

Comparative Legal Linguistics

Language of Law, Latin
and Modern Lingua Francas
2nd Edition

Heikki E.S. Mattila

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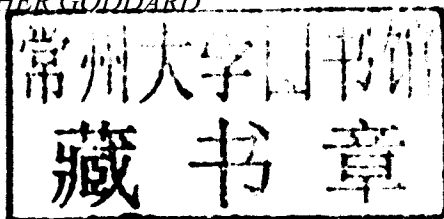
Language of Law, Latin
and Modern Lingua Francas
2nd Edition

HEIKKI E.S. MATTILA

University of Lapland, Finland

Translated by

CHRISTOPHER GODDARD



ASHGATE

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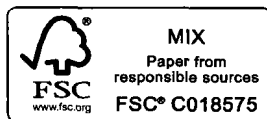
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Preface

Six years have passed since publication of the first English edition of this book. The rapid rhythm of change in today's world also touches linguistic phenomena. This is evident in legal languages, too, so that preparing for publication of a second English edition of this book is a matter of course, encouraged by the positive welcome of the first edition.

Beyond the fact that the text of the book has been generally updated and often added to, this edition contains a brand new chapter on legal Spanish. That chapter, in the shape of a French manuscript, was read and reviewed in 2009 by Carles Duarte i Montserrat, who is not only a recognised poet of distinction but also a linguist and expert in languages for special purposes and a notable author of books on legal Catalan and Spanish. At the same time, legal evolution and linguistic changes in the frame of the European Union have been dramatic in recent years. For this reason the author asked Kari Liiri, head of the Finnish Division at the Translation Service of the Court of Justice of the European Union, to read once again (he had already done so for the first English edition) the parts of the book dealing with the Union language regime and the current realities of EU language use.

Authors of some reviews of the first English edition deplored the modest space given over to the legal languages of the Nordic countries. As a result, the chapter on the functions of legal language now contains an additional section on the language issue in legal circles in Norway – a Nordic country of particular interest on this topic due to the existence of two variants of the national language. This section, again in the shape of a French manuscript, was read and reviewed by Kåre Lilleholt, a professor at the University of Oslo and co-editor of a recent digest (2010) on use of the two variants of Norwegian in the field of law.

Latin occupies an important place in this work, as is also evident from the subtitle of the second English edition. Apart from a specific chapter devoted to legal Latin, the overviews of modern legal languages in the book contain sections, at times detailed, on this, the mother-language of lawyers. As in the case of the original Finnish, the idea was to assure the reliability and accuracy of the Latin expressions cited in this edition by seeking the help of a professional Latinist, Doctor Reijo Pitkäranta, who has worked closely with the author since the 1990s. Dr Pitkäranta, co-editor of *Nuntii Latini*, international news in Latin broadcast by Finnish radio, scrupulously checked the grammatical and orthographical correction of the Latin expressions featuring in this edition of the book.

Relevant observations from these specialists have fundamentally improved the quality of the book – as indeed did critics of the manuscripts of the earlier editions in Finnish and English, whose names are mentioned with thanks in the forewords

to those editions, both printed at the beginning of the first English edition. As the Norwegian language example shows, in updating the manuscript now published the author has also tried to take into consideration suggestions from reviews of the first English edition of the book that appeared in various professional journals. Needless to say, the author alone accepts responsibility for errors and omissions in the final version.

During preparation of this edition, the author was privileged to have access to the collections of several legal and linguistic libraries. Notable examples include the Library of the Court of Justice of the European Union and, in Finland, the Library of Parliament in Helsinki, the Library of the University of Helsinki and the Library of the University of Lapland. The staff of these libraries also ordered many new books suggested by the author, or – in particular Heli Saintula (Library of the Court of Justice) – photocopied and mailed articles for the needs of the book. However, the contribution by librarians to the author's task was not limited to making books available: the staff of the Dag Hammarskjöld Library at the United Nations in New York and of the Library of Parliament in Helsinki provided the author with valuable information on the basis of which he was able to calculate statistics on language use in a legal linguistic context. Here, special thanks go to Kaarlo Mäkelä, Head of Collection Services at the Library of Parliament in Finland.

