# Language and Law

A resource book for students

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# Chapter A1

## ‘Legal Language’ as a Linguistic Variety



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## A1 'LEGAL LANGUAGE' AS A LINGUISTIC VARIETY

In this unit, we introduce the concept of legal language, perhaps the most obvious and traditionally debated intersection between language and law. The expression *legal language* designates what is often considered to be a recognisable linguistic variety, differing from other kinds of language use such as medical discourse, news reporting, Dorset dialect or underworld slang. But does a variety matching the name exist? And if so, what kind of variety is it: a dialect, register or something else?

In order to refine the concept of legal language, we introduce sociolinguistic concepts that help distinguish different *kinds* of linguistic variation. In related units, we extend our exploration of the concept: in Unit B1, we examine specific linguistic features associated with the variety, and in Unit C1 we examine contrasting views expressed about it. In Thread 2 (i.e. Units A2, B2, C2 and D2), we describe this complicated variety's historical development and the purposes it is thought to serve, as well as reasons why many people feel it is in need of reform if it is to achieve those purposes.

### Scope of legal language

If you ask people what **legal language** is the language of, you will get different answers. Some say it is the language in which laws and legal documents are written: constitutions, treaties, statutes, law reports, wills or contracts. Others add courtroom and police language (spoken as well as written, and about legal topics generally or only when oriented towards litigation). Some also include non-professional use of language that is *about* law (e.g. in newspaper features), wherever discussion draws on legal terminology or style to represent a specific topic. Some maintain that 'legal language' is whatever lawyers say about law (including colloquial in-group talk), whereas talk on the same subject by other people is 'talk about law' but not legal language.

Whatever boundaries we adopt, what we call 'legal language' is a kind of discourse: a variably classifiable set of utterances with enough regularities to contrast fairly consistently with other kinds (e.g. with the language of parenting, cricket, menus or hairdresser talk). At the same time, legal language is evidently not a single, unified variety. Rather, it is a cluster of uses, distributed on dimensions that need to be disentangled. Merely aggregating these as 'legal language' constructs only a stereotype: part statute, part contract, part courtroom scenes from films, and drifting between historical periods and legal systems.

In a summary of research (including his own earlier work with Derek Davy on the language of legal documents in Crystal and Davy 1969), Crystal (2010: 374) describes the language of legislation as follows:

> [it] depends a great deal on a fairly small set of grammatical and lexical features. For example, modal verbs (e.g. *must*, *shall*, *may*) distinguish between obligation and discretion. Pronouns (e.g. *all*, *whoever*) and generic nouns (hypernyms, e.g. *vehicle*, *person*) help foster a law's general applicability.

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Such formal description is suddenly far more precise, and can be extended by quantitative analysis of a corpus of representative texts. But some features of legislative language will also be found, in a different combination and with different frequency, in a contract or other private law documents. They will not be entirely absent, either, from the generally more discursive idiom of a judicial opinion as presented in a law report. One task in understanding legal language, therefore, is to differentiate *within* the legal variety as well as between legal and other varieties.

## The term *legal language*

The phrase *legal language* is one among a cluster of terms used to describe a general field of study. Such terms include *language and law*, the reverse-order phrase *law and language*, *the language of the law* and *language in law*, as well as *forensic linguistics*. Both the order of terms and choice of preposition are live issues, as are the differences between *language* and *linguistics* and between *law* and *forensic*. The content of the resulting field, which Tiersma (2009: 11) describes as 'relatively fractured', is usefully summarised in Gibbons and Turrell (2008), as well as – slightly differently – on the website of the International Association of Forensic Linguists (www.iafl.org). At its broadest, topics in the field include written legal discourse (sources of law, and judicial declaration or interpretation of the law), spoken legal discourse (e.g. police and court interaction), linguistic evidence, legal education, translation and interpreting. Nuances between names and what they denote have been much discussed in the literature.

