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EU LEGAL ENGLISH TERMINOLOGY

FREE SEMINAR

**“CREATING A SIMPLE, UNIFORM, TIME-SAVING AND EFFICIENT INSTRUMENT
FOR THE RECOVERY AND ENFORCEMENT OF UNCONTESTED MONETARY
CLAIMS IN THE EUROPEAN UNION”**

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THIS PRESENTATION IS BASED ON EUROPEAN JUDICIAL TRAINING NETWORK (EJTN) HANDBOOK ENGLISH FOR JUDICIAL COOPERATION IN CIVIL MATTERS, 2016, THE LEGAL ENGLISH SECTION OF THE INTRODUCTION HAS BEEN PREPARED BY EVA SAMANIEGO FERNÁNDEZ AND MIGUEL ÁNGEL CAMPOS PARDILLOS , THE EU LEGAL ENGLISH SECTION OF THE INTRODUCTION HAS BEEN PREPARED BY ISABEL ALICE WALBAUM ROBINSON.

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I. LEGAL ENGLISH

Legal English can be divided into two categories:

- Those having to do with **legal vocabulary**, and
- Those having to do with **syntax**.



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A. LEGAL VOCABULARY

Legal vocabulary may be classified into three types:

1. Technical terminology
2. “Subtechnical” or “semitechnical terms”
3. General terms



A. LEGAL VOCABULARY

a) **Technical terminology**, i.e. Words specifically belonging to legal contexts:

- “Distrain” -seize (someone's property) in order to obtain payment of rent or other money owed.
- “Litigation” -conduct of a lawsuit
- “Indemnity” - right to recover from a third party the whole amount someone is liable to pay
- “Condonation” *specifically* express or implied and usually conditional forgiveness of a spouse's marital wrong (as adultery or cruelty)
- “Alimony” -alimony refers to court-ordered payment awarded to a spouse or former spouse within a separation or divorce agreement. The reason for alimony is to provide financial support to the spouse who makes a lower income, or in some cases, no income at all.
- “Collusion” -the act of doing something secret or illegal with another person, company, etc. In order to deceive people.



A. LEGAL VOCABULARY

B) “subtechnical” or “semitechnical terms” words whose meaning in legal contexts differs from the one they possess in general language

e.g.

- “Action” meaning “suit” or “proceedings”,
- “service” meaning “notification”,
- “hand” meaning “signature”, etc.

C) general terms that are used in legal contexts, such as “theft”, “witness”, “judge”, etc.



A. LATIN ORIGIN OF TECHNICAL WORDS

Some of the technical words and/or expressions come from other languages, either in their original form or adapted into English pronunciation, spelling or structure.

❑ **These can be Latinisms, either:**

❖ **In their original form (prima facie** -at first view, on the first appearance, **bona fide** -made in good faith),

❖ **Adapted into English (“abscond”** first appearing in English in the 17th century, *abscond* derives from latin *abscondere*, meaning "to hide away," a product of the prefix *ab-* and *condere*, a verb meaning "to conceal." In general usage, *abscond* refers to any act of running away and hiding (usually from the law and often with funds), but, in legal circles, the word is used specifically when someone who has already become the focus of a legal proceeding hides or takes off in order to evade the legal process (as in "absconded from parole"), **“insolvent”**, an insolvent debtor : a person or entity that is unable to pay debts as they fall due)

❖ **Direct translations from Latin expressions.**

- (e.g. “Law merchant”, from *lex mercatoria*): the legal rules formerly applied to cases arising in commercial transactions, “last will” (*ultima voluntas*), “burden of proof” (*onus probandi*).



