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## **LEGALESE: AN OBSTACLE OR A NECESSITY IN LEGAL COMMUNICATION?**

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### **ABSTRACT**

This research examines the benefits and drawbacks of using legalese in legal communication. On the one hand, it offers clarity and accuracy, which helps avoid misunderstandings, particularly in fields like intellectual property law and contracts. However, its intricate and technical terminology frequently makes it hard for regular people to comprehend their rights and obligations.

To make laws and legal documents more accessible to everybody, there has been a significant drive in recent years to simplify legal terminology. Making legal writing more understandable without sacrificing accuracy is the goal of many legal changes.

This study emphasises how crucial it is to strike a balance between maintaining legal writings' accuracy and their readability. It promotes a legal system where individuals may understand their rights without the assistance of a lawyer for simple legal issues by looking at existing procedures and suggested changes.

## 1. INTRODUCTION

Legal language, often called legalese (The necessary language of Law), is the backbone of the legal system, shaping laws, contracts, and court rulings. It's designed to be precise, consistent, and enforceable, which helps ensure clarity among legal professionals. However, for the average person, legalese can feel like an unnecessary maze of complicated words and lengthy sentences, making legal documents difficult to understand. This has led to an ongoing debate - does legalese protect the integrity of the law, or does it create unnecessary barriers to justice?

On one hand, legalese provides accuracy, prevents misinterpretation, and ensures fairness in legal matters. Courts and lawyers rely on its specific wording to avoid loopholes and ambiguity that could lead to unfair outcomes. On the other hand, its complexity often alienates non-experts, making legal rights and responsibilities harder to grasp. In recent years, there has been a push to simplify legal writing so it's more accessible to everyone as people think that Legal terms can be extremely confusing, yet lawyers employ it at per their whim to make them appear more knowledgeable. This research explores whether legalese is an essential part of the legal system or if it needs to be reformed to improve communication between the law and the people it serves.

### 1.1 Value of Legalese in Law

Legalese is essential for delivering precise and unambiguous legal interpretation, as the maxim "**Certum est quod certum reddi potest**"<sup>1</sup> (That which is certain which may be made certain) captures. It helps ensure that contracts, laws, and court decisions are unambiguous and provide little room for misinterpretations or conflicts. Contracts provide parties with a detailed description of their rights and responsibilities. It ensures that court rulings are understandable and binding. It prevents miscommunications and legal lapses. Even while some individuals find legalese overly complex, it is necessary to maintain the fairness, consistency, and clarity of the legal system.

### 1.2 Elements influencing the complexities of legal languages<sup>2</sup>

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<sup>1</sup> Oxford Reference, *Certum est quod certum reddi potest*, OXFORD UNIVERSITY PRESS (2011), <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095559777>.

<sup>2</sup> Andrea Schneiderová, Historical Background to English Legal Language, 37 J. MOD. SCI. 117, 117-26 (2018).

- Expressing ideas that are easily conveyed in English, such as a rule, principle, theory, maximum, etc., using **Latin** and sometimes **French words and expressions**.
- The use of outdated, archaic, or archaic English terms that have been retained in the legal field even though they are no longer used in the English language.
- Judges and attorneys alike have a sarcastic tendency to write long, complex sentences without punctuation, and the process by which ordinary English terminology are given new, distinct, unusual, and exclusively legal meanings, or given some exclusive legal definitions.

### **1.3 Some examples of Legalese and their translation**

1. Whereas the party of the first part, hereinafter referred to as the grantor, doth hereby covenant and agree that, in consideration of the mutual promises and covenants contained herein, the grantor shall convey, transfer, and assign all right, title, and interest in and to the subject matter heretofore described.

**Translation:** The grantor agrees to transfer all rights to the described property in exchange for the agreed terms.

2. The obligations set forth herein shall survive the termination, expiration, or rescission of this agreement and shall remain in full force and effect notwithstanding any such cessation of contractual relations.