In countries where English is not the primary language of the legal system, legal language often goes under another name, partly because it is typically studied for different reasons. The phrase *legal English* (LE) is often used, for example, to mean competence in English for the legal workplace (Northcott 2013). Such approaches to legal language prioritise an applied, 'language proficiency' interest in how law works in English, an interest driven by a regionally varying combination of two forces:

- the international footprint of historically Anglo-American common-law legal systems in countries formerly colonised by or under the influence of English-speaking countries; and
- increased use globally of English as a legal lingua franca for commercial contracts and in formulating and enforcing public international law.

In these contexts, legal language, in English, is far less a variety absorbed during legal training, and is sometimes referred to as learning to **talk like a lawyer**; it is actively taught and certified (e.g. by assessments such as TOLES (Test of Legal English Skills) and ILEC (the International Legal English Certificate)). A good example of instruction in this idiom is Riley and Sours (2014).

Less attitudinally neutral than the terms above, **legalese** (along with *legal jargon*, *legal argot* and similar expressions) has a pejorative meaning: legal use of language that is clumsy, confusing or inefficient. Despite the apparent formality of legal discourse, lawyers are also sometimes said to use *legal slang*, an insider discourse between professionals.

While introducing terminology, we should note a further contrast implied by the term *legal language*: the contrast with 'illegal language'. Such language indicates use restricted or forbidden by specific laws, systems of extrajudicial regulation, and either binding or voluntary speech codes. We consider this rather different relation between language and law in Thread 8.

## What *kind* of variety is legal language?

The term *variety*, to continue with writing by Crystal by referring to his *Dictionary of Linguistics and Phonetics* (2008: 372), signifies 'any system of linguistic expression whose use is governed by situational variables. Classification of different kinds of discourse may be made by reference to subject matter, the situation, or the behaviour of the speaker'. In some cases, Crystal continues, situational distinctness can be easily stated (e.g. as regards regional and occupational varieties). In other cases, perhaps especially in relation to social class, varieties are more difficult to define because they involve intersection of a number of variables (e.g. sex, age, region, class and occupation). Varieties also change according to purpose and over time (reflecting stylistic fashions as well as longer-term language change). What kind or kinds of variety, we should therefore ask, is 'legal language'?

Reflecting Crystal's point above, legal language appears to involve a number of variables. There are *professionals* (lawyers, judges, others) dealing with a *field* (or domain of activity: laws and their enforcement). Those professionals do so in certain *settings* of use (e.g. in a solicitor's office, in the courtroom), for specified *purposes* (to impose obligations, plead a case, issue a court order). One of the challenges in thinking about language and law, accordingly – and within that field, thinking about what constitutes the core concept of 'legal language' – is to understand how this variety relates to recognised axes of linguistic variation.

### *How lawyers talk and what they talk about*

Linguists including Halliday have classified varieties by drawing a general distinction between variation determined by characteristics of the language user and variation related to situations of use.

- Variation by language user is known as **dialect** if variation is regional or determined by social structure; such variation includes grammatical and lexical distinctiveness, as well as pronunciation. It is known as **accent** if variation is regional or determined by social structure but restricted to pronunciation. The alternative term **sociolect** refers to a linguistic variety (a *lect*) defined on social rather than regional grounds.
- Variation associated with different topics, fields and contexts of use – including the relationship between participants – is known in stylistics and sociolinguistics as **register** (Halliday and Hasan 1976). Varieties of this type include registers of scientific, religious and academic English. In Hallidayan linguistics, because registers can be contrasted at different levels and in different ways, they are further classified on the basis of three aspects: their field (subject matter), their mode (the medium: spoken or written) and their manner or tenor of discourse (the relationship between participants). Some linguists (e.g. Biber and Conrad 2009)

distinguish between register and **style**, while others (Crystal and Davy 1969) have used *style* with a wider meaning close to that of register (alongside the more familiar sense of a personally distinct authorial imprint).

In a useful online summary and critical account of legal language, Tiersma (2000) poses a central, provocative question in the form of a subheading: 'So what is legal language exactly?' He then answers his own question:

> Legal language has been called an argot, a dialect, a register, a style, and even a separate language. In fact, it is best described with the relatively new term **sublanguage**. A sublanguage has its own specialized grammar, a limited subject matter, contains lexical, syntactic, and semantic restrictions, and allows 'deviant' rules of grammar that are not acceptable in the standard language.

