

women are left behind.” The change is a transformation of the substance itself. Man is not a complete, final being without women. To effect this change, to be reborn, to be awakened, really women are less selfish and more dedicated to duty and have much patience than men by nature. In order to make optimum use of our vast womanpower more opportunities have to be given. However, mere legislation cannot emancipate the lot of our women. This needs a radical change in our mental make up and our social structure. For this, we shall have to foster a social emancipating spirit in our everyday life. The conservative male chauvinistic attitude shall have to give way to liberalism.

It can be said with a sense of pride and confidence that the future of women in India is quite bright and prosperity will be safe in their hands. Women are also becoming more economically independent. With the growth of the nuclear family, a married woman’s dependency on her natal family and continued closeness to it is much greater today even if it was not so earlier. Among human beings where neither man is superior nor is a woman inferior. “Yathra, Narayanthya Pujiyathe Raman The Tatra Devatha”, has been the culture of our society and the girls have been worshipped and held in high esteem for enriching the society which in turn leads to the development of mankind.

—Dr. P. SATYANARAYANA,
H.No.5-5-110, Lashkar Bazar,
Hanamkonda, Warangal - 506001
9440282569

RIGHT USE OF WORDS AS CONVEYANCE AND CONFUSED TO WIN THE LEGAL BATTLE

By

—Prof. (Dr.) MOHAMMED SAHEB HUSSAIN,
Department of Private Law, UDSM School of Law
(Formerly Faculty of Law), Post Box: 35093,
University of Dar-Es-Salam, Tanzania,
North Africa
Email: hussainms@udsm.ac.tz

“Watch your thoughts, for they become words.

Watch your words, for they become actions.

Watch your actions, for they become habits.

Watch your habits, for they become character.

Watch your character, for it becomes your destiny.”

— Author Unknown

1.0 Introduction

Languages consisting of right, effective words are the medium to express our ideas

or thoughts; the judicious use of language is necessary for expressing ideas in effective manner to achieve the target/win the legal battle. Everyone has to study words so that a person can use them significantly, effectively, worthily. Words reveal more about you than you realize. Words are the voice of the heart¹. A single word ‘legal’ is used in forty three ways in English language². Once a word has been allowed to escape, it cannot be recalled

1. Confucius said.

2. www.morewords.com/contains/legal/.

like an arrow once go out of bow will not be returned back. For this object, a person has to use the appropriate words in appropriate context. In other words, right words in right context. Thus words play an important role in our communication. For better communication skills and legal drafting, a lawyer not only should know as many English plain words which include legal language³, as he/she can but also know their use so that he/she would use the appropriate words/legal terminology depending upon the situation. Many Universities in African continent require their students to take a compulsory course Communications Skills (for Lawyers), in the first year of LL.B. Degree. In this article an attempt is made to highlight some areas of grammar, spelling, improper use of words, expressions, Latin, French terms used in legal language, poor English used in the lower Court judgments, some punch words plus the type of expression, words often confused, words in legal profession and conclusion.

2.0 Grammar

Knowing the word (legal terminology) is not enough, one has to keep them in meaningful sentences depending upon the action to be taken when it is done. One has also to be conversant with the grammar, then and only then, one can effectively coin the sentences by using appropriate tenses.

There is a saying "Any person's glamour is his/her grammar"⁴. One can without fear and favour deliver extempore lecture or argument without having any hesitation or hitch to express his or her ideas in acceptable manner to convey to the others/audience/Court in a meaningful way.

A foreigner went to a village and he was forced to board train as there was no other

alternate way of transport. He reached to a small Railway Station and there was dialogue between him and the Station Master which went as follows:

Foreigner said "Who is the Station Master?"

Station Master said "I am the Station Master."

Foreigner said again in reply "Are you the Station Master?"

Station Master again said "Yes I am the Station Master."

In the first response the Station Master has to say that I am the Station Master while in the second instance he has to say Yes, I am the Station Master.

The grammar rule says, always verb and auxiliary verb should have an agreement with the subject. That is the grammar rule applicable in this context or scenario.

One should be very much cautious when one is using the prepositions⁵. These are dangerous words, which change completely the meaning of sentence if one uses in wrong place either as suffix or as prefix in the sentence. Prepositions are the words that indicate location. Usually, prepositions show this location in the physical world. Prepositions can also show location in *time*. *At midnight*, *in the spring*, and *during the marathon* all show location in time⁶.

