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LAW FRENCH IN LEGAL ENGLISH: EMERGENCE, EVOLUTION AND REASONS FOR VITALITY

СТАРОФРАНЦУЗЬКІ ВКЛЮЧЕННЯ В ЮРИДИЧНІЙ АНГЛІЙСЬКІЙ МОВІ: ВИНИКНЕННЯ, ЕВОЛЮЦІЯ ТА ПРИЧИНИ ЖИТТЄЗДАТНОСТІ

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Despite Britain's turbulent history Legal English has managed to preserve a remarkable degree of continuity collecting numerous relicts of the past historical periods, which create many difficulties for modern readers and translators. The article investigates the peculiar feature of Legal English that poses certain difficulties for perception and, therefore, for translation, namely foreign inclusions in the text, particularly French words and word combinations. Those French words and phrases that have not been (at least fully) anglicized and are felt as foreign comprise the subject of this study since the writer's (more rarely speaker's) choice of the above said vocabulary acquires special meaning (shade of meaning), which is to be comprehended by a reader and reflected in the relevant translation. The material being the subject matter of the investigation is the bulk of French legal terms as supplied by Black's Law Dictionary, which are labeled Law French, French, and French (Historical). The history of emergence of Law French in medieval Britain has followed revealing its evolution and rise to the position of professional language of law makers and the judiciary from the Norman conquest to the middle of the 17th century. Various reasons for the above said process have been provided with the emphasis on the most likely ones. Despite constant attempts to eliminate Latin and French from Legal English Law French (and Latin) are still actively used in Legalese although they are not evenly distributed across genres; hence, the causes of this present day vitality have been researched into and the corresponding explanations have been proposed. Words and phrases marked in the Black's Law Dictionary as Law French, French, and French (Historical) have been counted, analyzed and divided into groups, which helped explain the reasons for their survival in modern Legal English. In addition, words from other languages (Spanish, Greek, German, Italian, etc.) that have preserved either their written form or pronunciation and are felt and treated as foreign in the English language of law were found, counted and places in the relevant table. Understanding of the reasons for existing of numerous Latin and French inclusions in English legal texts help approach the development of the methods for adequate translation thereof taking into account the meaning (shade of meaning) that the author of the relevant text planned to convey.

Key words: Legal English (Legalese), history of legal English, foreign inclusions in legal texts, foreign words in Legal English, Law French (Old French).

Незважаючи на бурхливу історію Великої Британії, юридичній англійській мові вдалося значною мірою зберегти спадкоємність, збираючи численні релікти минулих історичних періодів, що створює багато труднощів для сучасних читачів і перекладачів. У статті досліджується характерна риса юридичної англійської мови, яка створює певні труднощі для сприйняття, а отже, і для перекладу, а саме включення в текст іншомовних, зокрема французьких слів і словосполучень. Ті французькі слова та фрази, які не були (принаймні повністю) англійзовані та сприймаються як іноземні, складають предмет цього дослідження, оскільки вибір автором (рідше мовцем) вищезазначеної лексики

набуває особливого значення (відтінку значення), який має бути зрозумілим читачем і відображеним у відповідному перекладі. Матеріал, який є предметом розслідування, — це масив французьких юридичних термінів, поданих у Юридичному Словнику Блека, які позначаються як «юридична французька», «французька» та «французька (історична)». Було простежено історію виникнення юридичної французької мови в середньовічній Британії, її еволюцію та піднесення до позиції професійної мови законодавців і суддів від норманського завоювання до середини 17 століття. Наведено найбільш ймовірні причини цього процесу. Незважаючи на постійні спроби виключити латинську та французьку мови з юридичної англійської мови, французька (і латинська) все ще активно використовуються в англійській мові права, хоча вони нерівномірно розподілені між жанрами; причини цієї сьогоденної життєздатності були досліджені та запропоновано відповідне пояснення. Слова та фрази, позначені в Юридичному Словнику Блека як «юридична французька», «французька» та «французька (історична)», були підраховані, проаналізовані та розділені на групи, що допомогло пояснити причини їх виживання в сучасній юридичній англійській мові. Крім того, були знайдені слова з інших мов (іспанської, грецької, німецької, італійської тощо), які зберегли свою письмову форму або вимову та вважаються чужими в англійській мові права; вони були підраховані та розміщені у відповідній таблиці. Розуміння причин існування численних латинських і французьких включень в англійських правових текстах дозволяє підійти до розробки методів їх адекватного перекладу з урахуванням сенсу (відтінку сенсу), який планував передати автор відповідного тексту.

