

II. LEXICAL FEATURES OF LEGAL ENGLISH

The characteristic features of legal English can be encountered above all on the lexical level and on the grammatical level. While the remaining parts of this book deal prevalingly with the grammatical structure, in this chapter we shall devote our attention to the special features of the lexical level of legal English, as the vocabulary used in it and its structure considerably differs from the other uses of English.

It is beyond any doubt that in any text the basic linguistic means for expressing and conveying the meaning are words, hence the lexical level is naturally of paramount importance for legal texts, too. Of course, the text itself and its meaning is constituted by the coexistence and interplay of various levels of language, and with regard to legal English these are dealt with also in other parts of this book.

In the present chapter we shall focus on the lexical features of English in legal vocabulary, applying the lexicological approach, i.e. the approach used in lexicology as a linguistic discipline dealing with words, and we shall try to highlight some of the aspects of the words used in legal discourse.

1. Origin of words in English legal texts

not surprisingly, words from the general vocabulary, or more terminologically, from the general lexis, and namely from its core, are present in any text. However, special texts, including legal texts, are marked by the presence of specific expressions and terminology. That is either based on domestic lexis, which for English means Anglo-Saxon words and their word-formative products, or on borrowings from other languages. In addition to borrowings *per se*, there are hybrid domestic-foreign or foreign(L1)+foreign(L2) formations, as well as some *calques*, i.e. translation loans in which each word or morph from a source language is translated into the receiving language. Though legal English includes numerous domestic words from the general vocabulary, and also their terminological usages, it is heavily marked by very complex special legal terminology the largest part of which are borrowings, mostly from Latin and French, but a few from other languages, too.

1.1. Words of domestic origin

As already referred to above, however specific and complex legal English is, quite naturally it also includes words that are of domestic origin, i.e. native Anglo-Saxon, hence part of the wider Germanic lexical heritage. In their number there are basically non-terminological words from the general vocabulary, e.g. nouns as *father; child, name, land, home, food, time*, verbs as e.g. *be, have, come, go, hear; hold, lose, make, say, sleep*, adjectives as e.g. *bad, good, hard, high, open, small*, adverbs as e.g. *before, next, soon, then, well*, and, of course, pronouns, articles, and conjunctions. Some native verbs in legal texts, similarly to English in general, merely, or basically, carry out grammatical functions. This is above all the case of some forms of link verbs such as *be* and *have* expressing tense, mood, or aspect (for more details see chapter V). Other verbs have primarily semantic functions, i.e. express meaning, of course within their grammatical modifications.

The presence of common native words in legal texts is in fact much higher than it is usually claimed. On the one hand there are native words with grammatical functions, as mentioned above and elsewhere in this book, on the other hand, there are words denoting people, their relationships, their ownership, activities, etc., many of which had been named long before the style of legal language actually came into existence. Hence, e.g. in family law there naturally occur such words as *mother; father; child, son, daughter; wife, widow, widower, stepfather; godmother; kinship, birth, death*, etc. It is noteworthy that the names of more distant family members are mostly loan words (see e.g. *husband, sister, cousin*, etc. in 1.2). Other native English words can be found e.g. in commercial law, cf. *own, land, lot, house, building*, etc., although the majority of words in this domain are borrowings.

In legal texts most native words are used terminologically, with possible further semantic and legal specifications. For instance, while the above mentioned *child* in ordinary language refers to ‘a small and young human being, or a son or daughter of any age’, in legal contexts its meaning can be terminologically specified to ‘a boy or girl from the time of birth until he or she is an adult’ (cf. *Cambridge Dictionary*), and/or as ‘a young human being below the age of puberty or below the legal age of majority’ (cf. *Oxford English Dictionary – OED*). Moreover, the age of majority can be further specified differently in different legal systems in different countries and in different legal contexts.

