

Excessive, Turgid, and Redundant Tautology

By William F. Haggerty

Edward III, grandson of “Longshanks” and great great grandson of John of the Magna Charta, had much to contend with in 1362. The Black Death, which had devastated England a little more than a decade before, had reappeared in 1361; the Hundred Years War was in its twenty-fifth year; and the breakdown of the feudal order was progressing nicely. Of less moment was the “first national outcry against the language of the law” — law French.¹

Yet so deplored was French that in addition to the other heady matters confronting the Crown, it was deemed necessary to enact the Statute of Pleading which declared (in French, of course) that “Pleas shall be pleaded in the English tongue, and inrolled in Latin.”² The bench and bar, as was their wont, responded overwhelmingly: For the next century, most of the pleading continued in French, writes persisted in Latin, and French dominated legal literature and remained the regular language of English statutes.

The transition to English was gradual, beginning with oral argument at the bar, gaining ground first in Equity and later in Chancery, and reaching completion³ during the Commonwealth Period orgy of “Giv[ing] the People what they Think they want.”⁴ Despite a brief return to French during the Restoration, within two decades, without compulsion of statute, English again was in use. By 1704 all reports were in English, and 1731 saw the passage of another Statute of

Pleading “[t]o remedy these great Mischiefs . . . brought . . . by Forms and Proceedings in Courts of Justice, in an unknown Language”⁵

During the transition, law French did not readily yield. What had been referred to as a “vulgar dialect” of Latin, and a “barbarous, corrupt, degenerate, and curious mongrel language,” was staunchly defended by practitioners:

[F]or so many ancient terms and words drawn from that legal French are grown to be *vocabula artis*, vocables of art, so apt and significant to express the true sense of the laws, and are so woven in the laws themselves, as it is in a manner impossible to change them, neither ought legal terms to be changed.⁶

It was feared that “by translating law French into English, the specialized distinctions which had taken so long to build up would be lost [and] that great confusion would follow.”⁷ Thus, the specialized law French terms were both retained and translated, engendering a convention which today enables the purchaser of a \$25 will to give away all worldly goods, while the purchaser of a \$100 will may give, devise, and bequeath them.

The old English relish for synonym joined in the Middle English period to produce the coupled synonym,⁸ a vogue that lawyers exalted in their attempts to preserve law French, not because it made their writings more precise, but “because it was the fashion.”⁹ The trend continues; the modern writer, especially the legal writer, has come to like to think — and write — in pairs and triads. Yet coupled synonyms are redundancies, and use of one element of a grouping must render the rest, residue, and remainder

superfluous. Concordant with the intentment of the ancient cabal — to foment abatement of this “kitchen-, pigeon-, and bastard French”¹⁰ — is the following collection of ten of the most cherished and useless couplings since Leopold and Molly Bloom.

1. *Last will and testament*

Testament (Latin) adds nothing to the meaning of will (O.E.). Labeling a will the *last will* does not make it so, and the words do not of themselves revoke an earlier will. The phrase is redundant, confusing, and usually inaccurate.¹¹

2. *Null and void*

Both words derive from a form of French, and today mean the same as either of the words separately. Their coupled use has been described as “a degenerative search for absolutes.”

3. *Give, devise, and bequeath*

Give (O.E.), devise (O.F.), and bequeath (O.E.) currently mean the same as give alone, and did so for more than five hundred years. The notion that devise applied only to realty, and bequeath only to personalty, did not arise until the nineteenth century.

4. *Rest, residue, and remainder*

All are French references to something left-over; the explanation that the coupling emanated from the technicality of vested and contingent remainders is specious.

5. *Full force and effect*

In legal writing the meanings are synonymous, lacking the dignity of art and adding nothing to precision.

6. *Duly authorized*

Authorize means to give authority or official power; duly means

William F. Haggerty is the State Reporter for the Michigan Supreme Court, and an adjunct professor of law at the Thomas M. Cooley Law School in Lansing, and is a member of the State Bar Standing Committee on Libraries, Legal Research & Publications.

properly.¹² Authorize itself subsumes a proper conveyance of power. Duly adds nothing.

7. **Close proximity**

Close means having proximity. Use of proximity alone will suffice.

8. **True facts**

Fact = truth.¹³

9. **Final/end result**

Perhaps in the sense of consequences, there can be immediate and long-range results of a particular action, but, as generally used, this phrase is intended to mean outcome, termination, or end, which is the definition of result.

10. **Class action suit**

Where the distinction between law and equity remains, there may be some justification in distinguishing a suit in equity from an action at law; however, action in its usual legal sense means suit, and suit has generally been replaced by action.¹⁴

Footnotes

1. The authority for much of the material used in this article is drawn from Mellinkoff, *The Language of the Law* (Boston: Little, Brown and Co, 1963), pp 111-360. To promote fluidity, quotation marks enclosing borrowed phrases, and respective page citations, have been omitted.
2. 36 Edw III, stat I, ch 15.
3. *An Act for turning the Books of the Law, and all Process and Proceedings in Courts of Justice, into English*, II Acts & Ords Interregnum 455 (1650).
4. Ade, George, "The Fable of the Preacher who Flew his Kite, but Not Because he Wished to Do so," in *The America of George Ade* (New York: G P Putnam's Sons, 1960), Jean Shepherd, ed, p 69.
5. 4 Geo II, ch 26.
6. Coke, *Commentary upon Littleton* xxxix, in Mellinkoff, n 1 *supra*, p 124.
7. Gopen, Writing from a Legal Perspective, p 16.
8. Mellinkoff, n 1 *supra*, p 120.
9. Mellinkoff, Legal Writing: Sense & Nonsense, p 4.
10. Mellinkoff, n 1 *supra*, p 105.
11. Nos 1-5, see *id.*, pp 332-360.
12. Nos. 6-9, see *The Random House Dictionary of the English Language: Unabridged Edition*.
13. *Id.* p 509. But cf. definitions 4 and 5 for an example of the perniciousness of legal usage.
14. Black's Law Dictionary (5th ed), pp 26, 1286.

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