

PLAIN LANGUAGE SOLUTIONS TO THE PROBLEMS OF LEGALESE — A CASE STUDY OF WILLS

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Abstract:

Legal English is well-known for its complexity which makes it incomprehensible for lay readers. The answer to the problem of legalese is the plain English movement, aiming at simplification of the language of documents. Despite the fact that the rules for clearer drafting have been extensively discussed, there are still no uniform standards, which is one of the factors that delay the pace of reform. Some types of documents, e.g. wills, are especially resistant to the reform.

The aim of this paper is to present a comparative analysis of legalese and plain English on the example of one type of texts. The material comprises a set of 6 British wills: 3 written in traditional style and 3 in plain English. The analysis takes into account both macrostructure and microstructure of wills, including design and layout, grammatical structures and lexicon.

The analysis reveals that plain language wills are much more readable than their legalese counterparts, as they use better organization, more accessible grammatical structures, and less ambiguous and less archaic terminology. It is argued that it is worthwhile to work on the enhancement of the existing plain language strategies and solutions, so as to develop and popularize plain legal English.

ROZWIĄZANIA PLAIN ENGLISH DLA TYPOWYCH PROBLEMÓW LEGALESE — ANALIZA PORÓWNAWCZA TESTAMENTÓW

Streszczenie

Angielski język prawniczy znany jest ze swojej nieczytelności i wysokiego stopnia skomplikowania, które sprawiają, że jest on praktycznie niezrozumiały dla zwykłego czytelnika. Odpowiedzią na problemy związane z angielskim żargonem prawniczym jest ruch plain English, zmierzający do uproszczenia języka dokumentów oraz języka prawa. Pomimo iż poświęca się dużo uwagi problemowi precyzyjnego formułowania dokumentów wciąż brak jest jednolitych zasad, co stanowi jeden z czynników spowalniających reformę.

Celem niniejszego artykułu jest analiza porównawcza dwóch rodzajów angielskiego dyskursu prawniczego: tradycyjnego żargonu (legalese) oraz nowoczesnego, uproszczonego języka prawniczego (plain English). Materiałem badawczym jest zestaw sześciu brytyjskich testamentów, z których trzy napisano w legalese, a pozostałe trzy w plain English. Analiza skupia się na poszczególnych aspektach dokumentów, takich jak: układ i organizacja tekstu, stosowane struktury gramatyczne i terminologia.

Badanie wykazuje, że testamenty napisane w plain English charakteryzują się dużo większą czytelnością niż ich tradycyjne odpowiedniki; dokumenty te są lepiej sformatowane, stosowane w nich struktury gramatyczne są prostsze i bardziej przystępne; a terminologia — bardziej precyzyjna i nowoczesna. Jednakże stosowane strategie upraszczania języka dokumentów wciąż wymagają ulepszenia i ujednolicenia.

1. Introduction

Legal English is a unique phenomenon which for ages has been a subject of great interest. It is known for its great formality, wordiness, and complexity. The answer to the never-ending complaints about legalese is the plain English movement whose aim is to replace the jargon in legal writing with plain language. In brief, this means creating documents of approachable layout and logical structure written in clear language which in terms of readability, grammar, lexicon, and punctuation would be governed by rules no other than those governing ordinary modern day English (Tiersma 1999; Butt 2006; Garner 2002, et al).

The call for simplification of legal language is hardly new and for the last few centuries many attempts have been made at the reform of it. However, it is impossible to change the age-old linguistic tradition of legal profession overnight, which is why the pace of the reform is quite slow. What also must be taken into account here is the fact that many English-speaking lawyers, to a greater or lesser extent, oppose the plain English movement and would prefer to adhere to the well-known forms, mostly due to the fact that this seems more practical from their point of view (Tiersma 1999: 216).

One of the pillars of the movement is the plain language legislation. In the United Kingdom much work has been done since the 80s by the government in terms of modernising administrative forms; also the simplification of the language of statutes and court documents was undertaken (Butt 2006: 87-92). In the United States the plain English laws were passed in many states which most often aim at simplification of consumer documents (Tiersma 1999: 220). Moreover, a number of American Bar Associations help to promote plain language (Butt 2006: 104). Law societies of some of Australian states have their plain language committees, similar to the Bar Associations in the U.S. (Butt 2006: 93-99). Also in New Zealand parts of legislation are being rewritten in plain English (Williams 2005: 176).