**Translation:** Even if this agreement ends, the obligations will still apply.

3. The doctrine of ejusdem generis shall apply to interpret the general terms used in this contract, such that words of a general nature shall be construed in accordance with their specific counterparts preceding them.

**Translation:** General terms in this contract will be interpreted based on the specific terms listed before them.

4. The party of the second part shall be estopped from asserting any claims inconsistent with the representations and warranties made herein, by reason of the doctrine of

promissory estoppel.

**Translation:** The second party cannot make claims that contradict the promises they made in this agreement.

5. Notwithstanding the foregoing, the lessee shall remain liable for any outstanding obligations.

**Translation:** Despite what was previously stated, the tenant is still responsible for any unpaid obligations.

6. Notwithstanding any provision to the contrary contained herein, in the event of any conflict between the terms and conditions set forth herein and any ancillary agreement executed contemporaneously herewith, the terms of this agreement shall govern and prevail.

**Translation:** If there is a conflict between this agreement and another signed at the same time, this agreement will take priority.

## 2. ARGUMENTS IN FAVOUR OF LEGALESE:

### 2.1 Precision and elimination of ambiguity:

Legalese is crucial to the accuracy and clarity of legal documents<sup>3</sup>, despite the fact that it is occasionally thought to as being complex. For example, clauses like indemnity and force majeure clearly define duties and protections under contract law. Indemnity provisions forbid one party from unfairly assuming the financial risks of another, whereas force majeure clauses outline what happens in the case that unanticipated events prevent the contract from being executed.

A good example of the need of using clear legal language is the legal principle known as “**ubi jus ibi remedium**”<sup>4</sup> which means that “**where there is a right, there is a remedy.**” Without it, contracts could be interpreted incorrectly, leading to disputes. Even while plain language

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<sup>3</sup> Legal Information Institute, *Legalese*, CORNELL LAW SCHOOL (June 2020), <https://www.law.cornell.edu/wex/legalese>.

<sup>4</sup> Oxford Reference, *Ubi Jus Ibi Remedium*, OXFORD UNIVERSITY PRESS (2011), <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803110448446>.

may seem more appealing, oversimplification can result in gaps and misunderstandings. Legalese ensures that contracts are fair, consistent and enforceable.

## 2.2 Legal consistency and precedent:

A key component of maintaining uniformity and predictability in legal systems is legalese, which is defined by specific legal vocabulary and wording. This specific terminology makes it easier to apply the **stare decisis** doctrine, which translates to "**to stand by things decided**."<sup>5</sup> This concept ensures consistency across cases by requiring courts to follow established precedents when rendering decisions.

Legalese is crucial to maintaining the integrity of legal precedents and guaranteeing that similar cases are treated similarly, which builds confidence and dependability in the judiciary. Without it, inconsistent interpretations could result in inconsistent rulings, undermining the stability of the legal system. Using precise legal language ensures that judicial decisions are based on consistent interpretations of legal texts, reducing ambiguity and promoting fairness in the application of the law.

## 2.3 Domains where Legalese is crucial:

Legalese is crucial to the clarity and enforcement of the law, particularly in the areas of contractual law, legal documents, communications between legal professionals and etc. It is also crucial in various categories of laws like:

**Contractual Laws:** Clear language avoids miscommunications and disagreements. Words like "best efforts" and "reasonable efforts" have different legal definitions that affect duties. Contracts that lack legalese may be misunderstood and result in legal disputes.

**Intellectual property Laws:** To specify ownership and usage rights, patent and copyright laws need precise wording. Uncertain copyright terms can result in disagreements about infringement and fair use, and a vague patent may be contested.

**Corporate Laws:** Companies use legalese to create shareholder agreements, manage acquisitions, and adhere to laws. Lawsuits, penalties, and regulatory problems can be avoided

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<sup>5</sup> Legal Information Institute, *Stare Decisis*, CORNELL LAW SCHOOL (2024), [https://www.law.cornell.edu/wex/stare\\_decisis](https://www.law.cornell.edu/wex/stare_decisis).

with clear legal wording.

