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FOREIGN COMPONENTS IN LEGAL ENGLISH

Summary. Despite active research into the specificities of the English language of law, massive bulk of legal translations performed from and into English in Ukraine supports the interest to this field. Legal translations require special precision both in the letter and spirit, and it is, therefore, not surprising that the last paragraph in all preambles to the Opinions of the European Commission for Democracy through Law (Venice Commission) warns about possible misinterpretations resulting from the faults in translation.

The English language of Law has many features, which distinguish it from the English language of everyday communication, one of them being active application of foreign words and phrases in legal discourse. Foreign inclusions are often viewed mixing words of foreign origin that have been fully anglicized and those words, which have retained their written form (and, sometimes, pronunciation), words and phrases that are felt and treated as foreign and are frequently unknown to native speakers outside legal profession.

The study of Black's Law Dictionary revealed such words borrowed from11 languages; however, the overwhelming majority come from Latin and French. The article gives the brief outline of the Legal English's evolution making special emphasis on the reason for appearance of Latin and French inclusions. The attempt has been made to identify different periods for Latin adoptions and certain misconceptions concerning the sources of Law Latin in the English language of law have been evaluated.

The reasons for choosing French as the language of legal communication in the early 14th – late 16th centuries have been studied. In the initial period of the formation of the language of law, French had the advantage of being the communication medium of those in power, associating law with the ruling class. It offered additional possibility of the cultural exchange in the legal sphere since French was regarded as the tongue of education and culture. On the other hand, unlike Latin, it was a living language more prone to evolution and linguistically closer to Latin allowing easier switch from one language to another, which was convenient since Latin preserved a sizable part of its importance.

The reasons, which explain persistent use of Latin and French in modern legal writing were classified according to the terminological and psychological functions that such inclusions perform. Many of such inclusions are terms that have received authoritative interpretations in the language of law over the centuries; moreover, some of them refer to historical legal phenomena and cannot be changed. Furthermore, substituting Latin and French terms with English variants will hardly make the language of legal discourse clearer for people outside the profession and may result in the loss of hidden meanings and the culture loaded therein.

On the other hand, the use of archaic language adds authority to the particular piece of legal writing and creates the appearance of rootedness in custom and tradition. In addition, although lawyers are generally reluctant to admit it, archaic language helps to justify the profession's monopoly.

Understanding the functions that foreign inclusions perform in English legal texts will foster precise perception thereof and better translations, which attaches relevance to this study.

Key words: Legal English, Legalese, foreign inclusions, evolution of English language of law, Law Latin, Law French, Norman French (Old French), legal terminology.

Comprehensive European integration for Ukraine envisages among many other issues harmonization of the legal sphere. This process has been in progress for already several decades with different degrees of intensity in different periods. The importance as well as complexity of the task can hardly be underestimated and, at all stages, it included scrutiny of legal texts belonging to diverse genres ranging from international treaties, legislative acts to theoretical papers. This occurs, on the one hand, due to the fact that the increasing number of legal texts, especially those for international use, are being compiled in English, which allows speaking of the emergence of a new variant of the English language – European English (AKA Euro English or *Eurish*) [1]. On the other hand, English has become the primary foreign language studied both within the system of secondary and higher education in Ukraine.

The English language of law, however, differs from everyday language spoken by the majority of native speakers to the degree, which allows separating it in a specific linguistic sphere requiring additional study. It is noteworthy that among numerous jargons of the English language it is the professional jargon of lawyers that has deserved a proper name – Legalese together with the language practiced in mass media – Journalese.

Most researchers note the following as being characteristic features of Legal English:

– A complex terminological apparatus, the correct usage thereof frequently requiring professional knowledge of law;

– Outdated vocabulary;

– Long and complex sentences attempting to cover all eventualities;

– Wide use of Latin and Old French;

– Conservative and frequently outdated grammar.

