

§ 11

Stuffy Words and Legalese

11.1 Just because you know what *malum prohibitum* means or what a *habendum clause* does is no reason to use such language at the dinner table. A lawyer should keep in mind that the purpose of communication is to communicate, and this can't be done if the reader or listener doesn't understand the words used.

Some lawyers also tend to use words in peculiar ways, using *same* as a pronoun, for example <plaintiff accepted the deed as written and signed same>, and peppering contracts and resolutions with *whereases* and *wherefores*. Some critics suggest that the impenetrable language serves the same purpose that mumbo-jumbo has always served: to keep the public in the dark and to protect a trade monopoly.

But the trend today is toward the use of plain language and away from the stuffiness and jargon-laced prose that characterized much legal writing in the past. It's a welcome trend, and one that writing coaches universally encourage.

Pompous Style

11.2 Use the simplest, most straightforward words that you can.

(a) *Plain English.* Language lovers often go through predictable phases of growth: first learning exotic new words and later avoiding them in favor of plain and clear terms. Using simple words and phrases instead of stuffy ones results in a more natural style.

(b) *Simple substitutes.* Choose simple words over fancy ones. Below is a necessarily limited list of dressed-up words and their simpler alternatives.

Instead of this:	Try this:
abutting	next to
accede to	allow; grant
accordingly	so
acquainted with	know
acquire	get
additional	more; extra; added; other
adjacent to	next to
administer (medicate) ..	give
administer	run; operate; manage; handle
advantageous	useful; helpful
advert to	refer to
advise	tell [unless you're giving advice]

Instead of this:	Try this:
afford	allow
all or part	any; some or all
alter	change
ameliorate	improve
apparent	plain
appellation	name
approximately	about
ascertain	find out; make sure
assist; assistance	help
attain	reach; get; win; make
attempt	try; seek
attributable to	due to; because of
augment	increase
augmentation	increase

Instead of this:	Try this:
authored	wrote
automobile	car
cognizant	aware
commence	start; begin
comment	say
conceal	hide
concept	idea; plan
concerning	on; about; for
condign	fitting; deserving
conflagration	fire
conjecture	guess
consequently	so; thus
constitute	make up; form; be
consummate	utmost; best; top
contiguous to	next to
contumacious	contemptuous
couched	phrased
demonstrate	show
desideratum	wish; aim; goal
deteriorate	get worse; run down
dichotomy	split
directive	order
disadvantage	drawback
discontinue	stop
divers	various; several
domesticate	tame
dwell	live
dynamic	forceful
educator	teacher
elapse	pass; go by
elect to	choose to
elucidate	explain
eminently	highly
emphasize	stress; point up
endeavor	try
enthused	enthusiastic; excited
envisage	foresee; see; predict; look for
equanimity	poise
erroneous	wrong; incorrect; mistaken
erstwhile	former; formerly; once; one-time
eschew	avoid
essayed	tried; did
eventuality	event; possibility
eventually	in the end
evidencing	showing
evinced	show

Instead of this:	Try this:
examination	exam; test; check; checkup
exceedingly	highly
excessively	too; unduly
exclusively	only
expenditure	cost; expense; payment
experiment	test
extended	long
extinguish	put out
facilitate	help; ease; make easier
favorable	good
following	after
forward	send
frequently	often
fundamental	basic; main
furthermore	further
gainsay	deny
gratuitous	needless; free
impact	affect; influence
implement	carry out; set up
inaugurate	begin; start
inception	start; beginning
incongruous	unfitting; incoherent
inconsiderable	slight; small; little
indebtedness	debt
indicate	say; mention; write; hint; suggest
indication	sign
indisposed to	reluctant to
individual	person
inform	tell
infringe on	infringe
inimical	adverse; hostile
initial	first; early
injudicious	unwise
instant [adj.]	this
intimate [vb.]	hint
intransigence	stubbornness
inundate	flood
inure (get used to)	adjust; accustom
inure (of a benefit)	mature; vest
kindly	please
lengthy	long
locality	place; town; city; village; county
modify; modification	change
multitudinous	many
narrate	tell