### 3. ARGUMENTS AGAINST LEGALESE: BARRIERS AND CHALLENGES

#### 3.1 Complexity and Inaccessibility

The intricacy of legal jargon often makes it difficult for non-lawyers to understand their own rights and obligations. The idea of **ignorantia juris non excusat**<sup>6</sup>, which holds that "Ignorance of the law is no excuse" and mandates that people follow laws they may not even fully comprehend, is in conflict with this. A common example is lease agreements, which are rife with legalese on liability, maintenance, and rent hikes. A lot of tenants sign without carefully reading the fine language, which might lead to unanticipated costs or legal problems. This is also the case with insurance policies, which are rife with technical terms that make it hard to know what is actually covered.

#### 3.2 Barriers to justice and access to law:

Legalese hinders justice, especially for marginalised populations who may not have the resources or expertise to understand their legal rights. Excessively complicated legalese makes it harder for people to grasp the system, ask for help, or defend themselves against injustice. Increasing accessibility is exemplified by the **Miranda Rights in the US**. Before they were introduced, many individuals, especially those with low levels of education, were not aware of their legal rights during an arrest.

The **Miranda v. Arizona (1966)**<sup>7</sup> ruling changed this by requiring police to give a succinct and straightforward explanation of a person's rights, including the right to counsel and the right to remain silent. This made obtaining legal protections simpler for everyone, not just those who were aware of the law. However, most of the legal profession continues to utilise complex, technical language that makes it difficult for the general people to understand contracts, court filings, and even legal aid papers. If legal jargon were clearer and easier to comprehend, more people especially those from disadvantaged backgrounds might confidently exercise their

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<sup>6</sup> Akrama Javed & Subodh Singh, *Ignorance Of Law In India: An Urgent Need To Fight Legal Illiteracy*, LIVE LAW MEDIA PRIVATE LIMITED (June 17, 2021, 10:34 AM), <https://www.livelaw.in/articles/accomplice-testimony-admissibility-section-133-evidence-act-vs-section-138-bharatiya-sakshya-adhiniyam-293694>.

<sup>7</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

rights and obtain justice without unnecessary confusion or barriers.

### 3.3 Delays in Litigation and Court Proceedings:

Court proceedings are frequently slowed down by legalese, which also makes it more difficult for individuals to obtain justice. According to the maxim **fiat justitia ruat caelum**<sup>8</sup>, which translates to "Let justice be done though the heavens fall," justice must always come first. However, too complex legalese causes needless delays, particularly for pro se litigants those who represent themselves in court without an attorney.

Court paperwork and processes might be intimidating to someone who is not familiar with legal jargon. Even small errors, such as failing to file documents or misinterpreting deadlines, can have serious consequences. This slows down the process for everyone since judges and court employees have to spend more time clarifying legal jargon or fixing mistakes. The outcome? Justice is more difficult to get when cases drag on longer than required.

People wouldn't need a law degree to grasp their rights and duties if legal papers were written in simple, understandable language. Court procedures would become quicker, more equitable, and easier to access as a result. Justice should be accessible to all, regardless of one's ability to pay for legal representation. The first step in achieving this goal is to make the legal system simpler to use.

## 4. APPLICABILITY AND INAPPLICABILITY OF LEGALESE

### 4.1 Where Legalese is Essential?

Legalese ensures that international treaties and commercial agreements are clear and enforceable under different legal systems. Since different nations have distinct laws and interpretations, using precise legal terminology helps prevent misunderstandings that might lead to issues. Well-drafted trade agreements, like the WTO treaties, have precise definitions of duties, levies, and dispute settlement processes.

In order to protect investors and businesses, **corporate law** mandates that contracts be written strictly. Large corporations enter into complex agreements, including mergers, shareholder

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<sup>8</sup> Rudrajyoti Nath Ray, *Fiat Justitia Ruat Caelum*, RUDRAJYOTI NATH RAY (Apr. 19, 2017), <https://rudrajyotinathray.com/2017/04/19/fiat-justitia-ruat-caelum/>.

agreements, and financing contracts, where unclear wording might lead to costly legal action. By making sure that responsibilities, rights, and obligations are spelt out precisely, legalese reduces the likelihood of mistakes or misinterpretations.