Ключові слова: юридична англійська, історія юридичної англійської мови, іноземні вкраплення в юридичних текстах, іноземні слова в юридичній англійській мові, юридична французька (давньофранцузька).

Legal English, i.e. the professional jargon used by lawyers in English speaking countries, especially those following common law traditions, is a unique linguistic body, which due to the historical peculiarities of its evolution has acquired features that occasionally make it hardly comprehensible even for native-speakers let alone translators who have not been specifically trained in this particular domain of the English language. Among the most notorious features of Legal English (AKA – Law English, Legalese), the following are generally listed:

- Complex terminological apparatus including numerous synonyms;
- Old, frequently outdated grammar;
- Long, complex sentences;
- Foreign inclusions – mainly Latin and French.
- In addition, Mellinkoff mentions:
 - Frequent use of common words with uncommon meanings;
 - Use of argot;
 - Frequent use of formal words;
 - Deliberate use of words and expressions with flexible meanings;

Attempts at extreme precision of expression. [5, p. 45].

On the other hand, P. Tiersma concentrates on the grammar of Legalese, e.g. impersonal constructions; passive constructions; negation; nominalizations; long and complex sentences; wordiness and redundancy. Latin and French are not mentioned specifically; rather the English legal vocabulary has been described as “technical, archaic, formal, and unusual or difficult” [6, p. 27]. Special attention, however, is paid to linguistic sources of Legalese, namely Anglo Saxon, Latin, French and Danish.

The **subject** of the study are French inclusions in English legal writing, which are researched into with the **aim** of defining functions thereof intended, in the

end, to develop the methods of adequate translation.

Modern translation techniques actively involve specialized computer software for various types of translations including legal texts. These methods being undoubtedly helpful in relieving the reader/translator from routine work in many cases of “everyday” legal translations may turn inadequate when dealing with rare or historical texts, which contain abundance of Law French and Law Latin. Precise comprehension of evolution thereof and contemporary function of such inclusions fosters correct translation and, therefore, attaches **relevance** to given study.

The **material** under examination is the bulk of French legal terms as supplied by Black’s Law Dictionary (2014). [8].

For the purpose of the article the term “legal English (Legalese)” is understood as the language spoken by lawyers in the USA, Canada and Great Britain. Variants of Legal English used in India, South Africa, Australia and New Zealand basically follow the above mentioned trends although they undoubtedly enjoy specific features as well as the language spoken and written in numerous European administrative and judicial bodies - the latter, being the tongue of mostly non-native speakers, is somewhat simpler in terms of grammar and narrower in vocabulary – have not been included in the study.

The other issue concerns the question of what should be considered “French inclusions” within the meaning of the given study.

The problem lies in the fact that modern Legalese is a complex combination of three source languages: Anglo-Saxon, Latin and French.

“The linguistic landscape of medieval England was inhabited by three languages – Latin, English and French – though not in equal shares – but in continuous and subtle intermingling, in particular of the French and English languages and cultures. The

role each language played, changed and evolved both in time and in terms of geographical and geo-political distribution. It is precisely that intermingling/interlocking of tongues that can be so well observed in the medieval language of the English common law" [1, p. 171].