Instead of this:	Try this:
necessitous	needy
nevertheless	even so; still; but
notwithstanding	despite
numerous	many
obligate	bind
occupation	job; work; business
occur	happen
odor	smell
oftentimes; oftentimes	often
opportune	convenient; handy; proper
orientate	orient
originate	start; come from
outcome	result
overall	whole; entire; total
overly	unduly; too
paradigm	model
partially	partly
participate	take part; go along; be one of
possibility	chance
practically	almost; nearly
precede	go before; come before
predecease	die before
presently	now; soon; in a moment
procure	get
prosecute (a business) ..	do; carry on; conduct (business)
purchase	buy
regarding	about

Instead of this:	Try this:
relocate	move
render	make; leave
request	ask
requisite	needed; required
reside	live
residence	house; apartment; address
respecting	for
schism	split
segment	part
significance	meaning; point
simultaneously	at the same time
subsequent	later
subsequently	later; after that; afterwards; then
substantial	large
substantially	largely; much
supposition	belief; thought; idea
surmise	guess
susceptible of	
(a meaning)	open to
(a threat)	prone to; vulnerable to
thrice	three times
transmit	send
ultimately	in the end
unto	to
utilize	use
vehicle	car; truck; motorcycle; etc.
vend	sell
wherewithal	means, money, ability

(c) *Paring down phrases.* By trimming your sentences you will make your prose tighter and more persuasive (see 13.3(e)). Wordy phrases are the biggest source of undergrowth and the first place to look when you trim your drafts. Below are some common phrases used in legal writing and their simpler substitutions.

Instead of this:	Try this:
acquire knowledge	learn
adequate number of	enough
a large amount of	a lot of; much
a large number of	many
a small amount of	some; a little
a small number of	a few
am in receipt of	have
as a consequence of	because of
as a means of —ing	to —
as previously stated	again

Instead of this:	Try this:
as regards	about; regarding
at no time	never
at the place where	where
at the present time	now
at the time that	when; once
at the time when	when
at this juncture	now
at this point in time	now
because of the fact that ..	because; since
be determinative of	determine

Instead of this:	Try this:
by means of	by
by necessity	necessarily
by reason of	because of
cause injury to	injure
commensurate with	equal to;
	appropriate for
despite the fact that	although
due to the fact that	because
during such time as	while
during the course of	while
enclosed please find	enclosed is;
	I enclose; here is
excessive amount of	too much
excessive number of	too many
for the purpose of —ing to —	
for the reason that	because; since
for this reason	so; thus
have knowledge of	know
in a — manner	—ly (with many
	adjectives)
in accordance with	under; according to
in addition to	besides
inadequate amount of	too little
inadequate number of	too few
in an effort to	to
inasmuch as	because; since
in back of	behind
in conjunction with	with; along with
in connection with	regarding; about;
	for
in excess of	more than
in favor of	for
in furtherance of	furthering;
	to advance
in lieu of	instead of
in light of the fact that	because; since
in order that	so
in order to	to
in proximity to	near
in reference to	about
in respect to	respecting
in the amount of	for
in the course of	while; during
in the event of	if
in the event that	if

Instead of this:	Try this:
in the instant case	here; now
in the near future	soon
in the neighborhood of	around
in the vicinity of	near; around
is able to	can
is applicable	applies
is authorized to	may
is binding on	binds
is required to	must
is unable to	cannot
it is certain that	certainly; surely
it is probable that	probably
it would appear that	apparently
make a decision	decide
make an inquiry	ask
make an observation	comment; observe;
	watch
make reference to	refer to
notwithstanding the	
fact that	although
on a daily basis	daily
on behalf of	for
on the ground that	because; since
on the part of	by
period of time	period; time
pertaining to	on; about
previous to	before
prior to	before
pursuant to	under; according to
reach a resolution	resolve
subsequent to	after
sufficient amount of	enough
sufficient number of	enough
take into consideration	consider
the majority of	most
to the detriment of	harming;
	prejudicing
undertake an effort	try
under the provisions of	under
until such time as	until
with reference to	about
with regard to	about; regarding
with respect to	about; regarding
with the exception of	except for

"You are no less a lawyer for being understandable."