In the area of **property law**, Legalese explains property titles, zoning laws, and deed restrictions. To prevent ownership disputes, real estate transactions require accurate legal descriptions. The exact legal definitions of concepts like easements, encumbrances, and restrictive covenants safeguard property rights.

#### 4.2 Where Legalese should be minimized?

Legalese should be avoided in areas where the public requires clarity, such as consumer rights, government laws, and criminal law. When legal jargon is overly complex, people become confused and find it difficult to fully understand their rights and obligations.

**Consumer rights** contracts must to be written in plain English so that buyers may make informed decisions. **Verba chartarum fortius accipiuntur contra proferentem**<sup>9</sup>, a legal adage that asserts that "words of a document are construed against the drafter," lends credence to this idea by ensuring that unclear contract stipulations are interpreted in the best interests of clients. Many agreements, like warranty policies or loan terms, are still riddled with legalese, making it difficult for consumers to spot discriminatory clauses.

Government legislation states that citizens should not need legal education to understand the laws that govern them. Rules and procedures written in legalese may make it difficult for people to follow them or for them to inadvertently disobey the law. Clear legal language makes laws understandable to everyone, not only lawyers.

The **criminal law** rights of the accused must be unambiguous and straightforward. If someone is not informed of their rights, such as the right to counsel or the right to remain silent, they may unwittingly implicate themselves. Legal jargon should be made simpler to ensure fairness and protect individual freedoms.

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<sup>9</sup> Team @Law Times Journal, *Verba chartarum fortius accipiuntur contra proferentem*, LAW TIMES JOURNAL (Oct. 3, 2019), <https://lawtimesjournal.in/verba-chartarum-fortius-accipiuntur-contra-proferentem/>.

## 5. THE NEED FOR A PLAIN LEGAL LANGUAGE:

### 5.1 Global push for plain language movement

To make laws easier for the general people to access and comprehend, there has been a global effort in recent years to simplify legal terminology. In an effort to do away with the complexity of conventional legalese, nations like the United Kingdom, the United States, and Australia have been leading the charge to promote simple language in legal draughting.

#### United kingdom

This move towards clarity is best illustrated by the **UK's Consumer Rights Act of 2015**. By combining important consumer rights pertaining to contracts for products, services, and digital content, this Act offers a more contemporary framework that is simpler to comprehend. According to the section 68<sup>10</sup> of this act, contract terms must be transparent, meaning they should be in plain and intelligible language and, if written, be legible. This increases customer trust and makes it simpler to enforce rights.

#### United States of America

The **Plain Writing Act of 2010**<sup>11</sup> in the United States requires federal agencies to communicate in a plain, understandable, and accessible manner. This law seeks to improve accountability and effectiveness by increasing the accessibility of government information.

#### Australia

Australia has a strong commitment to transparent communication even if it lacks official plain language regulations. Clear and open communication is crucial in consumer rights documents and company policies, according to the **Australian Competition and Consumer Commission (ACCC)**. In order to make material accessible to all readers, sites such as the Australian Government's Style Manual also offer advice on how to use plain language and steer clear of jargon.

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<sup>10</sup> Consumer Rights Act 2015, s 68.

<sup>11</sup> Plain Writing Act of 2010, 5 U.S.C. §§ 1 - 7 (2010).

## 5.2 Views of SC Justice Sanjeev Khanna

While speaking at the valedictory session of International Lawyers<sup>12</sup>, Honourable Justice Sanjeev Khanna has pushed for the legal profession to utilise simpler language to make laws easier to grasp and prevent unintentional violations. In his address at the International Lawyers' Conference, he highlighted that laws should settle disputes rather than make them worse. He questioned why legal vocabulary should be hard to grasp and emphasised that laws are meant for everyone, not just legal experts.

In his discussion on global commerce, he emphasised the necessity of precise legal structures to guarantee equitable and effective dispute settlement.