These as well as some other peculiarities have been the subject matter of extensive research leaving, nevertheless, some blank spaces and contradictory issues. The **subject** of this study is the foreign components in Legal English with the special emphasis on Latin and French inclusions, their appearance and evolution as well as stylistic functions they perform in the text. The **aim** pursued by this research is to instruct the Ukrainian speaking readers and translators on the correct evaluation of the role played thereby in the legal texts, which, in its turn would result in more precise translations.

The correct perception of European and Anglo-American law, in particular, requires thorough study of theoretical papers and, occasionally, historical documents, which tend to possess comparatively more occurrences of Law Latin and French, which attaches **relevance** to this study.

When writing about foreign inclusions in Legal English (generally Latin and French) researchers do not always distinguish between the words of foreign (Latin, French) origin and those words that have preserved their foreign form or even whole phrases in foreign language that are logically incorporated in the legal text, e.g. *Un ne doit prise advantage de son tort demense (Law French)* – One should not take advantage from his own wrong; or *Universus terminus in lege dies unus (Law Latin)* – One day is a complete term in law [2, p. 1968].

It appears reasonable that such distinction be made and it is, therefore, possible to separate foreign words in Legal English according to the degree of their adoption by the English language. Such classification allows separating three distinct groups:

a) Words of foreign origin that have been fully anglicized and are felt and treated by the native speakers as "native" words. They can be frequently found in the spheres other than law. Examples are the words of French origin: *complaint, council, court, defendant, evidence, judge, judgment, justice, party;* of Latin origin: *verdict, clerk, alibi, canon, capital, etc.*

b) Words that have not been anglicized, at least fully and are felt and treated as foreign and are normally unknown by the people outside the legal profession, e.g. Latin: *a qou, ab initio, actus reus, mens rea, ad hoc, affidavit, bona fide, contra legem, corpus juris, de minimis;* French: *voir dire,* cestui que trust; de son tort, fee simple, pur autre vie, etc.

c) Phrases or whole sentences usually in Latin (also possible in French/Old French) that are referred to as legal maxims (or maxims) being a "traditional legal principle that has been frozen into a concise expression" [2, p. 1126], e.g. *caveat emptor* ("let the buyer beware"); *Quod est inconveniens aut contra rationem non permissum est in lege* ("What is unsuitable or contrary to reason is not allowed in law").

This article deals specifically with points *b* and *c.* English terminology of law has been evolving in centuries borrowing words from several languages, the largest donors being Latin, French and Danish or other Scandinavian languages (the basic term and notion – *law* is of Scandinavian origin). In actuality, Anglo-Saxon part of the legal vocabulary may not even be the largest.

Basically, Legal English followed the same avenue of evolution as the "general" English, its starting point traditionally being placed close to 450 A.D. when several closely related (also linguistically) Germanic tribes – Saxons, Angles, Jutes and Frisians – arrived from the continental Europe. Despite not having a distinct legal profession, they managed to create a legal language, the words from which have developed into basic legal terms, including thief, theft, sheriff, steal, bequeath, guilt(y), murder, manslaughter, oath, swear, witness, right, goods, writ, ward, etc. Alliteration is one more distinct features of Legal English owing its existence to the Anglo-Saxon cultural tradition.

Alliteration, which unlike rhyme requires that words begin with the same sound, is not only poetic, but makes phrases easier to remember, which was an important trait in a largely preliterate society. "To have and to hold", "any and all", "each and every" – may be named among the examples frequently used in the legal sphere [3].

Probably the largest influence on the formation of the English language of law was exercised by Latin, which was used for legal communication by Anglo-Saxons alongside Old English. Although it first appeared on the British Isles together with Roman legions around the 1st century A.D., it acquired importance much later with the arrival of Christian missionaries in the late 6th century. (The Roman occupation left but a few traces in modern English, mostly toponyms).

At that time, Latin was primarily used as the language of court records; expressing opinions about law in Latin (maxims) was also popular among lawyers and judges of those days. According to P. Tiersma the word "*versus*" in the names of court cases and the popular saying "*caveat emptor"* date back to that period [4, p. 5].