The other pillar of the plain language movement are the organisations for plain English. The British Plain English Campaign, formed in the late 70s, has done a great amount of pioneer work, such as simplification of regulations or consumer contracts (Butt 2006: 80). They also offer their services in editing and award their Crystal Mark to the organisations whose documents comply with the prescribed standards (www.plainenglish.co.uk). The other significant organisation is the international Clarity, whose objective is the extensive promotion of plain English; they publish a journal *Clarity*, run seminars on legal drafting and, like Plain English Campaign, have their accreditation system for plainly written documents.

Admittedly, much progress has already been done — thanks to the activity of the organisations and proponents of plain English, as well as the regulations requiring clear language for certain types of documents, the number of documents and laws drafted in plain language is increasing. Moreover, lawyers are becoming more aware of

the need for change, while their lay clients feel more confident to demand their documents to be clear. On the other hand, the progress of the plain language movement is very uneven — in the United Kingdom there are still lawyers who prefer legalese, not to mention the situation in the far more diversified U.S.. The lack of uniformity of the reform can be observed also in terms of types of documents — some of them occur to be more reluctant to change than the others. Last but not least, the problem lays also in the concept of the plain language itself, which is understood in various ways by different drafters. Broadly speaking, despite the movement in good direction, the reform of legal English still requires much work.

This paper presents a comparative analysis of legalese and plain English on the example of one type of legal text, i.e. will. The aim of the research was to seek for the plain language solutions for the specific problems of traditional legal discourse and to assess the results of the plain English reform. The analysis is made on the example of wills, as they are one of the most conservative types of documents, resistant to change and archaic, which constitute a great challenge for the plain English movement. In spite of occasional efforts at improvement, nowadays we still encounter wills whose language and form resemble those from a few centuries ago (Tiersma 1999, 228). Nowadays legalese wills are still used along with the plain English ones. In the course of the research traditional wills were compared with their plain English counterparts in terms of macrostructure, grammar, and lexicon. Also the varying solutions proposed by plain English drafters were compared.

The case study is based on the set of six wills for the United Kingdom, three of which are written in traditional legal English (I–III), and three in plain English (IV–VI), which are as follows:

- I. will from 1861 from Peter Tiersma's website (www.languageandlaw.org),
- II. will from 1984 from TEPIS book *Selection of English Documents*,
- III. modern sample will found on the Internet (www.compactlaw.co.uk),
- IV. sample will from Anthony Parker's *Modern Wills Precedents*,
- V. sample will from Mark Adler's book *Clarity for Lawyers*,
- VI. sample will proposed by Plain English Campaign (www.plainenglish.co.uk).

For the purposes of this paper the documents are referred to by their numbers.

2. COMPARATIVE ANALYSIS OF LEGALESE AND PLAIN ENGLISH WILLS

2.1. Design and layout

Design and layout are key factors determining the accessibility of documents. Many traditional legal documents consist of excessively long blocks of text with scarce punctuation and no indentation (Crystal 1970, 197), which makes them look quite

inaccessible. The 19th c. will I is the perfect example, whose whole text is one sentence with no commas. The modern will III is paragraphed, but every paragraph is one sentence, e.g. the ‘charitable legacies’ clause, which is lengthy and complicated.

In traditionally drafted documents capitalisation of complete words is used to make up for the lack of punctuation and to highlight some prominent terms. However, it does not really enhance the readability of the text, moreover, the unjustified or inconsistent use of capitals may cause confusion (Adler 1996, 2; Butt 2006, 160–163). For example, in will II, for unknown reasons, the only capitalised word is *hereby*, while in will III the words denoting actions (*give*, *direct*, etc.) are capitalised. Capitalisation is also overused for rendering defined terms within a document — words such as *will*, *executors*, *testator* or *trustees* often start with capital letter. Moreover, traditional documents used to and still do use Gothic font for the title and sometimes for the initial word of each paragraph. This can be observed in will II and, of course, in will I (in its handwritten version). Both capitals and Gothic characters owe much to the decorative tradition of written texts going back to the Middle Ages (Crystal 1970, 198) — but in the age of computerised text processing they seem somewhat obsolete.

The problems of inaccessible design and layout were avoided or at least reduced in plain English wills. Above all, they make use of lists and numbering, which eliminates long blocks of text and makes it possible to organise information in a logical way. This, as well as the proper punctuation, solves the problem of capitalisation, which is hardly used in those wills — only in will IV the initial words “this will” are fully capitalised. Instead of using capitalisation, prominent elements are highlighted in will V by means of bold and frames, which, along with generous spacing, makes this document perfectly readable.