## 6. FINDING A MIDDLE GROUND

Legalese, or legalese, is sometimes criticised for being unduly complicated and making it hard for the general public to comprehend their rights and responsibilities. Excessive intricacy can erect needless obstacles, even though accuracy is essential in legal papers to prevent uncertainty. It's critical to strike a balance between accuracy and clarity, particularly in areas like financial disclosures and consumer contracts. Legal expert Joseph Kimble contends that use more straightforward language improves accessibility without compromising legal efficacy.

Clearly defining important terminology up front is one method to accomplish this balance. A glossary is frequently used in legal papers to provide plain English explanations of technical jargon. Using plain language, which includes eliminating legalese, replacing antiquated expressions with contemporary ones, and properly arranging sentences, is another successful strategy. This strategy has been supported by the **U.S. Securities and Exchange Commission (SEC)** since 1998. In financial statements, it mandates that businesses adhere to the Plain English Principles, which include the use of short phrases, everyday language, the active voice, and unambiguous formatting, such as bullet points. These modifications aid investors in making better judgements, particularly those who lack financial knowledge.

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<sup>12</sup> *Use of simple language required in legal profession*, THE ECONOMIC TIMES (Sept. 24, 2023, 05:46 PM), <https://economictimes.indiatimes.com/news/india/use-of-simple-language-required-in-legal-profession-sc-judge/articleshow/103909439.cms>.

## **7. MY PERSONAL VIEWS ON THE TOPIC OF LEGALESE**

Legalese is a complex topic. Although it is essential for guaranteeing the correctness and precision of legal texts, it also hinders communication between the public and the law. People may find it challenging to comprehend their rights and duties due to complex legal terminology. Legal documents are frequently written in a way that is far more sophisticated than necessary, making them inaccessible to people who depend on them the most, even while some technical jargon is required.

Legalese can make individuals feel helpless, which is one of its primary problems. Although formal agreements, contracts, and laws are meant to protect people, their wording frequently makes it difficult for the general public to understand what they imply. The long, jargon filled terms and conditions we frequently encounter when registering for online services serve as an excellent illustration. Most individuals don't even try to read these materials because they are so complicated, which raises questions about openness and justice.

Legalese shouldn't be totally eradicated, though. Accuracy is crucial, particularly in legal situations when vague language may result in unforeseen repercussions or legal gaps. Finding a balance by making sure legal writing maintains its required degree of detail while remaining clear and intelligible should be the major goal rather than completely eliminating legal terminology.

## **8. CONCLUSION**

There are two primary points of contention in the legalese discussion. Legalese, on the one hand, guarantees accuracy and uniformity in legal interpretation. Because of its technical terminology, legal writings are less ambiguous and more consistent. This is especially crucial in contract law as ambiguous language can result in disagreements. Legalese also aids with precedent continuity, enabling judges to apply well-established legal doctrines uniformly in various situations.

However, legalese is frequently criticised for being an impediment to accessibility and fairness. Ordinary people may find it challenging to comprehend their rights and responsibilities due to the complicated terminology used in legal papers. For even the most basic issues, this encourages people to rely on legal experts, raising expenses and limiting access to justice. In

addition to slowing down court proceedings, excessive legalese can also make matters less clear.

### **8.1 Middle ground**

It is necessary to take a balanced approach rather than completely eliminating legalese. Legal jargon should be more understandable to the general public while still being accurate. Many governments are already following this path. For example, the **UK's Consumer Rights Act of 2015** and the **US's Plain Writing Act of 2010** mandate that legal documents be written in a way that the general public can comprehend. Similar modifications are needed in various legal systems to ensure that laws are both comprehensible and enforced.

### **8.2 Future legal reform**

Going forward, the legal profession must strive for greater clarity without sacrificing accuracy. Writing legally competent and understandable legal documents should be a skill that law schools educate their students. Lawmakers should continue advocating for plain language legislation in order to make laws more comprehensible. The importance of ensuring that legal texts serve the public as well as attorneys and judges must be recognised by courts and legal professionals at the same time.