Similarly, the author recalls experiencing fruitful cooperation in legal-linguistic teaching over the years with colleagues at the University of Lapland. This cooperation was essential in raising the author's understanding in the complex issue of legal languages, also contributing to production of this book. For this reason, it is appropriate to acknowledge the following specialists: Richard Foley, M.Ed., Riitta Sallinen, Ph.D., Tarja Salmi-Tolonen, LL.D., Iris Tukiainen, LL.M., Katriina Uljas-Rautio, M.A., and Birgitta Vehmas, M.A.

At the same time, the author expresses warm thanks to Christopher Goddard, founder of the master programme in legal linguistics at the Riga Graduate School of Law (RGSL, Latvia) and translator of the first edition of this book, for having painstakingly and scrupulously translated from French the additions and updates to this second English edition. The translation was done hand in hand with stylistic correction of the French manuscript, drafted by the author – himself of Finnish mother-tongue – to prepare the manuscript for printing in Quebec. The result is a kind of co-drafting of the English and French versions of the book, as reflected positively and reciprocally in both versions. In particular, well-chosen comments by Professor Jean-Claude G  mar while checking the style of the French manuscript also contributed to improving the English version of the book. Moreover, the subtitle of the French edition as formulated by Professor G  mar offered a direct model for a striking subtitle for this English edition.

As in the case of the first English edition, warm thanks are due to Ashgate Publishing Ltd, who kindly agreed to publish this book, and their staff, in particular (the names in alphabetical order) Carolyn Court, Editorial Administrator, Sarah Horsley, Assistant Editor for Law, Alison Kirk, Publisher, Laura Linder, Desk

Editor, and Gail Welsh, Proofreader. In preparing the final version of the index and the list of foreign terms and expressions, Marianne Hiirsalmi and Anna-Roosa Länsipuro provided especially useful help.

Helsinki, October 2012.

Heikki E.S. Mattila

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Chapter 1

Legal Language and Legal Linguistics

1 The Concept of Legal Language

Legal language does not qualify as a language in the same way as French, Finnish, or Arabic, for example. According to Carles Duarte, the Catalan linguist, it operates as a functional variant of natural language, with its own domain of use and particular linguistic norms (phraseology, vocabulary, hierarchy of terms and meanings). Legal language possesses a number of specific features. These are morphosyntactic, semantic, and pragmatic. This language is used in particular social roles: pleading, claiming, and so on.¹

It is clear to see that legal language is based on ordinary language. For that reason, the grammar and – in general – the vocabulary of legal language are the same as in the case of ordinary language. However, legal language is a language for special purposes. This means, first of all, that a large number of legal terms exist whose properties vary according to the branches of the law. In addition, the legal languages of different countries and of different periods possess, to a varying degree, characteristics that distinguish them from ordinary written language (e.g., sentence structure). One may speak of a specific legal style. For those reasons, it often occurs that legal language may be incomprehensible from the standpoint of the general public.

Legal language is often characterised as a technical language or ‘technolect’, which is to say a language used by a specialist profession. That is accurate, but only with certain reservations. True, legal language is, first and foremost, used by lawyers. Nevertheless, in the courts and still more in the government are professionals who are not lawyers properly so-called (jury-members, lay judges, and administrators). At the same time, it seems natural to say that a citizen who, for example, writes his own will following a model form (as often occurs in the Nordic countries) is using legal language. Still more important, by contrast with most other languages for special purposes, the target of messages transmitted in legal language often consists of the whole population, certain layers of the population, or a number of particular citizens. For example, a law normally requires compliance of all the people, while a court judgment relates, first and foremost, to the parties involved in the case. Thus, legal language is not an instrument aimed solely at internal communication within the legal profession.

Use of legal language is notable for the fact that it is very widespread: it governs all areas of social life, and it can, through intertextuality, be combined

1 Prieto de Pedro 1991: 131–132.

with language from any and every domain. Furthermore, legal language is very old, which is not necessarily the case with most other languages for special purposes. This is why, historically, it has shaped the ordinary language of various countries, and in a significant way. Illustrations might include documents from royal chancelleries in France at the close of the Middle Ages and the beginning of the Modern Era, as well as *Las Siete Partidas* in medieval Spain. However, this is not a matter of a unique historical phenomenon. Even today, legal language still influences ordinary language.