Moreover, Danish should also be mentioned, its contribution to the English language of law being quite sizable. Suffice it to mention that the word "law" itself comes from Scandinavian *lay* meaning "that which is laid down". Despite dramatic events of the English history the language of law demonstrated remarkable continuity absorbing words (and sometimes grammatical constructions) from different languages; the four mentioned above do not constitute the exhaustive list as will be demonstrated further.

Latin was being included in legal language during practically all history of its evolution starting from approximately 600 AD when Christian missionaries first appeared on the British Isles; since then Latin has been considered the language of science, knowledge and education.

A special contribution to the formation of the legal language in Britain belongs to the Normans – people of Scandinavian origin (Normans – Northmen) who seized the lands in the north of France in the 9th-10th centuries. Within a few generations, they were completely assimilated and became French, both culturally and linguistically. Norman Duke William (William the Conqueror) claimed the English throne and in 1066 won a decisive victory in the Battle of Hastings. As a result, in a short time, the Anglo-Saxon ruling class was replaced by his associates who spoke the Franco-Norman dialect.

It is noteworthy that initially the Normans drew up legal documents in Latin rather than in French,

"... in general, the Normans did not use French but Latin in their legal documents. It is, therefore, likely that they continued to do so on arrival in England. ... but by 1275 statutes written in French began to appear" [7, p. 102].

By 1310, almost all acts of Parliament were issued in this language. A similar evolution took place with the language of the judiciary – during the reign of Edward I (end of the 13th century), French became the language of the royal courts [7, p. 106]. Interestingly, simultaneously, the French language began to rapidly lose ground in all other spheres of life; even at the royal court, it practically went out of use by the end of the 14th century.

The use of language in the judiciary, which was incomprehensible to most of the participants in the proceedings, could not but cause protests. Thus, in 1362, the Parliament passed the Statute of Pleading

describing French as the language "much unknown" (*trop desconue*) and demanding that only English be used in courts. Paradoxically, the bill itself was written in French [7, p. 106] and is notorious for having little effect. Acts of Parliament continued to be issued in French until about 1480, and legal treatises and court records remained in that language throughout the 16th and into the first half of the 17th century - six centuries after the Norman Conquest and some three hundred years after the Franco-Norman dialect had become a dead language in England. Moreover, at that time, the French would hardly have been able to understand this jargon [7, p. 106].

The Puritans put an end to the dominance of the French language by passing a law in 1650, which stipulated that all court proceedings, protocols, and the law codes be conducted exclusively in English.

Centuries of the use of the French language in legal practice in England could not but be reflected in the legal language. A huge amount of legal vocabulary is French in origin, including basic words such as: *appeal, attorney, bailiff, bar, claim, complaint, council, court, defendant, demurrer, evidence, indictment, judge, judgment, justice, party, plaintiff, plea, sentence, sue, suit, summons, verdict*, and many others.

However, they are not regarded and treated en masse as words foreign to the English language; moreover, many of them no longer belong exclusively to the sphere of legal use and are frequently found in non-specialized texts. For example, the Law French words *defend* and *defendant* that are presently English legal terms can also be found in non-legal contexts. Such words are not labeled as "French" or "Law French" in the Black's Law Dictionary being obviously viewed as technical terms of the English legal language.

The article deals **exclusively with words and phrases that have not been (fully) anglicized and are felt as foreign**. The writer's (more rarely speaker's) choice of the above said vocabulary acquires special meaning (shade of meaning), which is to be comprehended by a reader and reflected in the relevant translation.

A number of Law French terms and phrases have undergone certain changes in the process of their application thus becoming distinct from both the English words of French origin and modern French e.g. *alien* (in the sense of *to transfer*); *cestui que trust*; *chose in action*; *de son tort*; *estoppel*; *estoppel in pais*; *esquire*; *fee simple* and *fee tail* (which like *attorney general* retain the French word order); *laches*; *metes and bounds*; *oyez*; *pur autre vie*; *quash*; *roll* (as in *judgment roll*) *save* (in the

sense of *except*); *speciality* (in the sense of *sealed contract*); *voire dire*. [5, p. 16] These words and phrases also fall within the scope of this study since they are frequently a challenge for comprehension.

