

## § 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:	Instead of this:	Try this:
abutting .....	next to	afford .....	allow
accede to .....	allow; grant	all or part .....	any; some or all
accordingly .....	so	alter .....	change
acquainted with .....	know	ameliorate .....	improve
acquire .....	get	apparent .....	plain
additional .....	more; extra; added; other	appellation .....	name
adjacent to .....	next to	approximately .....	about
administer (medicate) ..	give	ascertain .....	find out; make sure
administer .....	run; operate; manage; handle	assist; assistance .....	help
advantageous .....	useful; helpful	attain .....	reach; get; win; make
advert to .....	refer to	attempt .....	try; seek
advise .....	tell [unless you're giving advice]	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  
 evince ..... 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

<b>Instead of this:</b>	<b>Try this:</b>	<b>Instead of this:</b>	<b>Try this:</b>
necessitous .....	needy	relocate .....	move
nevertheless .....	even so; still; but	render .....	make; leave
notwithstanding .....	despite	request .....	ask
numerous .....	many	requisite .....	needed; required
oblige .....	bind	reside .....	live
occupation .....	job; work; business	residence .....	house; apartment; address
occur .....	happen	respecting .....	for
odor .....	smell	schism .....	split
oftentimes; oftentimes .....	often	segment .....	part
opportune .....	convenient; handy; proper	significance .....	meaning; point
orientate .....	orient	simultaneously .....	at the same time
originate .....	start; come from	subsequent .....	later
outcome .....	result	subsequently .....	later; after that; afterwards; then
overall .....	whole; entire; total	substantial .....	large
overly .....	unduly; too	substantially .....	largely; much
paradigm .....	model	supposition .....	belief; thought; idea
partially .....	partly	surmise .....	guess
participate .....	take part; go along; be one of	susceptible of .....	
possibility .....	chance	(a meaning) .....	open to
practically .....	almost; nearly	(a threat) .....	prone to; vulnerable to
precede .....	go before; come before	thrice .....	three times
predecease .....	die before	transmit .....	send
presently .....	now; soon; in a moment	ultimately .....	in the end
procure .....	get	unto .....	to
prosecute (a business) .....	do; carry on; conduct (business)	utilize .....	use
purchase .....	buy	vehicle .....	car; truck; motorcycle; etc.
regarding .....	about	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.

<b>Instead of this:</b>	<b>Try this:</b>
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

<b>Instead of this:</b>	<b>Try this:</b>
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

<b>Instead of this:</b>	<b>Try this:</b>	<b>Instead of this:</b>	<b>Try this:</b>
by means of .....	by	in the instant case .....	here; now
by necessity .....	necessarily	in the near future .....	soon
by reason of .....	because of	in the neighborhood of .	around
cause injury to .....	injure	in the vicinity of .....	near; around
commensurate with .....	equal to;	is able to .....	can
	appropriate for	is applicable .....	applies
despite the fact that .....	although	is authorized to .....	may
due to the fact that .....	because	is binding on .....	binds
during such time as .....	while	is required to .....	must
during the course of .....	while	is unable to .....	cannot
enclosed please find .... enclosed is;		it is certain that .....	certainly; surely
	I enclose; here is	it is probable that .....	probably
excessive amount of ....	too much	it would appear that ....	apparently
excessive number of ....	too many	make a decision .....	decide
for the purpose of —ing to —		make an inquiry .....	ask
for the reason that .....	because; since	make an observation ...	comment; observe;
for this reason .....	so; thus		watch
have knowledge of .....	know	make reference to .....	refer to
in a — manner .....	—ly (with many	notwithstanding the	
	adjectives)	fact that .....	although
in accordance with .....	under; according to	on a daily basis .....	daily
in addition to .....	besides	on behalf of .....	for
inadequate amount of ..	too little	on the ground that .....	because; since
inadequate number of ..	too few	on the part of .....	by
in an effort to .....	to	period of time .....	period; time
inasmuch as .....	because; since	pertaining to .....	on; about
in back of .....	behind	previous to .....	before
in conjunction with .....	with; along with	prior to .....	before
in connection with .....	regarding; about;	pursuant to .....	under; according to
	for	reach a resolution .....	resolve
in excess of .....	more than	subsequent to .....	after
in favor of .....	for	sufficient amount of .....	enough
in furtherance of .....	furthering;	sufficient number of .....	enough
	to advance	take into consideration .	consider
in lieu of .....	instead of	the majority of .....	most
in light of the fact that ..	because; since	to the detriment of .....	harming;
in order that .....	so		prejudicing
in order to .....	to	undertake an effort .....	try
in proximity to .....	near	under the provisions of .	under
in reference to .....	about	until such time as .....	until
in respect to .....	respecting	with reference to .....	about
in the amount of .....	for	with regard to .....	about; regarding
in the course of .....	while; during	with respect to .....	about; regarding
in the event of .....	if	with the exception of ...	except for
in the event that .....	if		