A. FRENCH ORIGIN OF TECHNICAL WORDS AND/OR EXPRESSIONS

□ Also, there are **words of French origin**, some of which:

❖ **Have been imported directly**, such as “**fait accompli**” a thing accomplished and presumably irreversible, “**force majeure**” *force majeure* translates literally from French as *superior force*. In English, the term is often used in line with its literal French meaning, but it has other uses as well, including one that has roots in a principle of French law. In business circles, "force majeure" describes those uncontrollable events (such as war, labor stoppages, or extreme weather) that are not the fault of any party and that make it difficult or impossible to carry out normal business. A company may insert a force majeure clause into a contract to absolve itself from liability in the event it cannot fulfill the terms of a contract (or if attempting to do so will result in loss or damage of goods) for reasons beyond its control, etc.,

❖ Whereas others **have been translated directly**, such as:

- “under pain of” (sous peine de) which means subject to penalty or punishment of, or
- “plead guilty” (plaider coupable) to say in a court of law if you are guilty or not guilty of something that you have been accused of,

❖ **Others have been adapted** (such as “salvage”, “towage”, “anchorage” or “demurrage”).

- Salvage- 1) v. To save goods. 2) n. Payment to a person or group which saves cargo from a shipwreck.
- Towage -the action or process of towing; a charge for towing a boat or vehicle
- Anchorage- an area that is suitable for a ship to anchor in.
- Demurrage- a charge payable to the owner of a chartered ship in respect of failure to load or discharge the ship within the time agreed.



A. SPECIFIC FEATURES OF LEGAL ENGLISH VOCABULARY

In general, **the vocabulary of legal English is characterized by a great degree of formality.** This is partly brought about by a high frequency of terms of Greek or Latin origin, but also by some specific features, namely:

a) **Archaisms and formal expressions:**

- “whilst” (during the time that, or at the same time as, despite the fact that; although);
- “showeth” (archaic third-person singular simple present indicative form of show);
- “Witnesseth” (to take notice of or witness).

b) **complex prepositions:**

- “**by virtue of**” (instead of “**by**”),
- “**in the event of**” (instead of “**if**”),
- “**in pursuance of**” (instead of “**under**” or “**according to**”),
- “**having regard to**” (instead of “**considering**”)etc.;



A. SPECIFIC FEATURES OF LEGAL ENGLISH VOCABULARY

c) **Binomial or multinomial expressions**, i.e. Combinations of two or more elements with a similar meaning, such as:

“act or omission”, “advice and consent”, “under or in accordance with”, “rest, residue and remainder” or “give, devise and bequeath”

d) **compound prepositions and adverbs**, such as:

- **“Herein”** (meaning “in this document” or “mentioned here”)
- **“Hereby”** (“by this document”) or
- **“Thereafter”** (“after that, in the future”)



A. SPECIFIC FEATURES OF LEGAL ENGLISH VOCABULARY

e) Choice of words pertaining to a higher register

e.g.

- “Append” (instead of “attach”)
- “Deem” (“consider”)
- “Expedite” (“hasten”)
- “initiate/commence” (“begin, start”)



A. SPECIFIC FEATURES OF LEGAL ENGLISH VOCABULARY

f) Nominalization, i.e. **The use of nouns instead of verbs, sometimes through the conversion of verbs into nouns** (“to study – “make a study”) or **through derivation** (by adding suffix like “-ism”, “-tion”, “-ure”, amongst others.

g) Post-modification, which is a result of nominalization, whereby a number of elements follow the noun for greater accuracy or in order to avoid ambiguity, as in “on the payment to the owner of the total amount of any installments then remaining unpaid of the rent hereinbefore reserved and agreed to be paid and the further sum of ten shillings (...)”.



B. SPECIFIC FEATURES CHARACTERIZING ENGLISH SYNTAX AND SENTENCE STRUCTURE

There are also some specific features characterizing English syntax and sentence structure, which include the following:

- **Lexical repetition as a reference mechanism;** instead of “it” or “this” or any other pronoun, legal English prefers to use specific words like “**the aforesaid**” or “**the aforementioned**”, or **simply to repeat words**, e.g.
 - “The SEC (US Securities and Exchange Commission) has reinforced the insider trading restrictions with promulgation of rule 14e-3 of the SEC, an independent provision prohibiting insider trading in connection with tender offers. Congress has further reinforced these trading restrictions by providing the SEC with the power to seek a treble penalty under the Insider Trading Sanctions Act of 1984 (ITSA).
 - This legislation empowers the SEC to base enforcement actions on any recognized theory of insider trading restriction”