Although the words at issue comparatively rarely appear in modern legal documents they preserve their significance in the common law tradition where precedents play an important role in drafting new laws, substantiating judicial decisions, in legal education, etc. They have received the following labels in the Black’s Law Dictionary: Law French, French, French (Historical) and are the following in number:

Law French	French	French (Historical)	Total
168	128	55	351

Of interest is also the availability of other legal terms recognized by the Black’s Law Dictionary as foreign:

Spanish	Greek	Italian	German	Dutch	Hebrew	Hindi	Arabic	Hawaii
27	20	5	4	1	2	1	1	1

The incidence of these foreign words appears quite natural reflecting the intensiveness of cultural and legal contacts of English and the above mentioned languages. Greek used to be the second language of science and education after Latin whereas exotic Hebrew, Hindi, and Arabic refer to exclusively national legal phenomena.

The words and expressions marked as “French” come from French law (16), Louisiana law (1), Canadian law (6); the rest have been borrowed at different periods from modern French, international law, etc.

The definition of Law French provided for in the Black’s Law Dictionary itself reads as follows:

“Law French – the corrupt form of the Norman French language that arose in England after William the Conqueror invaded England in 1066 and was used for several centuries as primary language of the English legal system; the Anglo-French used in medieval England in judicial proceedings, pleadings, and law books” [8, p. 1018].

The Garner’s Dictionary of Legal Usage offers one more definition:

“Law French refers to the Anglo-Norman patois used in legal documents and all judicial proceedings from the 1260s to the reign of Edward III (1327–1377), and used in frequency in legal literature up to the early 18th century. When first introduced into England, this brand of French was the standard language used in Normandy; by the 1300s, through linguistic isolation, it became a

corrupted language – by French standards, at any rate.” [9, p. 684].

It should be added that the army that invaded England in the 11th century did not speak exactly French, most probably containing soldiers of various national description:

“... the nature of the speech they used must remain a matter of conjecture, but it is most unlikely that it could be adequately described in terms of any all-embracing formula such as ‘Norman dialect’” [10, p. 150].

The process of interaction of Norman-French and Anglo Saxon was extremely complex taking various forms within several centuries. Further, it should be kept in mind that the ties between the continent and the British Isles remained very close and “during the thirteenth century, on both sides of the Channel, French began to develop into a language of culture, education, science, diplomacy and administration (including the law). In other words, “French was used as a vehicle for ideas, a position that hitherto had been occupied only by Latin” [11, p. 464].

“Hence, French was becoming more dominant, not in terms of demographic weight but in relation to cultural prestige” [1, p. 180].

The reasons for the rapid rise of French and the importance it had acquired in the domain of law caused questions; thus Woodbine wrote:

“... something happens to make Englishmen write about law in French and frame statutes in that language” [12, p. 402].

And the reason in question appears to be the fact that, at that particular time, French had advantages over both Latin and English in the legal sphere being more open for development of new vocabulary as a living language on the one hand and being more widespread, having continental links, on the other hand. The variant of the French language that emerged within the legal community of that time had travelled a long way both from continental French and its conversational dialects. Löfstedt justly notes that

“... constant use of French within the closed ranks of the profession gradually developed specialized meanings that distinguished law French from the prevalent Anglo-Norman” [3, p. 290].

Another reason for that most probably was that for many people of legal profession in the 13-16th centuries French was not the mother tongue; it was studied in the course of mastering the profession, like Latin, which resulted in conserving outdated grammar and mistakes in vocabulary usage.

Tendency to form a close, frequently firmly structured bodies was characteristic of practically all

professions and crafts in the middle ages allowing to preserve professional secrets and "... improved standards of professional conduct, but it also meant that the law was becoming a 'closed profession'" [13, p. 217–219] This was emphasized by the use of the language not generally comprehensible by the ordinary man and further separated lawyers from laymen. Mellinkoff even suggests that

"...one reason for the use of French in legal documents was the urge to have a secret language and to preserve a professional monopoly" (Mellinkoff, cited in Coulthard et al., 2017: 33) [4].