“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:**

ab initio	from the start
aforementioned	this; that; named earlier
aforesaid	this; that; named earlier
albeit	although; though
anent	concerning
antecedent to	before
anterior to	before
apprise	tell; inform
arguendo	for the sake of argument
aver	state
bestow	give
bona fide; bona fides	good faith
case at bar	here; this case
case sub judice	here; this case
cestui que trust	beneficiary (of a trust)
child en ventre	
sa mere	fetus; unborn child
de son tort	by (his or her) own wrongdoing
ex contractu	in contract (law); contractual
ex delictu	in tort (law)
execution	
(of a will, contract)	... signing
ex hypothesi	hypothetically
feral	wild
fora	forums
forthwith	immediately; now; at once
gravamen	crux; gist; burden
henceforth	from now on
henceforward	from now on
herein	here
heretofore; hitherto	up to now; until now; till now
in esse	in being
in haec verba	in these words; verbatim
instant case	this case
instanter	at once

**Try this:****Instead of this:**

inter alia	among other things
inter alios	among other people
inter partes	between parties
inter se	among themselves
lessee; leasee	tenant
lessor; leasor	landlord
mesne	intermediate
messuage	house, buildings, and land
negative [vb.]	negate
non compos mentis	insane
notwithstanding	despite; in spite of; even though
pray	request; ask for
remise	release; surrender
residue	rest; remainder
res nova	case of first impression
said [adj.]	the; this; that
same [pron.]	it [or the antecedent]
save	except
seisin	title; possession
shall	must
simpliciter	simply; considered by itself
style	name
subjoin	attach
such [adj.]	the; this; that
sui generis	one of a kind; unique
sui juris	legally competent
tabula rasa	clean slate
testament	will
testifier	witness
thence	from this; from that; from there
thenceforth	from then on
thenceforward	from then on
thereafter	afterwards; from then on
thereat	there; at it
therefor	for it; for them

**Instead of this:**

therefrom .....  
 therein .....  
 thereof .....  
 thereout .....  
 theretofore .....  
 thereupon .....  
 these presents .....  
 thitherto .....  
 to wit .....

**Try this:**

away; from it; from  
 that  
 there; in it  
 of it  
 from it; from that;  
 from them  
 up to then; until  
 then; till then  
 then  
 this document  
 up to then; until  
 then; till then  
 namely

**Instead of this:**

vel non .....  
 vendee .....  
 vendor .....  
 viz. .....  
 whence .....  
 whosoever .....  
 whereat .....  
 wherein .....  
 whomsoever .....  
 whosoever .....

**Try this:**

or not;  
 or the lack of it  
 buyer  
 seller  
 namely; that is  
 from where  
 whenever; at all  
 where  
 in which; where;  
 when  
 whomever  
 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.

### Doubles

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 tenable  
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  
messuage 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	uphold and support
premeditation and malice aforethought	used and applied
repair and make good	various and sundry
restrain and enjoin	will and testament
reverts to and falls back upon	
sale or transfer	
save and except	
seized 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	

## Terms of Art

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

- (a) *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.
- (b) *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>.