There is undoubtedly complex interaction between the variables. Legal language, Tiersma maintains, is not a dialect, but does have dialects of its own, since it varies according to place. Because of their differing legal systems, UK and US lawyers use different words for many similar concepts; and in countries such as India, legal English contains terms for indigenous legal concepts as well as terms imposed under British colonization. Legal language across all these places shows shared register characteristics, nevertheless. These include use of long and complex sentences, unusual word order, antiquated vocabulary, apparently tautologous expressions, passive constructions, ritualistic idioms and formal terms of address. There are also period-specific styles that make it feasible, despite the conservatism of modern legal language, to distinguish between documents written in different periods, and there are author-specific styles associated with particular judges, such as Justice Antonin Scalia in the USA or Lord Denning in the UK (usually judges presiding in a legal system's uppermost, apex court). In addition to these dimensions of variation, there are recognisable differences that correlate with different legal purposes (e.g. a constitution is formulated in broader terms than a statute or contract, and all of these differ from a law report), and there are differences between spoken or written monologues, such as a judge setting out his or her reasoning in deciding a case, and legal dialogue, such as argument that takes place during a closed hearing in a judge's chambers or during more abstract legal discussion characteristic of a Supreme Court.

Combine all these variables, and 'legal language' may well be a 'sublanguage' according to Tiersma's definition. Whatever it is called, the variety cannot be considered homogeneous. While a broad contrast can be made with language use in other fields, legal language involves finely shaded, overlapping styles that call for more legally situated, interdisciplinary analysis if we are to understand the interaction between language and law.

## Does it matter what kind of variety 'legal language' is?

Distinguishing between user and use varieties is helpful descriptively, even if it is ultimately simplistic. Social markers (including age, region, class, job) intersect with situations of language use, especially in urban societies with considerable geographical

and social mobility. Code-mixing and code-switching are extensive, both among bilinguals who switch between languages and among monolinguals whose style repertoire includes code-switching between varieties, some of which might traditionally be thought of as regional or class dialects. All these kinds of variation may be reflected in legal language.

Complications associated with what language varieties signify also matter. Speakers' varying ease in switching in and out of a class or regional dialect, when they wish to, in order to fit in with or adopt some other stance in relation to given settings can affect professional success. Some linguists prefer the dynamic term **repertoire** to the more static contrast between dialect and register in order to emphasise such significance. The relative difficulty involved in acquiring legal language as a variety also matters, because law is not simply a semantic field such as the weather or geometry, but a professional practice steeped in tradition, subject to intense educational selectivity, and respectful of accentuated hierarchy. Law as a field exhibits complex shadings of language use among different institutions, topics, practitioners and purposes. Such semiotic micro-variation signals professional and social relationships both within law and between the legal system and the wider public who are subject to law in a given legal jurisdiction.

A2

## HISTORICAL DEVELOPMENT OF LEGAL ENGLISH

The four units that make up Thread 2 develop our exploration of legal language as a variety. In this unit, we outline the history of legal English; in Unit B2, we discuss specialised legal and social functions served by legal language; and in Unit C2, we consider arguments for and against reform of how legislation is written. The present unit introduces each of these themes by showing how the distinctive features of modern legal English are the result of sociolinguistic complexity during successive periods leading into the more stable situation of English, including legal English, from the late seventeenth century onwards. We suggest that modern perceptions of legal English are affected not so much by the variety's specific historical features (which are broadly consistent with the wider history of the language), but by the fact that historical substrata have persisted far more than in general usage, as collectively a marker of linguistic conservatism.

### Key moments in the history of English

We begin by outlining key moments in the wider history of the English language, focusing especially on contact between different languages.

1 Although there is a complicated and interesting history of languages in the land mass that is now Great Britain prior to the eighth century AD, the impact of that linguistic history on modern legal uses of language was not significant. There is, for instance, little continuity between the Latin brought by the Romans in 43 BC

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