It is not clear that the domain of usage of ordinary language and that of language used in legal matters are geographically identical. The population can make use of another language than that forming the basis of a country's legal language. In the Middle Ages and, in part, at the beginning of the Modern Era, Latin was the language of legal proceedings, and notably of written judgments. Another example: Swedish constituted the sole language of legal life in Finland until the second half of the 19th century. Today, the official language – as well as the language of legal affairs – of many African countries is French or English, in spite of the fact that the population speaks one or several African languages.

2 Genres of Legal Language

2.1 Division into Sub-genres

Legal language can be divided into sub-genres, particularly according to the various sub-groups of lawyers. This is explained by the fact that the language of each sub-group of lawyers to some degree possesses particular characteristics (vocabulary, style). This is notably so as to the language of legal authors, legislators (laws and regulations), judges, and administrators, as well as advocates.

The division of legal language into sub-genres is a relative matter² and the borderlines between these categories are somewhat vague. Here, the traditions of the country concerned play an important part. For example, in continental Europe one can refer to notarial language. The reason is simple. In these countries – notably Latin countries – private-law documents have been drawn up, for a thousand years, by a separate body: the notarial profession. A notary is a lawyer who can be styled part official, part advocate. The long traditions of the notarial college explain the specific characteristics of their language.

The language of legal authors is characterised by greater freedom than the other sub-genres of legal language. At the same time, legal authors employ a good deal of scholarly vocabulary, notably Latin terms and sayings. Courtroom language is especially formal, often archaic. It often has a categorical character, in that judges use unreserved declarations and peremptory orders. In certain countries,

2 Kurzon 1997: 119–123 and Arntz 2001: 282–291, where a number of divisions are presented.

such as France, courtroom language is also laconic when it comes to reasoning of judges. By contrast, detailed argumentation, along with an abundance of rhetoric, typifies the language of counsel. In certain domains of legal language, notably in judgments, highly complex sentence construction was formerly used – in some countries, that still remains the case today. Finally, texts of whatever genre of legal language understandably include many legal terms.

Besides, legal language can be divided into sub-genres on the basis of branches of law. The main distinguishing criterion then becomes the specialist terminology of each branch. It goes without saying that a large part of the legal terminology of the various branches of the law is universal. However, that is not true of terminology overall. Criminal law, for example, contains scores of terms that are almost never used in texts on the law of property or constitutional law. Equally, in some branches of the law legal terminology is mixed with non-legal technical terminology: for example, criminal law involves psychiatric terminology, while land law involves surveys, and tax law involves accountancy.

2.2 Related Linguistic Phenomena

2.2.1 Legal Jargon The style of legal language forms a spectrum that extends from the solemn cast of the Constitution to everyday legal texts, with their more laid-back style. This spectrum becomes complete with legal jargon. All professions develop their own jargon, which significantly strengthens internal relationships as well as the coherence of the group in question. Part of legal jargon is common to all sub-groups of lawyers (e.g., judges, advocates, civil servants). Nevertheless, other expressions also exist that are only used within the ranks of a single sub-group of lawyers, or within a particular court or department (e.g., ministry, supreme court).

As to the origin of legal jargon expressions, this varies. For example, in the Nordic countries these expressions are often deformations of legal Latin terms, which illustrates the strength of Roman law traditions in the periphery of Europe. At the same time, it can be said that no clear borderline exists between lawyer-to-lawyer jargon and layman's slang relating to legal phenomena. Certain expressions referring to legal circles, perhaps somewhat facetious in nature, are also used by the general public. To give a Polish example, an advocate in Poland is an 'apostle' (*apostoł*), a 'missionary' (*misjonarz*), a 'parrot' (*papuga*) or – after the shape and colours of the advocate's gown – a 'green penguin' (*zielony pingwin*).³

Legal jargon often takes the form of abbreviations, notably in internal court documents. Replacing explanations as to legal institutions by the numbers of articles constitutes a particular genre of abbreviation. This involves a phenomenon known in all legal cultures. In the Soviet Union, this form of replacement was particularly common. Thanks to Russian memoirs and literature about the prison camps, the numbers of certain articles of Soviet penal and procedural legislation became notorious even abroad. To illustrate, in a recent work a Russian legal

3 Hałas 1995: 43–44.