All researchers into the history of Legal English mark the Norman invasion as a turning point in the evolution of the English law, in general, and the language thereof, in particular. Indeed, the invaders, who quickly substituted what would be now called "the political elite" of the country, brought with them their language, which is generally referred to as Norman French – a dialect of the French language spoken in the province of Normandy by the descenders of the Vikings (Northmen) who had conquered and settled in the region during the 9–10th centuries. Like early English lawyers they originally used Latin as the language of law and, hence, a lot of Latin was borrowed indirectly from Law French. It is, therefore, possible to separate – with a large degree of approximation – four periods of Legal Latin borrowings:

1) Roman period (1–4th centuries A.D.)
2) Anglo-Saxon period (approximately 450 A.D. – 1066A.D.)
3) Norman French period (1066 – approximately 17th century)
4) Modern period (17–20th centuries)

The latter period owes the Latin borrowings primarily to legal education, which until recently could hardly be imagined without Latin. This is true not only for Great Britain and the USA; rather it used to be the general trend in European classic education.

In addition, K. Gałuskina and J. Sycz justly point to a common misconception regarding the origin of Latinisms, which are frequently attributed solely to the heritage of Roman law, particularly to the *Corpus Juris Civilis*. This is only partially true, since within the period of over a thousand years there have emerged other sources of Latinisms applied in the modern legal discourse, which include alongside those originating from the Roman times (e.g. *impossibilium nulla obligatio est, superficies solo cedit* or *duo non possunt in solido unam rem possidere*) "Latinisms that were formulated in the post-Roman era, but on the basis of ancient Roman legal texts, e.g., *lex posterior derogat priori, nasciturus*

pro iam nato habetur quotiens de commodis eius agitur, or lex retro non agit" [5].

To this should be added "Latinisms that come from canonical law, e.g., *pacta sunt servanda*, and common or equity law, e.g., *volenti non fit iniuria*, but are now applied in other legal systems and Latinisms coined and used within national legal systems, even if they express concepts existing in other legal systems, e.g., *nasciturus or culpa in contrahendo* in Polish law, *intuitus personae or assipiens* in French law, or stare decisis or habeas corpus in common law" [5].

However, the late 13th, early 14th centuries witnessed the switch from Latin into French for legal purposes. The first statutes drafted in French appeared around 1275, whereas by 1310 almost all acts of Parliament were issued in that language [4, p. 5]. This situation persisted until 1650 when the Puritans passed the law demanding that only English be used in the legal matters. For approximately 300 years, however, French occupied the primary position in English law; not only the court records and legal treatises were written in that language, but also court debates were held in Law French. Despite the fact that French was losing its positions in all spheres of life, including the royal court, it consolidated its stance in the legal domain becoming an exclusive source of legal discourse. It was simultaneously losing touch with the contemporary continental French becoming equally incomprehensible in England and France having evolved into a sort of artificial professional jargon.

The use of an incomprehensible language in the judicial proceedings and other vital legal practices naturally resulted in 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. [6, p. 106] Paradoxically, the bill itself was written in French and is notorious for having little effect.

Uncertain knowledge of French, which was not the mother tongue for the majority of English lawyers in the above mentioned period resulted in the mistakes in the form of quite a number of French words making them different from the original; many of them are incomprehensible to modern French speakers 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 [7, p. 16].

The reasons for the choice of French as the language of law in the period from the 13th to approximately late 16th century causes debates since the alternatives were the emerging English and Latin, which had been well established in the legal domain. In the initial period of the formation of the language of law, French had the advantage of being the communication medium of those in power, associating law with the ruling class. Since the contacts between England and France were active during the largest part of the above mentioned period, it offered additional possibility of the cultural exchange in the legal sphere. Furthermore, French was regarded as the tongue of education and culture. On the other hand, unlike Latin, it was a living language more prone to evolution. It was also linguistically closer to Latin allowing easier switch from one language to another, which was convenient since Latin preserved a sizable part of its importance. Some of this advantage eventually decreased but by that time most of the technical vocabulary of the common law as well as many forms of legal practice and procedure had been developed in French and became traditional.