3.0 Spelling

You need not to use bad or filthy or

3. Words like bequeath, goods, guilt, manslaughter, murder, oath, right, sheriff, steal, swear, theft, thief, ward, witness, writ, *etc.*

4. Many people commit mistake in spelling while they write grammar as grammer.

5. Among, around, as, at, atop, before, behind, below, beneath, beside, between, beyond, by, despite, down, during, for, from, in, inside, into, like, near, of, off, on, onto, out, outside, over, past, regarding, round, since, than, through, throughout, till, to, toward, under, unlike, until, up, upon, with, within without *etc.*

6. <http://www.chompchomp.com/terms/preposition.htm>. Note. From the entire Grammar, only Subject agreement and preposition were discussed in this article.

obscene language. One can offend another by simply committing a mistake in writing his or her name spelling. One of the great man said “if you want to annoy any person or become enemy to him, then just write his/her name with wrong spelling”. It is enough; he/she will be highly offended and his blood pressure shoots up and he becomes enemy.

One should also be very cautious about spelling when we are using the words in sentence. Of course, we who live in common law country use the British spelling:

For Example

Colour: It is British spelling and American spelling is Color. One can use either spelling but one should be consistent in its use. There are so many words of such nature.

4.0 Vocabulary

Legal writing extensively uses technical terminology as well as right words/legal words that can be classified in four categories:

- (i) Specialized words and phrases unique to law, *e.g.*, *tort*, *fee simple*, and *novation*.
- (ii) Quotidian words having different meanings in law, *e.g.*, *action* (lawsuit); *consideration* (support for a promise), *execute* (to sign to effect), and *party*; (a principal in a lawsuit);
- (iii) Archaic vocabulary: legal writing employs many old words and phrases that were formerly quotidian language, but today exist mostly or only in law, dating from the 16th century; English examples are *herein*, *hereto*, *hereby*, *heretofore*, *herewith*, *whereby*, and *wherefore* (pronominal adverbs); *said* and *such* (as adjectives); and
- (iv) Loan words and phrases from other languages: In English, this includes terms derived from French (*estoppel*,

laches, and *voir dire*) and Latin (*certiorari*, *habeas corpus*, *prima facie*, *inter alia*, *mens rea*, *sub judice*) and are not italicised as English legal language, as would be foreign words in mainstream English writing.

5.0 Legal English and Legal Writing

The Introduction to Legal English exposes legal practitioners and law students to English legal terminology and usage through an overview of the any legal system, contract law, and legal drafting. In addition to a broad range of legal terminology, that benefit from the legal reasoning process in any legal system, helping them apply the terms and concepts as they learn them.

In Legal writing process one will examine cases and concepts that help him/her understand key terminology necessary for any legal practice. This engages with their colleagues to practice pronunciation, conversation about legal concepts, legal reasoning, and legal writing. This will also develop the advanced skills they need to succeed in a multi-jurisdictional legal practice. The language and reasoning skills that they develop are useful not only for working with clients, firms and organizations, but also for understanding the logic behind any legal practice and applying legal reasoning in their own practice.

6.0 Common Man and Lawyer Expression

How common man says and the same made by lawyer are given below which is as clear as crystal.

6.1 Common man Plain English

I give you that orange.

6.2 Lawyer Language

I give you all and singular, my estate and interest, right, title, claim and advantage of and in that orange, with all its rind, skin, juice, pulp and pips, and all right and advantage

therein, with full power to bite, cut, suck, and otherwise eat the same, or give the same away as fully and effectually as I the said A.B. am now entitled to bite, cut, suck, or otherwise eat the same orange, or give the same away, with or without its rind, skin, juice, pulp, and pips, anything hereinbefore, or hereinafter, or in any other deed, or deeds, instrument or instruments of what nature or kind so ever, to the contrary in any wise, notwithstanding.

7.0 Latin Words in Legal Language

Latin was important for English Law mainly as the language of Court records. The practice of using Latin versus in case names (for “against”) harks back to these times. English lawyers and Judges were also prone to express sayings or maxims about the law in Latin. An example that has survived is *caveat emptor*.

7.1 French Words

French has had a tremendous influence on legal language. A vast amount of legal vocabulary is French in origin, including such basic words as appeal, attorney, bailiff, bar, claim, complaint, Counsel, Court, defendant, demurrer, evidence, indictment, Judge, judgment, jury, justice, party, plaintiff, plea, plead, sentence, sue, suit, summon, verdict and *voir dire*.

Another example of French influence is that in that language adjectives normally follow the noun that they modify. Several such combinations are still common in legal English, including *attorney general*, *Court martial*, *fee simple absolute*, *letters testamentary*, *malice aforethought*, and *solicitor general*. Also, Law French allowed the creation of words ending in *-ee* to indicate the person who was the recipient or object of an action (*lessee*: “the person leased to”). Lawyers, even today, are coining new words on this pattern, including *asylee*, *condemnee*, *detainee*, *expellee* and *tippee*.