Systemically, the non-terminological and terminological meanings and usages of words, in our case here of native words, coexist in language, while in usage one of these functions and meanings can prevail. From among the native English words used both as common words and as terms in legal texts, in addition to the examples listed above, we can mention *abode, deed, deem, dock, finding, freehold, goodwill, hearing, kidnap, knowingly, leapfrog, manslaughter, moonlighting, next-of-kin, outstanding, quash, reading, reckless driving, smuggle, steal, theft, thief, threat, waive, to wit, writ*, etc.

With regard to nouns denoting punishable deeds, it is interesting to note that in legal terminology native English words have been preserved above all for some

minor offences or minor criminal deeds. This is the case, e.g., of *to steal or theft, thief* (although, apart from them, there exist their borrowed synonyms, too, i.e. *expropriate, larceny*, e.g. in *sb. guilty of larceny*). For more serious misdeeds the borrowings are highly prevailing, e.g. *crime, felony, assassination* (although there are some native words in this domain, too, i.e. *kill, manslaughter*, etc.).

When words in legal texts, including also native words, are collocated, they can, on the one hand, form set expressions functioning as connectors or adverbials, e.g. *as well as, as far as, from time to time – v nepravidelných intervalech, příležitostně*, etc. On the other hand, they can form terminological expressions of various types. These can be above all adjectival-nominal, e.g. *maiden name – jméno za svobodna*, verbal *key witness – klíčový svědek*, verbo-nominal, e.g. *meet the deadline – dodržet termín*, verbal phrases with a complement, e.g. *hold harmless – chránit před odpovědností za škodu*, or e.g. adjectival-adverbial, cf. *best before – datum spotřeby; spotřebujte do*, the latter used in commercial law, usually to mark food as to the date before which it should be consumed. (For more on collocations see also subchapter 2.4.).

1.2. Words of foreign origin

However crucial for each language and text native words are, most words in legal English are borrowings, i.e. loanwords. The reasons are manifold. Some are connected particularly with the historical, political, institutional and linguistic history of England as a result of which the majority of words in English in general are borrowings. Other reasons are more broadly connected with the general development of European civilization and its linguistic consequences. In the further parts we shall devote attention to Scandinavian, Latin and French loanwords, and bring forth a few borrowings from other languages.

1.2.1. Scandinavian loanwords

The genetically closest source of early loanwords in English are Scandinavian words, as they are of shared Germanic origin. The loanwords are from Old Norse – the predecessor of the present Scandinavian languages. They came into English as a result of their coexistence with Old English between the 9th and the 11th centuries when parts of northern and eastern England were colonized by the Scandinavians. As both Old English and Old Norse were Germanic, they were mutually relatively comprehensible and within communication Old Norse words very easily found their way into English. Many of them penetrated into its core, e.g. *both, call, egg, fellow, get, knife*, and even the verbal form are and the 3rd person plural pronoun *they, them and their*.

As to borrowings in legal English, although most of them come from Latin and French, the very word *law* is actually an early Scandinavian loan. It also occurs in *bylaw* which was formed as a compound. Its current meanings are 1. 'a rule made

by a local authority for the regulation of its affairs or management of the area it governs' – *institucionální nebo místní nařízení* 2. 'a regulation of a company, society, etc.' – *stanovy* 3. 'subsidiary law' – *doplňující nařízení*. The same base also occurs in outlaw and in-laws, as well as in *mother-in-law*, *sister-in-law*, *lawful*, *lawless*, etc. In the core of English there exist hundreds of other Scandinavian loans some of which are also used in legal English. As to references to family members, there is *sister* and *husband*. Other nouns borrowed from Scandinavian include e.g. *gang*, *gift*, *loan* and *sale*, and numerous verbs e.g. *die*, *get*, *take*, some of them also used in legal contexts as terms or parts of legal expressions.