2.2. Reference

Another feature which differentiates legal language from ordinary English is the scarcity of pronoun reference; instead, the prominent lexical items are repeated many times, which is supposed to enhance precision of the text (Crystal 1970, 202; Tiersma 1999, 71; Butt 2006, 208). However, when repeated, these words are often accompanied by specific modifiers, such as *said* or *aforsaid*. Will I abounds with them, they appear also in wills II and III. Most often they refer to previously mentioned persons (“the *said* Testator”), but they may also modify names of objects (“the *said* oil painting”) or even actions (“*said* signing”). *Aforsaid* is the longer form of *said*, but, unlike *said*, it may also appear in the French word order (Tiersma 1999: 89), i.e. after the modified item, as in will I, where it appears several times after the place name (“Harriet Wells of Ipswich *aforsaid*”). These modifiers are probably literal translations from Latin and Law French, in which they used to appear as *dicti* and *le dit*, respectively (Tiersma 1999, 90; DMLU). Loathed by plain English drafters, they indeed are superfluous and archaic, and could as well be replaced with determiners such as *the*, *this* or *that*, or with

reference words such as *above* (DMLU; Tiersma 1999, 91; Butt 2006, 147; Duckworth 1995, 81; Adler 1996, 17–18).

The word *this* is used anaphorically and deictically in legal texts both as a determiner and as a pronoun (Jopek-Bosiacka 2006, 53–54; Tiersma 1999, 91). In its capacity as a determiner it is used in plain English wills instead of the archaic *said*. It often appears before the recurring name of the document itself ("under/ in *this* will"), in which case it could also be replaced with article *the*. The problem appears when this is not the only determiner used for a given word, as in wills I and III, in which it is used along with the possessive pronoun *my* ("of *this my* will"). Such over-defining is not necessary and adds nothing but more words. *This* used as a pronoun can be found most often in wills in the phrase "I declare *this* to be my last will", which use is a little archaic (Jopek-Bosiacka 2006, 53–54); it appears in legalese wills I, II, III, while in the plain language wills other constructions are used, as in will VI: "this is my last will".

Another method of reference to previously mentioned items, without repeating them, is to use the word *same* instead of a pronoun. This can be found in will I, where *the same* substitutes for "the oil painting". Such usage of *same* is regarded as archaic and is advised to be avoided. It may be ambiguous because, unlike proper pronouns, it could refer to both singular and plural; moreover, in some cases it may be difficult to distinguish between the ordinary usage of *the same* and its legalese meaning (Tiersma 1999, 88). It appears only in will I, which is the oldest one, and does not in the remaining documents — which, hopefully, supports Tiersma's theory of its slow extinction (1999, 88).

In plain language wills the repeated items are not modified in any special way, moreover, pronouns are used here more freely. The growing popularity of pronoun reference in legal documents is supposed to enhance their accessibility, but in some cases pronouns may be misleading or appear too informal, thus they should be used carefully (Butt 2006, 208). Sometimes the traditional repetition is a safer solution. But, anyway, the archaic referential modifiers should be shunned.

Another characteristic feature of reference in legal texts is the frequent use of specific pronominal adverbs, such as: *hereby*, *hereinafter*, *thereof*, etc. These forms come from Middle English and nowadays they are not used outside legal texts at all (Tiersma 1999, 93–94). They are used for the sake of economy of reference, (Tiersma 1999, 94); moreover, their archaic character gives the documents the desired "touch of formality" (Crystal 1970, 208) and "legal feel" (Butt 2006, 147). Nonetheless, opponents of legalese criticise them as imprecise and obsolete (Tiersma 1999, 94–95; DMLU). The adverbs of this type appear in the traditional wills analysed here, but they are absent in plain language wills. The term that is present in three traditional wills (I, II, III), and which is used excessively in all legal texts, is *hereby*. Its function is to underscore the performative character of the verb to which it refers (Witczak-Plisiecka 2007, 114). However, removing it from a document does not cause any loss of meaning

(DMLU). “I *hereby* revoke” (II, III) indicates revocation of former wills by this particular document, but since there is not any other way in which this could be performed, *hereby* seems superfluous (Adler 1985: 2). It is not used in plain English wills at all. The analysed documents contain also pronominal adverbs which serve as reference to other parts of the document. However, these words may be confusing — they are not precise enough and sometimes the reader cannot be sure if they refer to a given clause or to the whole document (Tiersma 1999: 95). Moreover, in certain types of texts (e.g. statutes), which are sometimes reordered due to amendments, these words may at some point become totally misleading (DMLU). One of them is *hereinafter* (I, III) which refers to the following part of the text. Garner advises to use more exact reference instead, such as: “later in this will” (DMLU). Another example is the word *herein* (III) which usually means “in this document”, but in order to avoid vagueness, the drafter should specify that what he means is the whole text, or some part of it (DMLU). Such adverbs are not used in plain English wills (IV, V, VI) at all; instead, more exact reference is made.