8.0 Some Glimpses in Unreported and Reported Cases

With due respect to the legal fraternity and the Courts in Tanzania, let me take the step to cite the case identified below: The case law is a public document and hence available from the Registry.

Jeradi John and Mitanga (Appellant) v. The Republic (Respondent),⁷

Judgment by Judge R.M. Rweyemamu

S.D.S. Msuya- R.M.

Some excerpts are given below:

The prosecution side did open his case by calling the PW1 *Joas S/o Kabogo* who come and testify that, on 21.12.2003, night hours. He was sleeping with his family then I heard some alarm raised up, outside the house. Soon after I saw some people who light off the light and break down the door and more than five people were invaded the house, and they did steal Radio Panasonic “Mobile Phone” CMEN C.25 and clothes, and also Cash Money 37,000/-. I did manage to identified one accused before he break the house and the person whom I saw is the accused person who is before the Court.

The PW2, adduced the evidence, that, on 2.12.2002, I was sleeping in my house and I heard some alarm outside then I turn off the light, and latter on the accused move out but they did not cause any harm to my house.

However, PW3, *come and testify that 2.12.2002 I was in Police Station and I did took the Caution Statement for the accused person and latter I was brought him to Court.*

7. High Court of Tanzania at Mwanza, High Court Criminal Appeal No.166 of 2004. (Unreported). (Original Cr. Case No.1280 of 2002 of the Resident Magistrate Court of Mwanza at Mwanza Before: S.D.S. Msuya, Resident Magistrate)

However, PW2 inclined his evidence because he said he was pointed gun to him but that was not true, because he fail to substituent with his statement.

The poor English and the spelling as well as sentence construction as per the Grammar rules which are highlighted in bold script are examples of a poor way the English language is written. In other words, English language above is below standard.

In another case *Mohammed Donge v. R*, HC Cr. App. 20/94 Tanga Registry (Unreported Case)

Judgment by *Lutakangwa J.*

In that case, before ordering a retrial on ground that “the record of the lower Court is incomprehensible, and or unintelligible because of poor English”, the Judge had this to say:

“The evidence as recorded in English language is so deplorably unintelligible such that it is impossible to discern form it what the witnesses testified to as to be able to definitively determine this appeal either way. There is no way of separating the chaff from the grain and proceed to conclusively determine the appeal on the basis of the grain gathered therefrom.”

8.1 Punch Words in Reported Cases

There are some Punch words which cannot be replaced or substituted by another words or group of words. They should appear as they are and no other equivalent words could fill the gap. Their use is indispensable especially when any person write the pleadings or written statements or any legal documents. Few examples are given below.

*Donoghue v. Stevenson*⁸

Wrong Expression: dead snail is floating in the tumbler of ginger beer?

8. (House of Lords) [1932] AC 562

Correct Expression: You may say putrid or decayed or rotten or decomposed snail is floating in the tumbler of ginger beer. But you are not supposed to say or write dead snail or bad smell snail or bad odour snail.

*Esso Petroleum Co. v. Southport Corporation*⁹

Wrong Expression: The Crew has thrown the crude oil into the Sea so as to lighten the ship so that she would not sink when there were turbulent waves in the sea¹⁰.

Correct Expression: One has to use the word “Jettison”. The Crew jettisoned the oil to lighten the ship from sinking.

*Carlill v. Carbolic Smoke Ball Co.*¹¹

Wrong Expression: In this case, the defendants were proprietors and vendors of ‘Carbolic Smoke Ball’. They advertised a reward of 100 Pounds to any person who contracted common cold after using the Smoke Ball for a certain period according to the printed directions.

Correct Expression: You have to use only that word which is appropriate and in case law it was used *i.e.* “*Influenza*” Here, influenza is a punch word.

9.0 Words often Confused

Hang – Hanged – Hanged. It is only used to animate things. As Judge in his judgment says that the accused should be hanged to death.

Hang – Hung - Hung. This inflected form of verb hang could be used for inanimate things. I hung the map on the wall in the morning at 9.00 a.m. today

There are many such words under the caption words often confused. They are also called as Homophones.

9. [1956] AC 218

10. Ship is feminine Gender hence she is used to express a ship

11. [1893] 1 QB 256

9.1 Words in Legal Profession

Weak: The defendant was not truthful.
Better: The defendant lied.

Weak: The witness quickly came into the Courtroom. *Better:* The witness bolted into the Courtroom.

Weak: The Judge was very angry.

Better: The Judge was enraged.