B. SPECIFIC FEATURES CHARACTERIZING ENGLISH SYNTAX AND SENTENCE STRUCTURE

- **Long and complex sentences, with multiple levels of subordination which are very seldom found in general English**
 - e.g. “it will be your duty, when the case is submitted to you, to determine from the evidence admitted for your consideration, applying thereto the rules of law contained in the instructions given by the court, whether or not the defendant is guilty of the offense as charged”
- **Frequent use of the passive, in order to emphasize the result of actions rather than the agents**
 - e.g. “The case was clear authority for the proposition that regard must be had to the particular circumstances in which the rent payments were made”



B. SPECIFIC FEATURES CHARACTERIZING ENGLISH SYNTAX AND SENTENCE STRUCTURE

**□ Use of connectors like “whereas”, “provided that”,
“where”**

- e.g. “Where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences, (...)”

**□ Omission of the relative pronoun and the appropriate
form of the verb “to be”**

- e.g. “all the rights and remedies [which are] available to a secured party”



B. SPECIFIC FEATURES CHARACTERIZING ENGLISH SYNTAX AND SENTENCE STRUCTURE

- A tendency to avoid the negative particle “not”,**
 - e.g. Through the use of “**never**”, “**unless**”, “**except**”, “**fail to**” or negative prefixes, such as “un-”; (untrue)

- Use of prepositions which are separated from their complements,**
 - e.g. “tracing and identification of proceeds from, or other property related to, crime” or “illicit manufacturing of and trafficking in firearms”



B. SPECIFIC FEATURES CHARACTERIZING ENGLISH SYNTAX AND SENTENCE STRUCTURE

- **Use of the subjunctive**, which is very seldom used in everyday language except for some fixed expressions. In legal English, the subjunctive is used:
- **After verbs like “ask”, “advise”, “command”, or “recommend”**
 - e.g. “Even though someone may be eligible for an informal hearing, we will recommend that he attend a formal hearing.”
 - **After adjectives like “important”, “essential”, “advisable” or “crucial”**
 - e.g. “But even though he is no model of courtroom decorum, it is crucial that he be granted the opportunity to present his positions to the court”
 - **After some nouns**
 - e.g. “There is also the recommendation that the council meet every week” or “there is the necessity that funding be found urgently”



B. SPECIFIC FEATURES CHARACTERIZING ENGLISH SYNTAX AND SENTENCE STRUCTURE

□ Use of conditional sentences with inversion, as in:

- e.g. “each party may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically”
- e.g. “the court approached the EU law claim on the basis that EU treaty principles would provide a basis for the claim as long as the contract was one which would have been subject to one or other directive had it not been a concession”.



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II. WHAT IS EU LEGAL ENGLISH?

In this section, we shall give a brief description of the distinctive features of EU legal English (also referred to as EU law English), by examining the vocabulary and syntax of the *acquis Communautaire*.



A. EU LEGAL ENGLISH VOCABULARY

EU law vocabulary may be classified into three distinct types:

a) Single, binomial and multi-word phrases used in EU primary and secondary legislation, many of which are specifically defined:

“appellate”, relating to or having jurisdiction to review appeals; “Applicant”, “authentic instrument”, “court of origin”, “Free movement of persons/judgments/data”, “holder of parental responsibility”, “immovable property”, “maintenance obligations/recovery”, “member state addressed/of enforcement/of origin”, “mutual trust”, “recognition and enforcement”, “recovery”, “rights of access”, “rights of custody”, “Service”, “wrongful removal or retention”; etc.



