardner, **The English Language in Pakistan** (Oxford University Press, 1993). 321 pages. ISBN 0-19577-44-2 (detailed study of Pakistani English, with numerous legal and business examples).

Bolton, **Chinese Englishes: A Sociolinguistic History** (Cambridge University Press, 2003). 338 pages. ISBN 0-521-03001-3 (detailed study of adaptations of native Chinese speakers to international English).

The British Council, **English Next** (2006). 132 pages (detailed study of English as a world language).

Cao, **Chinese Law: A Language Perspective** (Ashgate, 2004). 225 pages. ISBN 0-7546-24358 (this book is mainly a study of problems encountered when translating English into legal Chinese and addresses many issues raised by various traditional Chinese ways of expressing legal concepts but it also has many useful suggestions about avoiding problems which may arise when attempting to match up Chinese legal concepts with reasonably appropriate counterparts in legal English).

**The Chicago Manual of Style** (University of Chicago Press, 14th edition, 1993). 921 pages. ISBN 0-226-10389-7 (very detailed reference work, mainly directed at US usage, punctuation, use of commas, hyphens and spelling). Also available online.

**Collins Australian Thesaurus** (HarperCollins, 2003). ISBN: 0732279321.

Gooden, **Who's Whose? A No-Nonsense Guide to Easily Confused Words**. (Bloomsbury, 2004). 250 pages. ISBN 0-7475-7231-3 (hundreds of confusing non-legal words and phrases explained, with many clear and useful examples).

Görlach, **A Dictionary of European Anglicisms** (Oxford University Press, 2001). 352 pages. ISBN 0-19-823519-4 (collects thousands of British and US "Anglicisms" that are commonly used in 16 other European languages, cited alongside the local language terms).

Huddleston, et al., **The Cambridge Grammar of the English Language** (Cambridge University Press, 2002). 1,842 pages. ISBN: 0-521-43146-8 (very detailed grammar, but without specific treatment of legal language).

Kirkpatrick, **World Englishes** (Cambridge University Press, 2007). 257 pages. ISBN 978-0-521-85`47-3 (detailed study of English as a world business language, with emphasis of specific problems encountered by non-native speakers, worldwide).

Lutz, **The Cambridge Thesaurus of American English** (Cambridge University Press, 1994). 515 pages. ISBN 0-521-41427-X (200,000 synonyms and antonyms, following US usage).

Macmillan's **Phrasal Verbs Plus** (Macmillan, 2006). 522 pages. ISBN 1-4050-6390-4 (detailed guide to the most common phrasal verbs, with examples).

Maggio, **The Dictionary of Bias-Free Usage: A Guide to Nondiscriminatory Language**. (Oryx Press, 1991). 293 pages. ISBN 0-89774-653-8.

Moore, ed., **The Australian Oxford Dictionary** (Oxford University Press, 2004). 1,800 pages. ISBN 0-1955-1796-2 (about 225,000 terms in Australian English).

Murphy, et al., **Essential Grammar in Use** (Cambridge University Press, 2002). 300 pages. ISBN 0-521011248 (English grammar in Thai, especially designed for speakers of Thai). Cambridge also publishes such bilingual guides for native speakers of French, German, Italian and Spanish.

Nihalani, et al., **Indian and British English: A Handbook of Usage and Pronunciation** (Oxford University Press, 2005). 290 pages. ISBN 0-1956-6656-9 (detailed guide to Indian English, with emphasis on business usages).

**The Oxford English Dictionary** (Oxford University Press, 1989). 20 volumes (22,000 pages). ISBN 0-19-861186-2. Also available on CD-ROM and online. (More than 600,000 English words, illustrated by more than 2 million quotations).

**The Oxford Dictionary of New Zealand English** (Oxford University Press, 2004). 1,405 pages. ISBN 0-19558-4511 (more than 100,000 definitions, including Maori terms used in New Zealand English).

**The Oxford Style Manual** (Oxford University Press, 2003). 1,056 pages. ISBN-10: 0198605641 (very detailed reference work, mainly directed at UK usage, punctuation, use of commas, hyphens and spelling).

Peters, **The Cambridge Guide to English Usage** (Cambridge University Press, 2006). 608 pages. ISBN 0-521-62181-X (detailed guide to English usage in the UK, Australia, Canada, New Zealand and the US, with more than 4,000 examples explained and commented upon).

Silva, ed., **A Dictionary of South African English on Historical Principles** (Oxford University Press, 1996). 856 pages. ISBN 0-19-863153-7 (about 8,000 words and phrases, with almost 50,000 quotations, including legal terms).

Wilkes, **A Dictionary of Australian Colloquialisms** (Sydney University Press, 1990). 362 pages. ISBN 0-424-00178-0 (many examples of Australian business and legal usage, with examples).

### A general word about legal drafting

There are many useful books on legal drafting which assume that the reader already has a very good command or even a fluent command of English and is looking for very specific drafting advice in a legal context, for example, about common problems regarding contract terms in general, or regarding insurance contracts, construction contracts, maritime contracts, real property leases, real property sale agreements, loan and financing agreements, M&A documentation, company documents, stock market listings, pleading in litigation, patent applications, consumer warranties, trusts, charitable gifts and wills and so forth. The publications listed in the Bibliography contain useful explanations and examples. It would not have been possible in this guide to Legal Drafting in English to include even a representative sample of what these books recommend. Hence the reader is referred to the selected publications listed in the Bibliography, for further details.

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