—Christopher T. Lutz

(d) *Avoiding legalese.* Some legal writers cling to legalisms as if they were life preservers. Too often, the result is that the client is confused and the judge is amused at best, irritated at worst. Good legal writers favor words that their intended readers—especially clients—will understand. Below is a list of legalisms and plain-English translations.

Instead of this:	Try this:	Instead of this:	Try this:
ab initio	from the start	inter alia	among other things
aforementioned	this; that;	inter alios	among other people
	named earlier	inter partes	between parties
aforesaid	this; that;	inter se	among themselves
	named earlier	lessee; leasee	tenant
albeit	although; though	lessor; leasor	landlord
anent	concerning	mesne	intermediate
antecedent to	before	messuage	house, buildings, and land
anterior to	before	negative [vb.]	negate
apprise	tell; inform	non compos mentis	insane
arguendo	for the sake of argument	notwithstanding	despite; in spite of; even though
aver	state	pray	request; ask for
bestow	give	remise	release; surrender
bona fide; bona fides	good faith	residue	rest; remainder
case at bar	here; this case	res nova	case of first impression
case sub judice	here; this case	said [adj.]	the; this; that
cestui que trust	beneficiary (of a trust)	same [pron.]	it [or the antecedent]
child en ventre sa mere	fetus; unborn child	save	except
de son tort	by (his or her) own wrongdoing	seisin	title; possession
ex contractu	in contract (law); contractual	shall	must
ex delictu	in tort (law)	simpliciter	simply; considered by itself
execution (of a will, contract)	signing	style	name
ex hypothesi	hypothetically	subjoin	attach
feral	wild	such [adj.]	the; this; that
fora	forums	sui generis	one of a kind; unique
forthwith	immediately; now; at once	sui juris	legally competent
gravamen	crux; gist; burden	tabula rasa	clean slate
henceforth	from now on	testament	will
henceforward	from now on	testifier	witness
herein	here	thence	from this; from that; from there
heretofore; hitherto	up to now; until now; till now	thenceforth	from then on
in esse	in being	thenceforward	from then on
in haec verba	in these words; verbatim	thereafter	afterwards; from then on
instant case	this case	thereat	there; at it
instantly	at once	therefor	for it; for them

Instead of this:	Try this:
therefrom	away; from it; from that
therein	there; in it
thereof	of it
thereout	from it; from that; from them
theretofore	up to then; until then; till then
thereupon	then
these presents	this document
thitherto	up to then; until then; till then
to wit	namely

Instead of this:	Try this:
vel non	or not; or the lack of it
vendee	buyer
vendor	seller
viz.	namely; that is
whence	from where
whensoever	whenever; at all
whereat	where
wherein	in which; where; when
whomsoever	whomever
whosoever	whoever

- (e) *Useless verbiage.* Many terms and phrases continue to drift along in legal writing like so much deadwood in a stream. There is no reason anymore for writing "know all men by these presents." Watch out for the words and phrases below, and do not be afraid to dismiss them with prejudice.

aforementioned
aforesaid
as a matter of fact
as such
as to
basically
clearly
comes now
for all purposes
for your information
further affiant saith [or sayeth] not
hereby
hereinafter referred to as [*just place the defined term in parentheses*]
in any way
in connection with
in the above-styled and -numbered cause

in the final analysis
in the process of
it being the case that
it goes without saying that
it is apparent [clear] that
it is important to bear in mind that
know all men by these presents
needless to say
on the matters set forth herein
overall
the fact [of the matter] is
the fact that
veritable
whereas
wherefore, premises considered
witnesseth
would show that

"I am particularly careful to avoid jargon, and to write simply and clearly. For certain types of writing a high level of technicality is unavoidable; but in general it is the second-rate intellect that cultivates a pretentious vocabulary and a solemn and portentous style."