2.3. Shall

A verb which deserves particular attention is *shall*. It is abundant in all types of legal documents and can be regarded as the true symbol of legalese (Butt 2006, 131). Thorough research on the occurrence of *shall* was made by Williams, which reveals that, although its use has been significantly reduced in jurisdictions of Australia and New Zealand, *shall* still appears in the laws of the United States, Canada, and is extremely popular in the United Kingdom, as well as in the English legislation of the European Union (2006, 238–239). It is used out of habit by lawyers who are unable to find coherent substitutes for it among less archaic verbs. Moreover, many drafters cling to *shall* because of its exceptional flexibility (Butt 2006, 132). However, the polysemous character of the word is, at the same time, its most dangerous drawback (Butt 2006, 132). Its most common meanings in legal context are: imposition of duty/obligation, direction/ recommendation, entitlement, condition, and future action (BLD; DMLU; Butt 2006, 131–132). The borders between those meanings are not always clear cut, which may pose a great difficulty in interpretation of the text, and which may create the ground for litigation. In ordinary English *shall* is used mainly to talk about the future, to ask for instructions or decisions, but sometimes it can also express obligation (Swan 2005, 212–220). Nonetheless, *shall*, outside legal texts, is already very unusual in American English and it is becoming more and more obsolete also in British English (Swan 2005, 312; Williams 2005, 181). It is possible that shortly it will become one of those archaic words restricted to legal texts.

Will I is replete with *shalls*, they appear also in wills II and III, and even in Parker's will IV. To make it worse, *shall* usually carries several different meanings within one document. Table 1 presents the varying uses of *shall* in the analysed wills:

Tab. 1 Use of *shall* in wills.

Meaning of shall:	Examples of use:	Will No.:
obligation	"I direct that the last mentioned legacies <i>shall</i> be paid [...]"	I
	"I [...] direct that all my debts [...] <i>shall</i> be paid [...]"	II
	"I further direct that the receipt [...] <i>shall</i> be a sufficient discharge"	III
condition	"In case the said [...] <i>shall</i> die in my lifetime [...]"	I
	"if he <i>shall</i> predecease me [...]"	III
denial of permission	"it <i>shall</i> not be sold without her consent [...]"	IV
direction	"which expression <i>shall</i> mean Trustees [...]"	III
future	"then it <i>shall</i> form part of my residuary estate [...]"	IV

These are the meanings of *shall* that could be inferred from the context. However, sometimes it may be difficult to interpret *shall* properly without a thorough knowledge of the testator's case and of the author's intention. In the remaining plain English wills (V, VI) various meanings of *shall* are differentiated by using a different verb for each meaning. The notion of obligation is expressed here with *is to* and *are to* ("gifts in a will which [...] *are to* be given to named people [...]"). The *be to* construction is becoming increasingly popular in modern legal texts; it constitutes a gentler form of *must*, which also is acceptable, but in some contexts may be regarded as too strong (Butt 2006, 202–203; Williams 2005, 188; 2006, 244). Condition is rendered more clearly by means of simple conditional sentences ("If my wife has died before I die, I appoint [...]"). In the case of giving permission, in will V *shall* is replaced with *may* ("A professional executor [...] *may* charge his or her usual fees"). Futurity is expressed with modal verb *will*, e.g.: "No executor or trustee *will* be liable for anything done or overlooked [...]". This way of avoiding *shall* in different contexts is similar to what was proposed by Garner (DMLU, 2002) and Butt (2006, 200–203). The other meanings of *shall* mentioned above, but not appearing in the analysed plain English wills, which are entitlement and direction — could be realised by *is entitled to* and *should* respectively (DMLU).

To avoid *shall* seems to be the best strategy. The aim of modern legal writing is to achieve the highest possible level of precision and clarity — this cannot be done if drafters preserve such polysemous words as *shall*.