"The legal profession hung onto this idiom that had shaped their law, legal thinking, habits and the construction of their concepts and arguments. Coke described law French as 'vocabula artis […] 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 […]" [8].

The other reason for the English lawyers of that period clinging to French can be found in the desire to exclude outsiders from the profession, to 'lock up trade secrets in the safe of an unknown tongue' [7, p. 101]. However, it should be kept in mind that although Law French prevailed, it never fully substituted contemporary English used in court debates for questioning witnesses and parties that had no knowledge of French, which accounts for existing pairs of words like *deem and consider*, *fit and proper, will and testament* dating back to this particular time.

G. Williams finds an additional term to that language – *Frenglish* (alongside Law French), explaining the *term autrefois acquit* [2]; indeed, by the 16th century this jargon could hardly be understood both by contemporary English and French speakers.

"… constant use of French within the closed ranks of the profession gradually developed specialized meanings that distinguished law French from the prevalent Anglo-Norman" [9, p. 290].

No matter how important French and Latin might be for the modern English language of law, they are not the sole foreign inclusions that could be found in the legal writing.

Black's Law Dictionary labels the words that have not been fully anglicized as French, Spanish, Dutch, etc. unlike the terms originating from these and other languages that have been fully accepted by English and are not felt and treated as foreign. (A formal sign in the former case can be italicization). The overwhelming majority of such terms is comprised by Latin terms, phrases and maxims.

Then comes French, with the total of 351 words and phrases labeled as Law French (Old French), French and French Historical.

The other terms recognized by the dictionary as "foreign" include Spanish (27), Greek (20), Italian (5), German (4), Hebrew (2), Arabic (1), Dutch (1), Hawaii (1) and Hindi (1). [2] This incidence reflects the frequency and intensity of the contacts in the legal sphere. For instance, Greek used to be the second language of science and education after Latin, whereas exotic Hebrew, Hawaii, or Hindi define exclusively national legal phenomena. For instance, *ahupuaa* (Hawaiian) refers to "a variable measure of Hawaiian land, traditionally understood to stretch from sea to the mountains" [2, p. 83] or *beth din* – "[Hebrew – court of law] a rabbinical tribunal empowered by Jewish law to decide and enforce matters of Jewish law and custom" [2, p. 192].

Translation of the above said foreign inclusions generally requires search, often painstaking, for their meaning in the specialized sources. The words/word combinations should be either transcribed into Ukrainian or their spelling could be preserved (the latter variant appears preferable), the description being given in brackets or footnotes. Preserving the English spelling of the above said inclusions emphasizes their foreign connections, which is also relevant for the author of the text in question.

As it has already been stated, Latin and French had remained important for legal writers (more rarely speakers) until the

20th century especially due to specificities of British and American legal education. However, the efforts to make legal communication clearer to the general public have gathered momentum, especially since the second half of the 20th century. The advocates of the Plain language movement justly emphasized the difficulties that people encounter trying to understand Legalese. A. Hapner is among many to call.

"For whatever reason, many lawyers use Latin words or phrases in an attempt to enhance their legal writing, perhaps thinking it will impress their readers. However, it often has the opposite effect. Not only does the use of archaic and uncommon Latin make your writing less clear, but also, you are more likely to make a grammatical mistake when using Latin. For those reasons, the use of plain English is generally superior" [10].

Since the general consensus on the issue has been presumably achieved, including attempts to eliminate or, at least, minimize Law Latin and Law French, it could be expected that the number of the above said inclusions substantially decrease. Au contraire, several researchers supply findings testifying to the fact that Latin and French occupy the same (or even a consolidated) position in the legal writing. Chuanyou Yuan et al. corpus-based study revealed the active use of Latin and French both in law textbooks and law journals although with different incidence [8]. P. Macleod comes to similar conclusions as to the use of Latin in the modern legal world. According to him, the incidence of the use of Latin words and phrases in legal writing has paradoxically increased within the recent 40 years [11]. Numerous attempts to explain this phenomenon have been made emphasizing either terminological or psychological functions played by these inclusions.