A. EU LEGAL ENGLISH VOCABULARY

b) Semi-technical terms or words whose denotation in legal contexts are different from the meanings conveyed in general purpose language, such as:

- “accession” meaning “entering/joining the EU as member state”,
- “access” meaning “right to take a minor to a location other than his/her habitual residence for a limited time period”,
- “Actor” meaning “party”, “creditor” meaning “an individual to whom maintenance is owed or supposedly owed”,
- “debtor” meaning “an individual that owes or supposedly owes maintenance”,
- “decision” meaning “decree, order, judgment or writ” in relation to a specific subject matter,
- “default of appearance” meaning “procedural term to refer to lack of appearance in court”,
- “enhanced cooperation” meaning “procedure by which member states (minimum nine) can work together in specific areas of EU law (e.g. Divorce, legal separation) without other EU country involvement, for the purpose of efficiency and expeditious performance”,
- “participating member state” meaning “a member state that is party to enhanced cooperation”,
- “service” meaning “document transmission or notification”



A. EU LEGAL ENGLISH VOCABULARY

c) shared legal terminology by both legal English and EU law English such as:

“Act”, “abduction”(usually in reference to child abduction), “admissibility”, “agreement”, “alimony”, “bankruptcy”, “beneficiary”, “burden of proof”, “claim”, “claimant”, “consent”, “defendant”, “defamation”, “delict”, “enforce”, “indemnity”, “insolvency”, “instalments”, “judge”, “legal aid”, “liquidator”, “parental responsibility”, “pension”, “tort”, “winding up”.



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A. EU LEGAL ENGLISH VOCABULARY

EU legal English also includes technical words and/or expressions from other languages.

These can be direct borrowings in their original form and denotation or adaptations into EU law English with changes in pronunciation, spelling or form.

Examples:



A. EU LEGAL ENGLISH VOCABULARY

a) Latin-based terms in their original form such as:

- “Acta iure imperii” acts by right of dominion commonly used in conflict of laws. It regards issues of liability of a state for acts and omissions in the exercise of state authority
- “ad litem” meaning “temporary appointment for the duration of an action”,
- “forum conveniens” meaning “the most appropriate court for the resolution of a dispute”,
- “forum necessitatis” meaning “rule which ensures that where no court of a member state has jurisdiction, the courts of a member state may exceptionally hear the case if proceedings cannot reasonably be brought in a third state with which the dispute is closely connected”,
- “lex loci delicti commissi” meaning “the locus or place where a tort, offence or injury has been committed”,
- “lis pendens” meaning “pending suit or notice of pending suit, where any other court other than the court first seised shall stay the proceedings until jurisdiction of the first court is established”,
- “mutatis mutandi” meaning “change where change is needed”
- “negotiorum gestio” or “carrying out business on behalf of another”



A. EU LEGAL ENGLISH VOCABULARY

b) integrated Latin origin terms with different meaning as in:

- “**institute**” meaning “**established law**” (Latin “*institutus*”, “to set up”);
- “**acquiesce**” meaning **to consent or comply passively, without protesting**” (Latin “*acquiescere*”, “to rest/to remain quiet”)



A. EU LEGAL ENGLISH VOCABULARY

c) Integrated into English from other languages. From old, middle or Anglo-French:

- “allege” meaning “to affirm” or “to assert”;
- “apprise” meaning “to inform”,
- “to notify” (French “apprendre”; old French “aprendre”, “to learn”);
- “arrears” meaning “to be behind in the fulfilment of an obligation” (French “arriere” “behind”, “backward”);
- “durable” meaning “permanent”, “lasting”;
- “injury” meaning “violation of a person’s rights” (Anglo-French “injurie”, “wrongful action”);
- “tort” meaning “damage or wrongful act carried out negligently” (old French: “tort”, “fault”);
- “warrant” meaning “to safeguard”, “to protect” (old French “garantir”, from Germanic “waren”, “to protect”, “to warn”)



A. EU LEGAL ENGLISH VOCABULARY

d) Borrowed directly from French:

- “*acquis Communautaire*” meaning “body of European union law”,
- “Force majeure” meaning “exceptional event/situation”,
- “renvoi” meaning “to send back”.

Borrowed from Old Norse (North Germanic language once spoken in Scandinavia):

- “ombudsman” meaning “person who investigates violations of citizens’ rights regarding the public sector”.