2.4. Passive voice

Passive voice is overused by legal writers because of its useful indirectness (Butt 2006, 153–154). It comes in handy when the author strategically prefers to obfuscate the agent of the action, or when the text can apply to more than one possible agent, e.g. in statutes (Tiersma 1999, 74–77). The passive voice is always more difficult to follow than the active voice because it reverses the true sentence structure; thus it should be avoided unless absolutely necessary (Garner 2002, 40–42). However, wills are not exactly the type of text in which there should be any strategic need for obscuring the agent and in the analysed documents the passive voice is not used too often. Usually the introductory sentence in wills includes passive construction, which presents the author or the date of the document, as in will III: “This Last Will and Testament *is made* by me Judy Ann Jones [...]”. This construction probably results from the author’s wish to put the title of the document in the prominent position (which is the position of the subject) of this first sentence — words *last will and testament* are sometimes underscored within the first sentence by means of Gothic font and this is the place where the title is officially introduced (will II, the manuscript of will I). This passive construction does not seem especially troublesome, but if the authors of wills were to avoid passive constructions whenever possible, and, at the same time, keep the title of the document in the subject position, they could formulate it as in will V: “The will of Oliver Showlem”; or will VI: “I am Paul John Brown [...] This is my last will [...]”.

2.5. Subjunctive

Subjunctive is a special verb mood which in English is used mainly in dependent clauses, to talk about desirable, possible or imaginary situations (Swan 2005, 567). It was used in older English and is still widely used in some other languages, e.g. in French. In modern English subjunctive is used rarely, hardly ever in spoken dialect, and it is regarded as old-fashioned and extremely formal (Swan 2005, 567–568; Tiersma 1999, 93). Nonetheless, subjunctive is still often used in legal language. Among the analysed wills, the examples of subjunctive can be found in modern will III, in phrases such as: “I REQUEST that my body *be* cremated [...]”. Use of subjunctive in legal texts is not particularly onerous — the subjunctive constructions are usually quite comprehensible and, probably, there are more important aspects of legal texts that the plain language movement should focus on. Nonetheless, according to the idea of modern legal drafting presented by some of its proponents, for example Butt, the rules of legal writing should not be different from the rules governing modern English writing in general (2006). Following this reasoning, if drafters wish to keep the language of their documents up to date, they should abandon such obsolete grammatical constructions as the subjunctive. In modern British English it is very unusual and the

ideas that in the past were expressed by means of subjunctive structures are nowadays conveyed using modal verbs such as *should*, and ordinary tenses (Swan 2005, 568). Although subjunctive is an exceptionally elegant device that evokes the style of great works of British literature — in legal texts it should rather be sacrificed for the sake of clarity.

2.6. Nominalization

Another common grammatical feature of legal discourse is nominalization, which means using nouns instead of verbs while speaking of actions (Gotti 2005, 77). Nominalizations reduce the number of strong verbs in the text — the meaning which could be expressed by only a verb is split between an introducing copular verb and a noun phrase (Gotti 2005, 78). Tiersma claims that these structures, just like passive voice, are most often used in order to obscure the agent (1999, 77). In English generally changing the distance between certain lexical items makes it possible to slightly manipulate the meaning — when the strong verb comes right after the agent, the direct connection between them is more visible, whereas expressing the action by a noun and separating the agent from it by means of a copular verb helps to obscure the link between them (Lakoff 1981, 128–132). There are some legitimate reasons for doing this — for example, when there is a need to state something as broadly as possible (Tiersma 1999, 77–78). Gotti claims also that there are cases in which nominalization makes it possible to achieve greater precision, even if using a verb would allow for fewer words (2005, 78). Finally, using nominalization may be regarded by some drafters as the hallmark of the desired formality (Butt 2002, 153) which is supposed to emphasise the specialised character of the text. Nonetheless, the dense text consisting mainly of nominal phrases is not easy to interpret — it demands more effort and is often impossible without specialised knowledge of the certain type of texts (Jopek-Bosiacka 2006, 67). Plain English proponents agree that communication is always more effective when strong verbs are used rather than nominalizations (Butt 2002, 153; Tiersma 1999, 206).

Interestingly enough, nominalization seems to show low frequency in wills. Only in will III we can find some constructions that may be regarded by some readers as unnaturally nominalized, these are the phrases in which *charge* and *discharge* are used as nouns: “the expenses relating to my funeral shall be the first *charge* on my estate”. However, this example is quite debatable and is quoted here just because of the lack of any more prominent instances of nominalization in these wills. The almost complete lack of this feature probably may be explained by the fact that generally in wills there is hardly any need to obfuscate the agent of the action — what the testator performs in the will is rarely something that they would like to separate themselves from, not to mention the fact that they are dead at the moment when the will is read by the others. However, the frequent occurrence of nominalization in other types of documents

constitutes yet another challenge for those who would like to make the English specialised discourse more approachable.