Among the former group of reasons, the following may be mentioned:

a. Certain Latin and French words have received authoritative interpretations in the language of law over the centuries;

b. "conservatism of legal English characterized by keeping using Latin and French words is deemed safe and convenient. The result is that those outdated Latin and French terms that may have been used decades or centuries ago is continually reincarnated, virtually without change, in modern legal documents" [8].

c. A sizable part of Law Latin and French belongs to history, i.e. designating the phenomena existing no longer but still important from the perspective of study of the evolution of law and human history, in general, e.g. *basse justice* (Law French) – a feudal lord's right to personally try a person charged with a minor offence; *capitulla eclisiastica* (Latin) – Salic law elaborated in councils of the bishops from A.D. 8030804 during the reign of Charlemagne. [2] Such facts and events cannot be renamed.

d. Substituting Latin and French terms with English variants will hardly make the language of legal discourse clearer for people outside the profession, since the function of a term is to designate complex phenomena in a concise form. Understanding of the particular word/words comprising the term frequently helps little in understanding its meaning (e.g. see "corruption of blood"). On the other hand, such substitution may lead to "weakening the semantic density of legal terminology, which will result in the loss of hidden meanings of those terms and the culture loaded therein" [8]. In addition, activity aimed at comprehensive modernization of terminology will inevitably lead to much confusion and substantial expenses.

The psychological function of Latin and French inclusions, however, is deemed to explain the majority of the cases. Indeed, a lot of Latin and French is easily substituted with active English words and phrases. For example, P. Macleod used in his research words and phrases that have obvious English equivalents: ab initio (from the beginning); expressio (the expression); inter alia (among other things); jus tertii (the right of a third party); locus (place); malum in se (bad in itself); mutatis mutandis (with the appropriate changes); noscitur a sociis (it is known by those around it); nuns pro tune (now for then); obiter dictum (words said); ratio decidendi (reason for decision); res gestae (things done); sua sponte (of its own accord); sub silentio (in silence); and vet non (or not) [11, p. 238–239], most of them being technical expressions, rather than legal terms.

In this light, the following reasons seem to have sense:

a. The use of archaic language adds authority to the particular piece of legal writing;

b. This creates the appearance of rootedness in custom and tradition. Ancient law makers attributed laws to Gods; modern lawyers find justification for legal practices in legal continuity and tradition. "Using antiquated Latin and French terms bestows a sense of timelessness on the legal system, as something that has lasted through the centuries and is therefore deserving of great respect" [5];

c. Like all professional jargons, Legalese (including Latin and French) helps identifying a person as a member of the profession;

d. Although lawyers are generally reluctant to admit it, archaic language also helps to justify the profession's monopoly.

It has already been noted that the use of foreign inclusions may present problems for readers and translators. With regard to the methods of translation of the above mentioned foreign inclusions, it appears reasonable to divide them into three groups:

1. Technical words, like *a contrario, ad hoc, ad interim, de minimis, ex officio, ex post facto, in fine, in abstracto, in extremis, ibid, inter alia, locus standi, in lieu,* etc.
2. Terms, both historical and modern;
3. Maxims.

In most cases, the inclusions of the first group should be translated directly without preserving the foreign form. Latin and French used to have the similar connotation in Ukrainian - that of erudition and education. However, following the drastic changes of 1917 revolution aimed at breaking up with tradition and previous history, these languages lost their importance in legal practice and education. Attempts to preserve them in the Ukrainian text would create an effect of archaic, outdated and incomprehensible writing.

Historical term from the second group can frequently remain in their original form with the translation, often explanation, offered in brackets or the footnote. It is preferable to translate more modern terms although those referring to legal realia, exotic to a Ukrainian reader may be treated similarly to the historical terms.

Maxims, in most cases, should be given in their original form with the translation and explanation, where appropriate, in footnotes.