The difference between a smart lawyer and a wise lawyer is that a smart lawyer knows what to say, a wise lawyer knows whether or not to say it.

9.2 Lawful and Legal

Lawful: "The principle distinction between the terms 'lawful' and 'legal' is that the former [Lawful] contemplates the substance of law, the latter [legal] the form of law. To say of an act that it is 'lawful' implies that it is authorized, sanctioned, or at any rate not forbidden, by law. To say that it is 'legal' implies that it is done or performed in accordance with the forms and usages of law, or in a technical manner. In this sense 'illegal' approaches the meaning of 'invalid.' For example, a contract or will, executed without the required formalities, might be said to be invalid or illegal, but could not be described as unlawful. Further, the word 'lawful' more clearly implies an ethical content than does 'legal.' The latter (legal) goes no further than to denote compliance, with positive, technical, or formal rules; while the former (Lawful) usually imports a moral substance or ethical permissibility¹².

'Lawful' has to do with the substance of Law. 'Legal' has to do with the shadow (or form) of Law.

9.3 Character and Reputation

Character' representing what is lawful,

'reputation' representing what is legal. Character consists of the qualities which constitute the individual, while reputation is the sum of opinions entertained concerning him. The former is interior; the latter external. The one is the substance; the other the shadow. Character is what a person is. Reputation is what people say of him."¹³

Character means something. Reputation means nothing; it's source is hearsay. What people say about you is worthless, because God doesn't care what people say about you, he's not a respecter of persons. Man sees the exterior, God sees the interior.

How will we know what is a 'lawful' word and what is a 'legal' word? How will we know which is the substance and which is the shadow? The giver of the Law will determine this. If the giver of the Law is Almighty himself, then the words of that Law have substance, because they have their origin in Him who spoke all Substance into being. If the giver of the law is man, then the law has no substance, but is only an image, vapour, shadow, or form of law, because man really can never create law but only an image of the law, only a fiction in law, or as it is called in man's law, the "colour of law."

The written word is one of the most important tools of the legal profession. Words are used to advocate, inform, persuade and instruct. Although mastering legal writing skills takes time and practice, superior writing skills are essential to success. Polish legal writing skills through seven simple tips *viz.*, i). Remember Your Audience; ii). Organize Your Writing; iii). Ditch the Legalese; iv). Be Concise; v). Use Action Words; vi). Avoid Passive Voice; and vii). Edit Ruthlessly¹⁴.

12. Black's Law Dictionary (4th edition, 1957 & 1968), page 1032

13. Ballentine, Self-Pronouncing Law Dictionary, (1948), page 138

14. www.legalcareers.about.com/od/practicetips/tp/practicetips.htm (Accessed on 26.8.2011)

9.4 Use of some Common Words to win an Argument

The ultimate goal for an argument is not to have a contest to see who can yell the loudest, it is about having the other person(s) believe and agree on your point of view. Being a powerful communicator means that you must be able to defend your point of view. Here are some ways that might help you win an argument almost every time:

These are some common words used in an argument:

- o Everybody...
- o Everyone...
- o No one...
- o You always...
- o You never...

These words are called universal quantifiers. They are used in arguments to build leverage which most of the time are not true. Be sure to challenge your opponent when they use these words because each time you do, you weaken their argument. Also, now that you are aware of what they mean, avoid using these words unless you know it is true.

This also happens *vice versa*. To keep your arguments powerful and strong, be consciously aware of the words that you use because they can bite you in the butt. Instead of using the aforementioned words, using the following words, will defend your argument:

- o Sometimes...
- o Most of the time...
- o Almost always...
- o You usually...

One will almost always win the arguments because one uses words that give him/her room and maneuverability so to speak¹⁵.

10.0 Conclusion

Words which include legal terminology and legal language have the power to defend the parties in effective way and make an argument to disprove the opponent claims and to win the legal battle in the Court of Law. They (words) have the power to make someone feel better about them and achieve the target in legal profession. And of course these words have the power to tear someone down completely and cause opposite council to feel completely worthless. Nevertheless, words are of immeasurable importance. In tangible written form they are the solid bricks in legal writing for the case to defend and make arguments to win the case. Remember, our words only show what is going on inside of our minds and to impress Magistrates or Judges to reach to the goal of winning legal battle. The last but not least the author would like to end by this quotation "Words are mighty weapon to defeat our opponent in the Court of Law, the judicious use of words enable one to express emotions and defend the legal arguments properly and this in turn leads to win the legal battle with bravery."

15. <http://www.persuasive.net/blog/how-to-win-an-argument/> (Accessed on 29.8.2011)