2.7. Doublets and triplets

Legal style is well-known for its great verbosity, which is the characteristic feature of most formal registers. Conveying some simple message by using many redundant terms can be compared to wrapping the essence of the message in the thick layer of words — which is the perfect way of obscuring the meaning (Haiman 1983, 781–819). Legal discourse is overloaded with tautological phrases consisting of two, three, or, less often, more synonyms expressing the same concept, which by Garner are called doublets and triplets (DMLU). The reasons for the use of more than one word for one meaning are mainly historical. First, as during Anglo-Saxon period legal acts were performed orally, a Germanic poetical device — alliteration — was used also in legal domain, in order to make words easier to remember (Tiersma 1999, 14). This is probably the source of such rhythmical alliterating phrases as, for example, *rest, residue and remainder* (will I). Second, the historical multilingualism of English law system, especially the great significance of French in the Middle Ages and Renaissance, created the peculiar fashion of translating legal terms by means of coupling together two or more words of Anglo-Saxon, Old French or Latin origins (Tiersma 1999, 31–32; DMLU). This led to coining such phrases as *last will and testament* or *give, devise and bequeath*. Although there is no need for explaining each term in different languages anymore, many doublets and triplets were retained in legal English. They are used because of the tradition, out of habit rather than necessity; some of them have attained the status of the so called ritualistic phrases, which are obviously tautological, but, at the same time, so popular that it is almost impossible to eschew them (DMLU). Moreover, lawyers use them in order to make sure that they cover every possible future circumstance, which, according to some of them, is most easily attained by enumerating all the possible synonyms of one meaning (Butt 2006, 129; Tiersma 1999, 63). Nonetheless, this does not enhance precision of the text, and can be confusing — where a few different terms are used it is logical to expect each of them to carry a distinct meaning. Language users have a tendency to search for differences in meanings even between very close synonyms. This may be especially dangerous in the case of less known doublets and triplets (DMLU). Therefore, most plain English writers advocate using just one word for each concept.

The most obvious example of a doublet in the analysed documents is their title. The traditional documents (I, II, III) are all titled *last will and testament*, which in plain language has been shortened to *will* (IV, V, VI). Later in the text of the documents, irrespective of their main titles, they are usually referred to as *last will* or just *will*. The word *will* comes from Old English and it was formerly used only for disposal of real property (OED; DMLU). Anglo-Saxons disposed of their property by means of

documents that were called *wills*; in Old English the verb *will* used to express desire, rather than futurity, as in modern day English — therefore wills were originally expressions of what a person wished to happen after their death, and the link between the noun and the verb *will* was much more obvious back then (Tiersma 1999, 11). The word *testament* is of Latin origin and it used to be ascribed to disposal of personal property (OED; DMLU). The phrase *last will and testament* has been used for more than 500 years (Duckworth 1995, 47). While Section 1 of the Wills Act 1837 states that “the word ‘*will*’ shall extend to a testament and to a codicil” there seem to be no longer any legal basis for the use of the phrase. Although the word *testament* is not used alone too often anymore (Alcaraz 2002, 139; DMLU), the phrase *last will and testament* is used interchangeably with *will*. This tautological doublet is most often used out of habit; as in many wills (I, II, III) it appears as the title, while later the document is referred to as *will*. The argument for such use may be the fact that *last will and testament* is well known, especially to non-lawyers, and therefore it might be used as a matter of tradition, especially for the title of the document (DMLU). Nonetheless, according to most plain English writers, for the sake of consistency and in order to avoid redundancy, only *will* should be used. As to the adjective *last*, it is redundant, as anyway it cannot substitute for the standard revocation clause (Duckworth 1995, 48). Garner also demonstrates that in some contexts its use may be misleading (DMLU) — which is another argument against *last will and testament*.

We have mentioned above the triplet *rest, residue and remainder*, which appears in will I. The phrase usually refers to what remains after giving gifts and paying debts from the testator’s estate (Duckworth 1995, 73). It conjoins three words, each starting with the same letter, which makes it rhythmical and easy to remember. Apparently, this is the only rule here, because all the words are of the same origin. The word *rest* comes from French word *reste*, *residue* comes from French *résidu*, *remainder* is the Old French word — the roots of all three words lie in Latin, and the meaning of each of them includes meanings of the other two (OED; DALF; MW). *Remainder* does not exist in modern French anymore, while *reste* and *résidu* are still used and their meanings are synonymic. In legal English these words used to and still appear in various combinations, or separately (will I; LFD), which clearly implies that they are interchangeable. Yet, the phrase is still often used by drafters of wills, although among documents that are analysed here it can be found only in the 19th c. will I, which probably is a good sign. Authors of other wills propose some equivalents of *rest, residue and remainder*. Author of will II uses the word *remainder* only. This word used on its own in such context can be problematic, because in legal English it has a second meaning connected with the future interest (Duckworth 1995, 74; DMLU; BLD). Wills III and VI use the word *residue*, which seems acceptable, but to some drafters or readers may appear too foreign in form and pronunciation. Will IV uses *rest* which is probably a better choice than *residue*. Other substitutes for *rest, residue and remainder* proposed by plain English drafters often do not include any of those three, but constitute the literal expression of the meaning