It is, therefore, possible to arrive at certain **conclusions**:

• Centuries of cultural contacts resulted in appearance of legal terms borrowed by Legal English from a number of languages including Spanish, Greek, Italian, German, etc., which have not been anglicized;

• The overwhelming majority of foreign inclusions in English legal texts are Latin and French being the result of complex

evolution of the English language of law during the centuries of its history;

• Attempts to modernize legal education and legal language made in the recent 50 years have reached only partial success and failed to fully exclude Latin and French from modern legal discourse;

• Terminological and psychological reasons for the above mentioned inclusions' vitality make the possibility of the rapid change in the situation unlikely in the foreseeable future and the study of Latin and French elements of Legal English will remain relevant;

• Methods for translation of the above mentioned inclusions vary and depend upon their type.

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Алєксєєв М. Є., Алєксєєва Л. І., Синьова Т. В. Іноземні компоненти в юридичній англійській мові

Анотація. Незважаючи на активне дослідження специфіки англійської мови права, величезна кількість юридичних перекладів з англійської та на англійську в Україні підтримує інтерес до цієї теми. Юридичні переклади вимагають особливої точності як букви, так і духу, тому не дивно, що останній абзац у всіх преамбулах Висновків Європейської комісії за демократію через право (Венеціанської комісії) попереджає про можливі неправильні тлумачення внаслідок помилок в перекладі.

Англійська мова права має багато особливостей, які відрізняють її від англійської мови повсякденного спілкування. Однією з них є активне використання іншомовних слів і словосполучень у юридичному дискурсі. Іноземні вкраплення часто розглядаються як суміш слів іноземного походження, які були повністю англізовані, і тих слів, які зберегли свою письмову форму (і, іноді, вимову), і які сприймаються та розглядаються як іноземні та часто невідомі носіям мови, які не є представниками юридичної професії.

Вивчення юридичного словника Блека виявило такі слова, запозичені з 11 мов; однак переважна більшість походять з латини та французької. У статті подано короткий нарис еволюції юридичної англійської мови з особливим наголосом на причини появи латинської та французької мов. Було зроблено спробу визначити різні періоди запозичення латинської мови та оцінено певні помилкові уявлення щодо джерел юридичної латини в англійській мові права.

Досліджено причини вибору французької мови як мови правового спілкування на початку XIV – кінця XVI ст. У початковий період становлення мови права французька мова мала перевагу як засіб спілкування можновладців, асоціюючи право з правлячим класом. Це надавало додаткову можливість культурного обміну в юридичній сфері, оскільки французька вважалася мовою освіти та культури. З іншого боку, на відміну від латини, це була жива мова, більш схильна до еволюції та лінгвістично ближча до латини, що дозволяло легше переходити з однієї мови на іншу, що було зручно, оскільки латинська мова зберігала значну частину свого впливу.

Причини, що пояснюють постійне використання латинської та французької мов у сучасному юридичному письмі, було класифіковано відповідно до термінологічних та психологічних функцій, які вони виконують. Багато з таких включень є термінами, які протягом століть отримали авторитетне тлумачення у юриспруденції; деякі з них стосуються історичних правових явищ і не можуть бути змінені. Крім того, заміна латинських і французьких термінів англійськими варіантами навряд чи зробить мову юридичного дискурсу зрозумілішою для не юристів та може призвести до втрати прихованих смислів і закладеної в них культури.

З іншого боку, використання архаїчної мови додає авторитету конкретному юридичному твору та створює видимість вкоріненості в звичаях і традиціях. Крім того, хоча юристи, як правило, неохоче визнають це, архаїчна мова допомагає виправдати професійну монополію.

Розуміння функцій, які виконують іноземні включення в англійських правових текстах, сприятиме їх точному сприйняттю та кращим перекладам, що надає актуальності цьому дослідженню.

Ключові слова: юридична англійська, юридичний жаргон, іноземні включення, еволюція англійської мови права, юридична латинська мова, юридична французька, нормандська французька (давньофранцузська), юридична термінологія.