Further, the conservatism of the profession should not be disregarded: modern legal language is also notorious for its adherence to old grammar and outdated vocabulary.

Thus, among the reasons for vitality of Law French in the 13–16th centuries the following can be mentioned:

- Position of (Norman) French as the language of the ruling class;
- Position of French as the language of culture, education and prestige;
- Closer relation to the traditional language of science (including jurisprudence) – Latin, and hence are easier translations and transformations;
- Tradition, which followed the initial period;
- Incomprehensibility of Law French to laymen, which put the lawyers in the privileged position of interpreters of the law to the public.

The above said speculations do not, however, explain the reasons for Law French's vitality in the modern English language of law. Despite constant attempts to eliminate Latin and French from Legal English the corpus-based investigation into the frequencies of occurrence of Law French revealed that "the raw frequency of the selected 13 Law French words is 7,571 and the token ratio is about 0.27%. Of the 7,571 occurrences, there are 1,607 in textbooks and 5,964 in journals, the token ratios being 0.20% and 0.30% respectively" [4, p.160]. (Yuan, et al. 2020: 160). The authors come to the conclusion that "... Latin and Law French ... are still actively used in legal English, but they are not evenly distributed across genres" [4, p. 169]. (Yuan, et al. 2020: 169).

They also noted that less technical words (*defendant*, *plaintiff*, *jury*, *attorney*) occur more frequently whereas more technical terms (*estoppel*, *prochein ami*, *oyer et terminer*) demonstrate scarce or no occurrence [4, p. 170]. The former four words are not labeled in the Black's Law Dictionary as Law French/French and, therefore, are not understood and treated as foreign words. Being undoubtedly of French origin, they have become legal terms of the

English language of law and their translation actually poses no special challenge.

Most of the French vocabulary under examination refer to precise legal terms, which are fixed at a certain historical period and, therefore, cannot be changed in any way, e.g.

corve seigneurial – services due to the lord of the manor;

countez – a direction given by the clerk of a court to crier, after a jury was sworn to count the jury members;

fem(m)e covert – married woman;

homage liege – homage due to the sovereign alone as supreme lord, done without any serving or exception of the rights of other lords;

oyer et terminer – a royal appointment authorizing a judge (often a sergent-at-law) to go on the assizes circuit and hear felony and treason cases;

jeofail(e) (j'ay faille) – "I have made an error" – a pleading error or oversight that results in a misjoined issue and requires a repleader. The acknowledgement of such an error;

senage – money paid for synodals; tribute money

A certain number of words/word combinations are still active in the modern legal English although they have not been (at least fully) anglicized, e.g.

Syndic – an agent (especially of a government or corporation) appointed to transact business for others;

Scene a fair – standard of general themes that are common to a wide variety of works and are therefore not copyrightable;

prochein ami – next friend;

remere – the right of repurchase;

rapporteur – an official who makes a report of proceedings for a larger body;

pret-nom – someone who lends his name;

voir dire – a preliminary examination of a prospective juror by a judge or lawyer to decide whether the prospect is qualified and suitable to serve on a jury.

Being used in legal writing/speaking, these words/word combinations could be substituted by more semantically transparent English variants, which is strongly advocated by the Plain language movement (PLM). In most cases, however, such an operation is either senseless or hazardous to the meaning of such terms:

"... weakening the semantic density of legal terminology, results in the loss of hidden meanings of those terms and the culture laden (or loaded in the terms)" [4, p. 157].

Further, such attempts are frequently void of sense since many of these terms refer to complex professional notions, which can be fully

comprehended by specialists in law. For example, *replevin* is:

“1. An action for the repossession of personal property wrongfully taken or detained by the defendant, whereby the plaintiff gives security for and holds property until the court decides who owns it.