—Richard A. Posner

- (f) *Synonymia*. The doublet and triplet phrase common in Middle English still survives in legal writing. That's probably the worst possible soil for it to grow in because those who interpret legal writing are impelled to strain for distinctions so that no word is rendered surplusage. Yet that is exactly what all but one word (and often *any* one word) in each of the following phrases is.

Doublets

act and deed
 agree and covenant
 agreed and declared
 aid and abet
 aid and comfort
 all and singular
 all and sundry
 amount or quantum
 annoy or molest
 annulled and set aside
 answerable and accountable
 any and all
 appropriate and proper
 attached and annexed
 authorize and empower
 betting or wagering
 bills and notes
 bind and obligate
 by and between
 by and under
 by and with
 canceled and set aside
 cease and come to an end
 cease and desist
 cease and determine
 chargeable and accountable
 covenant and agree
 custom and usage
 deed and assurance
 deem and consider
 definite and certain
 demises and leases
 deposes and says
 desire and require
 do and perform
 dominion and authority
 due and owing
 due and payable
 each and all
 each and every
 ends and objects
 escape and evade
 exact and specific
 execute and perform

false and untrue
 final and conclusive
 finish and complete
 fit and proper
 for and in behalf of
 fraud and deceit
 free and clear
 from and after
 full and complete
 full faith and credit
 full force and effect
 good and effectual
 good and tenantable
 goods and chattels
 have and hold
 indemnify and hold harmless
 keep and maintain
 kind and character
 kind and nature
 known and described as
 laid and levied
 leave and license
 legal and valid
 liens and encumbrances
 made and signed
 maintenance and upkeep
 make and enter into
 make and execute
 means and includes
 message and dwelling-house
 mind and memory
 name and style
 new and novel
 nominate and appoint
 null and of no effect
 null and void
 object and purpose
 order and direct
 other and further
 over and above
 pains and penalties
 pardon and forgive
 part and parcel
 peace and quiet
 perform and discharge

power and authority
 premeditation and malice aforethought
 repair and make good
 restrain and enjoin
 reverts to and falls back upon
 sale or transfer
 save and except
 seised and possessed of
 sell or transfer
 separate and apart
 separate and distinct
 set aside and vacate
 shall and will
 shun and avoid
 similar and like
 sole and exclusive
 son and heir
 successors and assigns
 supersede and displace
 surmise and conjecture
 terms and conditions
 then and in that event
 title and interest
 total and entire
 touch and concern
 true and correct
 truth and veracity
 type and kind
 uncontroverted and uncontradicted
 understood and agreed
 unless and until

uphold and support
 used and applied
 various and sundry
 will and testament

Triplets

cancel, annul, and set aside
 form, manner, and method
 general, vague, and indefinite
 give, devise, and bequeath
 grant, bargain, and sell
 grants, demises, and lets
 hold, possess, and enjoy
 lands, tenements, and hereditaments
 make, publish, and declare
 name, constitute, and appoint
 ordered, adjudged, and decreed
 pay, satisfy, and discharge
 possession, custody, and control
 promise, agree, and covenant
 ready, willing, and able
 remise, release, and forever discharge
 remise, release, and forever quitclaim
 repair, uphold, and maintain
 rest, residue, and remainder
 right, title, and interest
 signed, sealed, and delivered
 situate, lying, and being in
 vague, nonspecific, and indefinite
 way, shape, or form

Terms of Art

11.3 Unless the context requires otherwise, use legal terms according to their specialized sense as terms of art.

- Terms of art.* Some words are “terms of art” for lawyers—that is, they express certain legal ideas that are scarcely expressible otherwise. Examples are *habeas corpus* and *res ipsa loquitur*, both of which have a rich legal history. They are not really used outside law.
- Ordinary words with special legal senses.* Many everyday words take on new meanings when used in a legal context. Following is a collection of words that law students must relearn. They mean one thing to most people but often something completely different to a lawyer.

abstract. *Common meaning:* an adjective describing something that is theoretical rather than concrete. *In law:* a noun referring to a concise summary of a writing <abstract of title>.