by means of ordinary words such as: *all other property, the balance of my property* etc. (Duckworth 1995, 74; DMLU).

Another example of triplet typical of wills is *give, devise and bequeath*. These words are supposed to express the testator's wish to transfer the specified gifts to certain beneficiaries. The phrase appears in the full form in will I and in its contracted form (*give and bequeath*) in wills I and II. Words *give* and *bequeath* come from Old English; *devise* came into English from Latin (*dividere*), via Old French (*deviser*) (OED; DALF). *Give* is used in the same sense both in ordinary and legal English, *bequeath* has no meaning outside legal context anymore, *devise* in the sense of giving is used nowadays only in wills and in modern ordinary English it has a new meaning (OED, MW; DALF). Traditionally, *devise* is said to be assigned for the disposal of real property and *bequeath* for the gifts of personal property (Duckworth 1995, 31; DMLU). However, according to Mellinkoff, this custom arose only in 19th c. and was "a subtlety contrary to the legal and linguistic history of the words and never uniform in practice" (1963, 354). Nevertheless, the text of Wills Act 1837 seems to follow this distinction. On the other hand, as the Act establishes the same procedures for disposal of real and personal property, there seems to be no need for marking the difference between them by using different terms (Adler 1996, 17; Duckworth 1995, 32). In general, the two words are often used interchangeably, but in order to avoid any uncertainty, *give* could be used instead of *devise* or *bequeath* — it certainly includes the meanings of those two, and it is perfectly understandable (Adler 1996, 17; Duckworth 1995, 32; DMLU). The plain English wills IV and V use just *give*. Plain English Campaign's will (VI) uses *bequeath* within definitions clause and *give* later in the disposition clause — the use of two terms is confusing, *give* would suffice here.

The general plain language trend is to abandon the use of doublets and triplets and replace them with their one word synonyms. This seems to be a reasonable approach, as precision and conciseness are fundamental for creation of modern, clear documents.

2.8. Foreign vocabulary

The historical multilingualism of English legal system manifests itself not only in the presence of doublets and triplets, but also in the general frequent occurrence of words of foreign origin. Much as there appear some words of Norse or Anglo-Saxon origin, the vast majority of technical terms in legal English derive from French, to which they came from Latin; but also directly from Latin (Crystal 1970, 208–209). Tiersma points at certain areas of law that are characterised by especially great concentration of vocabulary of French origin. One of such areas is the English real property law, which was greatly influenced by feudalism patterns brought to England by the Normans (1999, 31). The French terms belonging to the domain of real property law, which can be also found in the analysed wills, are words such as *property* or *estate* (OED).

In plain English texts there seems to be a general tendency to use shorter and simpler vocabulary. In English language this usually means using words of Anglo-Saxon or Norse origin. The keen supporter of this approach is Garner, who advocates using more familiar, shorter Anglo-Saxon words than those of French and Latin origin (2002, 29). The analysis of the wills reveals that plain English drafters, to a smaller or bigger extent, stick to this rule. An interesting example is the way of referring to death in the wills. Traditional wills (I, III) use the French word (*pre*)*decease* in reference to the testator's death or the potential death of the appointed executor, trustee or beneficiary. Interestingly, in the 19th c. will I there also appears the more straight-forward word *die*. In plain language wills (IV, V, VI) the same is expressed by means of *die* or (*not*) *survive*. The word *die* comes from Old Norse and is perfectly understandable. The word *survive* comes from French, but, for some reasons, it was preferred by plain English drafters to the French *decease*. There seems to be a general tendency to avoid too straightforward reference to death and probably *die* is regarded by some drafters as too strong word for a will. The French *decease* is so often used in wills because of its archaic formality and slight obscurity — which makes it possible to handle the delicate subject with more distance than it is in the case of using *die*. Garner mercilessly mocks this tendency: "There is nothing wrong with death, although it has inherently unpleasant connotations. But that is the nature of the subject, and writing *decease* [...] in legal contexts is only a little less ridiculous than writing *going to meet his Maker*" (DMLU). This implies the open use of *die* instead of its euphemistic equivalents — which would also be consistent with Garner's prescription for avoiding Romance words. Nonetheless, within the analysed wills the word *survive* seems to be the winner. The reason may be the fact that, despite its French origin, *survive* is perfectly understandable; moreover, unlike *decease*, it is still used in modern English outside legal context; and, finally, it creates some distance against the subject of death. The problem of handling the subject of death in wills shows that one of the criteria proposed by Garner (using Germanic words instead of Romance words) cannot be applied irrespective of other circumstances. As we can see, there are cases when not only the origin of the word, but also other factors must be taken into account. Much as there are instances when the obsolete, extremely formal French word could easily be replaced by its more practical Anglo-Saxon equivalent, there is definitely nothing wrong in French or Latin vocabulary as such — as long as it is understandable and up to date.