Later Scandinavian borrowings relevant for law are rare. One of them, borrowed at the beginning of WWII from Norwegian, is *quisling* – *kolaborant s okupanty, zrádce*. It is an eponym, i.e. a word named after a person, namely the Norwegian fascist politician Vidkun Quisling. As the head of the puppet government during the occupation of Norway he collaborated with the Germans and after their defeat he was shot for treason. A recent borrowing (late 1950s) from Swedish into English is *ombudsman*, its original meaning being 'commission man'. The word has spread into numerous languages, including Czech, and as a well-known internationalism it denotes a person who is in charge of hearing and investigating complaints by individuals against abuses by the state.

1.2.2. Latin loanwords

As far as the origin of legal terms is concerned, in English, as well as in many other languages, the majority of them are loanwords and phrases taken over directly from Latin, or they were borrowed from French, though they ultimately originated in Latin. In terminology, though above all technical, there exist the so-called Neo-Latinisms formed recently from earlier Latin forms to express new meanings.

In addition to the high number of Latinisms in English legal texts, they also have a very high frequency of occurrence. To illustrate this, we can quote a randomly selected paragraph from the *Californian Criminal Law*. The words in bold type were borrowed directly from Latin or through French:

*An assault is **punishable** by **fine** not **exceeding** one thousand dollars or by **imprisonment** in the county jail not **exceeding** six months, or by both. When the **assault** is **committed** against the **person** of a **peace officer engaged** in the **performance** of his or her **duties** as a **member** of a **police department** of a **school district pursuant** to **Section 38000** of the **Education Code**, and the **person committing** the **offense** knows or **reasonably** should know that the **victim** is a **peace officer engaged** in the **performance** of his or her **duties**, the **offense** shall be **punished** by **imprisonment** in the county jail not **exceeding** one year or by **imprisonment** in the state prison.*

However, it should be pointed out that some Latinisms were etymologically based on Latin borrowings from Greek. In the above extract this is the case of e.g.

police. Although into English it was borrowed from Latin *politia* ‘civil administration’, the ultimate origin of the Latin word is in Greek *polis* ‘city’. Though borrowed from Latin, of Greek origin is also *school* which originally meant ‘leisure for learning, or learned discussion, and a place for lectures’.

The international presence of Latinisms in the language of law is not surprising as it was the Roman Empire that was the cradle of European law. “Works like Justinian’s *Corpus Iuris Civilis* had a notable influence on the birth of European legal systems, as the foundation of the *ius commune*, and also in the domain of legal philosophy, where Cicero and Aquinas, amongst many others, were the major references” (Balteiro and Campos-Pardillos, 2010, p. 95).

Roman law has been adopted by most European countries and forms the basis of their system of law. This is manifested in the internationalisation of Latinisms in legal texts, too. The education of lawyers included and includes studying Latin, and in their professional career they encounter as well as use numerous Latin expressions. The clear-cut Latin legal terms and expressions allow for exactness, for avoiding ambiguity, and for preserving traditions in the legal profession. Within the history of English, in some spheres Latin enabled linguistic communication across the varied English dialects. Within the coexistence of English and Latin, the Norman invaders as speakers of French quite naturally preferred Latin as a closely related Romance language, and not English, so Latin legal expressions gained even more ground in England. As noted in Baker (1998, p. 22), it was in Latin that all original and judicial writs, and likewise all records of pleas in the king’s courts, as well as certain statutes, were written.

In broader contexts, the advantage of Latin legal expressions lies in the fact that they enable straightforward cross-linguistic communication by the identity or close similarity of terms and expressions used in different languages. Latinisms have actually enabled the development of international *lingua franca* for legal purposes. Hence, it is quite natural that also translators of legal documents should be well versed in Latin legal expressions and terms.

With regard to English, however, there necessarily arises the question of what is the reason that Latinisms in legal English are so abundant and prevailing, as in England, though applying “the statute law”, too, as enacted by the Parliament, in common legal practice it is not the Roman Law but the Common Law that has been in use. As mentioned already above in Introduction, it was established before written laws existed and is based on the decisions of judges in earlier times. A comprehensive and interesting account of the causes is provided by the following extract (Balteiro and Campos-Pardillos, 2010, pp. 4-5):

“There are historical reasons that, at first sight, would account for a lower presence of Latin in legal English than in other languages... However, although England was developing a legal system of its own, the almost overwhelming prestige of Latin in the Middle Ages (especially in Canon law) caused a number of legal concepts in England to be translated into this language. Strangely enough, the Norman influence, rather than

immediately imposing French, resulted in the disappearance of English from written legal language, since the Normans were accustomed to writing in Latin; in the early 12th century, Latin became the exclusive language for legal documents.”