A. EU LEGAL ENGLISH VOCABULARY

For the most part, the vocabulary of EU law English compared to legal English is characterized by a **slightly reduced level of formality**. This is partly due to the restricted use of borrowings from Latin and the mindful selection of words of those who, in a multi-cultural, multi-lingual contexts such as the EU, have the remit of drafting and translating legislative products (primary law: treaties; secondary law: recommendations, decisions, directives) from 3 working languages (English, French, German) into 24 EU 'official' languages, 6 'semi-official' languages (Catalan, Galicia, Basque, Scottish Gaelic, Welsh), and, where necessary, into 7 'main EU immigrant' languages(s) (Arabic, Berber, Chinese, Hindustani, Russian, Turkish, Urdu).



A. EU LEGAL ENGLISH VOCABULARY

As a discipline-based technical language, EU law English vocabulary shares linguistic conventions of legal English, often with its **own peculiar choice of vocabulary**, such as:

a) Formal, age-worn expressions that have resisted change:

- “By way of derogation from”,
- “subject to the provisions of”,
- “Where necessary and in so far as possible”,
- “Nothing in this title shall preclude”,
- “the competent administrative authorities within the meaning of”,
- “no reservations may be entered in respect of this convention”



A. EU LEGAL ENGLISH VOCABULARY

b) Formulaic conventions that signal the different 'structural' components of EU acts:

- “whereas” used to introduce the preamble section;
- **Citations used in the introductory section of EU legal documents, to indicate the legal grounds for the act, such as:** “having regard to”, “acting in consideration of”;
- **To indicate the closing or enacting formula:** “has/have adopted this regulation/directive/decision”;
- **To indicate the final article stating the specific time of entry into force:** “it shall apply from [...]”;
- **To indicate its scope and legal grounds:** “this regulation shall be binding in its entirety and directly applicable in the member states in accordance with the treaties”;



A. EU LEGAL ENGLISH VOCABULARY

c) Higher register word replacement, e.g.

- “Alien” (instead of “foreign”),
- “Arrears” (“balance due”),
- “Commence” (“start”),
- “Convene” (“gather”),
- “foster” (“promote”),
- “jurisdiction” (“competence”),
- “Removal” of liberty (“deprivation”),
- “seise” (“court where proceedings are brought”),
- “surrender” (“turn in”),
- “writ” (“legal document or instrument”);



A. EU LEGAL ENGLISH VOCABULARY

d) **Nominalization, i.e. The process of word formation by way of conversion from verb to noun:**

(I) **With no change of form:**

- “to remedy” and “remedy”, “to table” and “a table”; “To stay” as in, “to stay the proceedings” and “a stay” as in, “a stay necessary for the proper administration of justice”,

(ii.) **With change of form:**

- i.e., by derivation, e.g., Adding a suffix such as “-ability” to a verb (“to enforce” and “enforceability”), “-ance”, (“to order” and “ordinance”), “-ion” (“to access” and “accession”), “-ment” (“to employ” and “employment”), “-ure” (“to proceed” and “procedure”), “-Y” (“to jeopardize” and “jeopardy”), (“to warrant” and “warranty”);



A. EU LEGAL ENGLISH VOCABULARY

e) Multiword prepositional phrases:

- “pursuant to” (“under”),
- “in consideration of” (“considering”),
- “Without prejudice to” (“without changing”),
- “in accordance with” (“according to”),
- “with the purpose of” (with to + infinitive): “to convey”; (with for + gerund): “for conveying”;



A. EU LEGAL ENGLISH VOCABULARY

F) here-/there-adverbs. For stylistic purposes, the full array of English here-adverbs is less frequently used in EU acts with, however, a few exceptions such as the use of “hereinafter” and the multiword expression “hereinafter referred to as” meaning “from this point in the text forward”; The full array of English there +adverbs is also less frequent compared to legal English, except for:

- “**thereafter**” used in expressions such as “by 31 December 2015, and every 5 years thereafter” meaning “**from that point on**”;
- “**therefore**” as in, “this regulation should therefore provide”, meaning “**for this reason**”;
- “**therein**” as in, “including any right indicated therein” meaning “**somewhere in the document cited**”;
- “**thereof**” as in, “an appeal against the declaration [...] is to be lodged within one month of service thereof” meaning “**from the time of the cited item**”;
- “**thereto**” as in, “this regulation shall not preclude the application of the convention of 23 March 1962 between [...] on the recovery of maintenance by the member states which are party thereto” meaning “**actors or parties included**”.