2. A writ obtained from a court authorizing the retaking of personal property wrongfully taken or detained.” [8, p. 1491]

This brief definition is followed by some 350 words of additional information necessary for fuller comprehension. Interestingly, this term has another name “claim and delivery” that is closer to the PLM requirements but is similarly incomprehensible by or even misleading to the people outside the legal profession. It should also be added that attempts to substitute foreign (French) words in English Legalese are likely to result in expenses and inconvenience. It can, therefore be concluded that Law French words that came to be legal terms are likely to hold their position in the future.

There is, however, the third group of French/Law French words, which contains vocabulary easily substitutable by English equivalents:

Racheter – to purchase or buy back; to ransom;

Pur tant que – forasmuch as; because of; for the purpose of;

Proces-verbal – a detailed authenticated written report of a proceeding;

In lieu of – instead;

Pour acquit – for acquittance (the formula that a creditor adds when signing a receipt);

Pour autre vie – for another’s life;

Per bouche – by mouth; orally.

Of interest is the term *force majeure*, which is defined as “an event of effect that can be neither anticipated or controlled” [8, p. 761]. In addition to two other foreign synonyms – *force majesture* and *vis major* – it has two English equivalents: act of God and superior force; nevertheless, *force*

majeure is actively used. It, therefore appears likely that continuous application of foreign, particularly French words/word combinations is called to demonstrate high level of education and add authority to the relevant pieces of legal writing or speaking. Further, the use of such words emphasizes continuity, succession and rootedness in legal tradition as with the utterance *oyez, oyez, oyez* used in court by the public crier to call the courtroom to order when a session begins.

Hence, the reasons of Law French’s vitality and continuous application of French words/word combinations in modern Legalese can be reduced to the following:

– Peculiarities of case law tradition, where old cases are still important;

– Peculiarities of legal education in Great Britain, the USA and Canada where centuries’ old legal authorities are studied and quoted;

– Historical terminology in Law French, which is unchangeable;

– Reluctance of the legal community to alter modern terminology in (Law) French due to objective complexity of the process and adherence to the tradition;

– The air of authority, knowledge and education associated with the use of foreign words;

– The air of professional unity, which is emphasized through the use of “common language”.

With regard of the above said, it may be reasonably foreseen that the use of Law French in English Legalese will persist although the efforts to modernize legal education and the language of law will inevitably narrow the sphere of application thereof; it may also be reasonably predicted that the French words with wider field of application will be eventually fully adopted by the English language and become legal terms of French origin like it has happened to many others or will be substituted by English synonyms.

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АКАДЕМІЧНЕ ПИСЬМО ДЛЯ ЗДОБУВАЧІВ ВИЩОЇ ОСВІТИ ЮРИДИЧНИХ СПЕЦІАЛЬНОСТЕЙ

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Статтю присвячено розгляду структури, мети, завдань та змістового наповнення навчальної дисципліни «Академічне письмо» для здобувачів вищої освіти юридичних спеціальностей на матеріалі робочих програм для аспірантів Національного університету «Одеська юридична академія». Освітньо-наукова програма підготовки здобувачів вищої освіти ступеня доктора філософії за спеціальністю 293 «Міжнародне право» передбачає три обов'язкові освітні компоненти, пов'язані із академічним письмом, а саме: «Академічне писемне мовлення», «Аудіювання і професійне мовлення» та «Аналіз наукового/професійного тексту». На першому етапі здобувачі вищої освіти знайомляться з основами академічного письма англійською мовою у цілому та з правилами оформлення і побудови окремих елементів наукового та професійного текстів. Другий етап передбачає вдосконалення різних форм усної мовленнєвої діяльності аспірантів, зокрема, публічний виступ, презентація наукового дослідження, дискусія, переговори. Мета відповідної навчальної дисципліни – сформувати мовні компетентності достатні для ефективної усної комунікації іноземною мовою у галузі наукової та професійної діяльності. Третій зазначений етап формує