Nevertheless, the fate of Latin in legal communication in England was by far not straightforward but was in fact rather dramatic. Although after the Norman Conquest in 1066 French as the language of rulers started to prevail in courts, English gradually came back in oral communication at courts, but at the same time the status of Latin in legal documents was not only acknowledged, but strengthened. As presented by Baker, as early as in 1363 a governmental statute was issued in which it was ordained that “all pleas pleaded in all courts whatsoever should be pleaded, shewn, defended, answered, debated and adjudged in the English tongue, but entered and enrolled in Latin“ (Baker, 1998, p. 21).

However, as Balteiro and Campos-Pardillos (2010) indicate, within later developments there were periods when French prevailed. By an Act of Parliament (in 1650) Latin was even outlawed, but within a decade it again became the language of court records. Even though later (in 1731), the Parliament again prohibited the use of Latin, this time together with French, ordering English to be used, Latin continued to be “a fundamental component of legal education, and all self-respecting scholars did acknowledge its importance” (MacLeod 1997, p. 235). As referred to in the above source, Latin has experienced a revival in court opinions over the second half of the 20th century. Nevertheless, as the author points out:

“the different varieties of English (or rather, the various English-speaking legal systems) do not feature the same presence of Latin expressions, and the amount of Latin used also varies from one legal genre to another. Concerning geographical varieties, there is, on the one hand, the obvious case of the Scottish legal system, where Latinisms abound (e.g. inter regalia [‘amongst those things belonging to the Sovereign’], sederunt [‘they sat’, i.e. a court session], ad vitam aut culpum [‘for life or until fault’]). On the other hand, even within those systems belonging to the common law tradition, such as England and the United States, there are noticeable differences, and there is a greater presence of Latinisms in American Legal English”.

The overall role of the Roman law is concisely outlined in the following brief extract (Legal Secretary Journal dated 01/05/2017):

“Roman Law is the legal system invented by the Romans more than 2,000 years ago. Having undergone the process of transformation and reinterpretation, Roman Law continues to influence legal thinking and legal practice to this day.

England has not adopted Roman Law as the other countries in Europe have. In England, ancient Roman texts were never considered as rules having the force of law. However, Roman Law was taught at the Universities of Oxford and Cambridge and had a considerable influence on the development of certain areas of law. Some substantive rules, and more importantly, concepts of reasoning based on the Roman legal tradition, influenced the English legal system.

Most important of all, Roman Law will have great significance in regard to the formation of uniform legal rules which further the process of political integration in Europe. Roman Law is the common foundation upon which the European legal order is built. Therefore, it can serve as a source of rules and legal norms that will easily blend with the national laws of the many and varied European states.” (https://www.legalsecretaryjournal.com/Latin_Legal_Terminology)

In legal texts there are basically two types of Latin loans.

On the one hand, there are special Latin expressions and fixed phrases that are sometimes referred to as ‘terms of art’. These are internationally considered to be part and parcel of the professional qualities and sophistication of legal discourse. Using one of these here to refer to their role, it can actually be stated that they are *conditio sine qua non*, i.e. ‘indispensable prerequisites’, for legal texts. Although the same meaning can be expressed by English and other languages, in legal discourse Latin expressions are preferred. Such Latin words or fixed expressions are used as foreign elements, i.e. as foreignisms, and their authentic Latin spelling is preserved. Some nearly exclusively occur only in writing, hardly ever being pronounced. Others can be pronounced either as in Latin, which can sometimes be intended and/or perceived as a manifestation of the erudition of the speaker, or their pronunciation is assimilated, i.e. ‘Anglicized’.