B. EU LEGAL ENGLISH SYNTAX

Some specific features characterizing EU law English syntax and sentence structure, are:

a) Complex sentences containing subordination and embedding, often in EU law recitals such as the 84-word (numbers excluded) example below:

- “In the interest of consistency of union legislation, the definition of ‘contracting authorities’ in directive 2004/17/EC of the European parliament and of the council of 31 march 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and in directive 2004/18/EC of the European parliament and of the council of 31 march 2004 on the coordination procedures for the award of public works contracts, public supply contracts and public services contracts should apply for the purposes of this directive”



B. EU LEGAL ENGLISH SYNTAX

b) **use of connectives to link sentences including the three central ones, “and”, “but”, “or” as well as “according to”, “as regards”, “as against”, “for the purposes of”, “in accordance with”, “in consideration of”, “pursuant to”, “subject to”, “where”, “by virtue of”, “within the meaning of”, “without prejudice to” as in:**

- **“without prejudice to the obligations of the participating member states [...] this regulation shall not affect the application of international conventions to which one or more participating member states are party [...]”;**



B. EU LEGAL ENGLISH SYNTAX

c) verb tenses such as the present simple, present perfect, present continuous and past simple.

- **The present simple** is used for **events occurring “now, regularly”**:
 - “the directive combats late payment in commercial transactions to insure the proper functioning of the internal market.”
- **The present perfect** is used to express **past events “with results in the present”**, as in this present perfect passive:
 - “the document in matters relating to maintenance obligations has been registered as an authentic instrument”; or events “started in the past with effect up to the present” as in: “the person refuses the recognition or enforcement on the ground that he has not had the opportunity to arrange for his defence.
- **The present continuous** is used to express **an event happening “now, in this moment”** as in:
 - “the person is claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised”;
- **The past simple** is used if **the action is finished**:
 - “that report included an evaluation of the possible need for a further extension of the rules on jurisdiction to defendants not domiciled in a member state”;



B. EU LEGAL ENGLISH SYNTAX

d) **Use of the passive form of the verb** to highlight the result of an action rather than the agent(s)

- e.g. “Rules on material and formal validity should be defined so that the informed choice of the spouses is facilitated and that their consent is respected”

Or a **combination of passive forms** (modal verb + be + past participle)
combined with (to-infinitive be + past participle)

- e.g. “This regulation should apply irrespective of the nature of the court or tribunal seised. Where applicable, a court should be deemed to be seised in accordance with regulation (EC) No 2201/2003”



B. EU LEGAL ENGLISH SYNTAX

e) **Auxiliary/main verb separation.** Frequent in legal English documents, but used with reserve in EU and international legal instruments with a wide, multicultural, multilingual readership.

Example:

- “any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in sections 2 and 3 of this chapter, apply for a decision that the judgment be recognised”;



B. EU LEGAL ENGLISH SYNTAX

f) **Verbs of enacting.** These are of two types:

(i.) **Verbs used in EU primary and secondary legislation to denote “obligation” or “command”** – Modal verb shall for “positive command”; shall not for “negative command”

- **Examples:**

- positive command: “if the law applied to legal separation does not provide for the conversion of legal separation into divorce, article 8 shall apply, unless the parties have agreed otherwise [...]”;
- negative command: “this regulation shall not affect the application of the 1958 New York Convention”;

(ii.) **Verbs used for ‘defining’ and ‘creating’ or ‘developing’:**

- “for the purposes of this directive: ‘undertaking’ means any organization, other than public authority, acting in the course of its independent economic or professional activity”; and, “to guarantee access to good-quality information, the commission regularly updates the internet-based public information system set up by council decision 2001/470/EC”;



B. EU LEGAL ENGLISH SYNTAX

g) use of collective noun + singular or plural verb:

- singular, if the purpose is to highlight the organization, as in:
 - “the council has approved the content of the revised texts”;
- plural, where the purpose is to highlight members within the organization, as in:
 - “the commission have presented a report on the application of this regulation”.