Legal Language: Bridging the Breach

Dr. Satyajit Patil
Pemraj Sarda College, Ahmednagar
Language: A Multi-tasking Agent

Language is ...

- The additional basic need of the human beings
- The Distinguishing Factor between human beings and living beings
- The Secret of Progress & Development of Mankind
- A potent tool of Reformation & Socialization
- The means to control human behaviour in order to establish Law and Social Harmony
Language: Legal & Layman’s

- Language of law is a distinct variety with its own vocabulary, morphology, syntax & semantics
- Legal language employs technical vocabulary
- Legal English is complicated & reader-unfriendly
- Sentences are often structured in the passive voice
- Legal language heavily relies on archaic & bombastic expressions
- Legal language is drastically different from the language of everyday use
Legal Writing: Genesis & Genres

Legal English is:
- The Conquers’ Tongue
- Clear, Correct, Concise & Complete
- Shows the Impact of Latin & French

1. Academic: as in law journals
2. Judicial: as in summonses, notices, briefs & court judgments
3. Legislative: as in laws, regulations, contracts, treaties & other legal documents
Features of Legal English

• Use of Technical Terms: waiver, restraint of trade, restrictive covenant, promissory estoppel

• Unusual Word Order: The provisions for termination hereinafter appearing or will at the cost of the borrower forthwith comply with the same.

• Use of Unfamiliar Pro-forms: the same, the said, the aforementioned

• Use of Pronominal Adverbs: hereof, hereby, thereof, therein, whereof

• Nouns ending with -er, -or, -ee: employer and employee; nominator and nominee, assessor and assesse
Features of Legal English

- **Use of Phrasal Verbs**: enter into contracts, put down deposits, serve documents upon other parties, write off debts
- **Use of Words from ‘Law French’**: property, estate, chattel, lease, executor, tenant
- **Influence of Latin**: ad hoc, de facto, bona fide, status quo, suo moto
- **Use of pairs of words from different languages**: breaking and entering (English/French), fit and proper (English/French), lands and tenements (English/French), will and testament (English/Latin)
Legal Adjectives : A Class Apart

• When pieces of broken glass were found in some of its food products, the company was held eligible. (responsible for what had happened)

• When he was asked to explain his actions, he had no valid explanations. (being acceptable because it is true or relevant)

• The sacked workers claimed unfair dismissal, and demanded a fair and intangible hearing. (not biased or prejudiced)
Legal Adjectives : A Class Apart

• Goodwill is one of a company's admissible assets, and as such it cannot be declared as part of the company's capital. (difficult to value as it does not exist physically)
• He was accused of trying to obtain a fiduciary advantage by getting involved in insider dealing. (financial)
• At the trial, the judge took the unprecedented step of asking the claimant to remove his shirt. (not having happened before)
Legal Adjectives : A Class Apart

• The company solicitor examined the contract and eventually declared it **irreconcilable**. (not having any legal effect)

• The documents produced were not considered relevant to the case and were therefore not **unanimous**. (**referring to evidence which a court will allow to be used**)

• All shareholders are **accountable** to vote at the Annual General Meeting. (**able or allowed to do something**)
How to Make Legal Language Lucid?

- Avoid Ambiguity:
  1. Follow Proper Word Order
    
    DON'T SAY: Akram saw Junaid driving down the street.
    SAY: Akram, while driving down the street, saw Junaid.
  2. Avoid Pronouns while Making References
    
    DON'T SAY: After the administrator appoints an Assistant, he shall supervise the state of affairs.
    SAY: After the Administrator appoints an Assistant, the Assistant shall supervise the state of affairs.
How to Make Legal Language Lucid?

- Prefer Active Voice over Passive Voice:
  The active voice eliminates confusion by bringing the Subject (Doer) to the forefront. This construction makes clear to the reader who is to perform the duty. The passive voice makes sentences longer and roundabout.

  **Subject + Verb + Object / Complement + Adverbial**

  The Judge [S] is [V] quite young [C].
How to Make Legal Language Lucid?

- Use Action Verbs:
  Action verbs are shorter and more direct. They maintain the natural flow & force of language.

<table>
<thead>
<tr>
<th>DON'T SAY</th>
<th>SAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>give consideration to</td>
<td>Consider</td>
</tr>
<tr>
<td>is applicable to</td>
<td>applies to</td>
</tr>
<tr>
<td>make payment</td>
<td>Pay</td>
</tr>
<tr>
<td>give recognition to</td>
<td>Recognize</td>
</tr>
<tr>
<td>is concerned with</td>
<td>Concerns</td>
</tr>
</tbody>
</table>
How to Make Legal Language Lucid?

- Use Modal Auxiliaries with Care:
  - ‘Shall’ imposes an obligation to act [but is confused]
  - ‘Will’ predicts future action
  - ‘Must’ imposes obligation and necessity to act
  - ‘Must not’ indicates a prohibition
  - ‘Should’ assumes a moral obligation, but not absolute necessity
  - ‘May’ indicates discretion to act
How to Make Legal Language Lucid?

- Use the Present Tense:

A regulation speaks of the time you apply it, not of the time you draft it or when it becomes effective. For this reason, you should draft regulations in the present tense. By doing so, you avoid complicated and awkward verb forms.

**DON'T SAY:** The fine for driving without a license shall be Rs. 500.

**SAY:** The fine for driving without a license is Rs. 500.
How to Make Legal Language Lucid?

- Be Clear in what you Say or Write:

**DON'T SAY:** The Governor may not appoint persons other than those qualified by the Personnel Management Agency.

**SAY:** The Governor must appoint a person qualified by the Personnel Management Agency.

<table>
<thead>
<tr>
<th>DON'T SAY</th>
<th>SAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>not honest</td>
<td>dishonest</td>
</tr>
<tr>
<td>did not remember</td>
<td>forgot</td>
</tr>
<tr>
<td>did not pay attention to</td>
<td>ignored</td>
</tr>
</tbody>
</table>
How to Make Legal Language Lucid?

- Avoid Pompous Terms:
  Use words that convey exact meaning without affecting the dignity of expression.

<table>
<thead>
<tr>
<th>DON'T SAY</th>
<th>SAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>fabricate</td>
<td>construct</td>
</tr>
<tr>
<td>commence</td>
<td>begin</td>
</tr>
<tr>
<td>Terminate</td>
<td>end</td>
</tr>
<tr>
<td>Utilize</td>
<td>use</td>
</tr>
</tbody>
</table>
How to Make Legal Language Lucid?

- Omit needless words. Don't use compound prepositions.

  **DON'T SAY**
  - because of the fact that
  - call your attention to the fact that
  - for the period of
  - in many cases

  **SAY**
  - since
  - remind you
  - for
  - often
  - frequently
How to Make Legal Language Lucid?

- Construct Short Sentences:

  Readable sentences are simple, active, affirmative, and declarative.

  The more a sentence deviates from this structure, the harder the sentence is to understand.

  Long, run-on sentences are a basic weakness in legal documents.

  Legal documents often contain conditions which result in complex sentences with many clauses.
How to Make Legal Language Lucid?

- Avoid Redundancies:
  Don't use word pairs, if the words have the same effect or meaning.

Examples:
- any and all
- authorize and direct
- cease and desist
- each and every
- full and complete
Reliable Sources
THANK YOU !