On the other hand, Latin is used in legal terminology to denote legal concepts. It is mostly assimilated to English, though in many cases its pronunciation and spelling was further modified, partly also as a result of the the terms having been borrowed through French. Numerous Latin terms borrowed into English are spelled as well as pronounced differently in other languages, e.g. English *delinquent* and Czech *delikvent* [note also the meaning below sub B) and the meaning differences in Section 3.1 on faux amis].

Here we shall devote attention to special Latin expressions and fixed phrases used in legal English as they are characteristic of the style of legal texts. For translators it is important to be able to identify and understand them, so that their meaning in context is adequately interpreted. Moreover, in some situations their translation equivalents are needed or expected, which the translator should be able to provide.

Structurally, special Latin expressions and phrases used in legal English include one-word expressions, two-word fixed phrases, as well as more complex phrases.

A) Latin one-word expressions are not very numerous. They are mostly, though not only, adverbs and include e.g. (Czech equivalents are stated only with some of the less common words):

<i>ante</i>	– before
<i>anterior</i>	– earlier
<i>intra</i>	– inside
<i>per</i>	– through, by means of
<i>prior</i>	– before

<i>quasi</i>	– (as if it were; almost) [e.g. an agreement which will be dealt with as if it was a contract] – <i>jako kdyby, kvázi, takřka</i>
<i>sic</i>	– so, thus (used in brackets after a copied or quoted word that appears odd or erroneous to indicate that the word is quoted exactly as it occurs in the original)
<i>verbatim</i>	– word for word, literally
<i>videlicet</i>	– that is to say; namely (used especially to introduce examples, details, etc.); abbreviation: <i>viz – a to; jinými slovy (řečeno)</i>

B) Miscellaneous Latin legal terms:

<i>arbitrator</i>	– a person chosen to decide a dispute or settle differences, especially one formally empowered to examine the facts and decide the issue – <i>arbitr, rozhodčí</i>
<i>delinquent</i>	– literally ‘unpaid though due’ – 1. offending by neglect or violation of duty or of law 2. being overdue in payment 3. of, relating to, or characteristic of people who regularly perform illegal or immoral acts: marked by delinquency 4. An offender against the law; a usually young person who repeatedly performs illegal or immoral acts
<i>homicide</i>	– the act of one human killing another – <i>zabití</i>
<i>injunction</i>	– a court order requiring a person to do or cease doing a specific action – <i>soudní příkaz</i>
<i>mandamus</i>	– a writ from a superior court – <i>nařízení vyššího soudu</i>
<i>plenipotentiary</i>	– holder or full powers – <i>držitel zplnomocnění</i>
<i>regicide</i>	– murder of the king – <i>královražda</i>
<i>subpoena (summons)</i>	– <i>soudní předvolání, předvolání k soudu</i>

Although terms are generally defined as having one exact meaning, in reality many English expressions used in legal texts can express several meanings, depending on the phenomenon denoted and the extra-linguistic and linguistic context. As an example we can refer the reader to the above word *delinquent* which has at least three meanings as an adjective and one as a noun. Hence, translators have to be aware of the fact that also legal terms can be potentially polysemous, i.e. allowing for more than one meaning and should be very careful in checking and identifying the one that applies in the given text.

C) Two-word Latin phrases in English legal texts are very numerous and there are hundreds of them. For the convenience of the readers, above all translators and interpreters, we would like to present here a selection of them, including prepositional, adjectival and verbo-nominal phrases, with their meanings and translation. (Czech equivalents are stated only with some of the less common words):

<i>a fortiori</i>	– with even stronger reason
<i>ab inito</i>	– from the beginning
<i>ad acta</i>	– to the archives (denoting the irrelevance of a thing)
<i>ad hoc</i>	– literally ‘for this’ – created or done for a particular purpose as necessary – <i>(jen) k tomuto účelu</i>
<i>ad idem</i>	– in agreement; at a meeting of the minds