2.9. Other modifiers

There are also some obsolete and redundant modifiers to be found in the analysed traditional wills. What strikes in the case of will III is the frequent use of adverb *absolutely*, in phrases such as: "I GIVE the following Legacies *absolutely* [...]". The intention of the author was to ensure that the beneficiary becomes an outright owner,

rather than a limited one. It is redundant here, because a gift passes the entire interest, unless stated otherwise (Adler 1985, 2).

Unlike *absolutely*, modifiers such as *whatsoever* and *wheresoever* are not only redundant, but also archaic. The adjective *whatsoever* is the obsolescent form of *whatever*, while the archaic adverb *wheresoever* has its modern equivalent in *wherever* (DMLU; OED; MW). They can be found in wills I and III, as modifiers of words relating to the estate: “my estate both real and personal of *whatsoever* nature and *wheresoever* situated [...]” (III). Probably here also the author’s intention was to be as precise as possible. Such over-defining does not seem necessary, and it could be attained by using more modern and shorter terms. Also Garner criticises these words as archaic and legalese and advocates the use of their modern forms or other constructions (DMLU).

2.10. Highlights

In the table below the most prominent elements of legalese and their plain English equivalents are highlighted (Table 2). They are strictly limited to those which were discussed in this chapter, i.e. to grammatical and lexical issues concerning only a few randomly chosen wills, which leads to creation of a unique linguistic profile of those documents.

Tab. 2. Highlights of the plain English solutions used in wills.

LEGALESE	PLAIN ENGLISH
DESIGN & LAYOUT	
solid blocks of text	lists, numbering, tables
scarce punctuation	punctuation as in ordinary English
Gothic fonts	modern fonts
overuse of capitalisation	capitalisation as in ordinary English
GRAMMAR	
lengthy sentences	shorter sentences
passive voice	active voice
subjunctive	modal verbs/ ordinary tenses
nominalization	strong verbs
<i>said/ aforesaid</i>	<i>the/ this/ that/ above/ ø</i>
<i>(the) same</i>	pronoun/ noun
<i>hereby</i>	<i>ø</i>
<i>hereinafter</i>	<i>later in this Will</i>
<i>herein</i>	<i>in this document</i>
<i>shall</i> (obligation)	<i>must/ be to</i>
<i>shall</i> (condition)	conditional sentences
<i>shall</i> (future)	<i>will</i>
<i>shall</i> (permission, entitlement)	<i>may</i>
<i>shall</i> (direction)	<i>should</i>

LEXICAL UNITS	
<i>last will and testament</i>	<i>will</i>
<i>rest, residue, and remainder</i>	<i>rest/ all other property/ the balance of my property</i>
<i>give, devise, and bequeath</i>	<i>give</i>
<i>(pre)decease</i>	<i>die/ survive</i>
<i>absolutely</i>	\emptyset
<i>whatsoever</i>	\emptyset
<i>wheresoever</i>	<i>wherever/ \emptyset</i>

3. Conclusions

The above analysis reveals that some good progress has been made in modernising wills. The plain English wills analysed here paper demonstrate various attempts at thorough simplification. They are much different from their legalese counterparts; their layout, grammar and lexicon are more reader-friendly than those of traditional documents. In spite of the fact that they differ between one another, these plain English wills constitute a good example, and proof, of the changes in good direction that are happening in legal English.

On the other hand, the general situation is still far from perfect. The plain language documents, including wills, are a rarity. Still very few law firms in the United Kingdom declare to be drafting their documents in plain language and there are virtually no plain language documents in the form of ready-to-use precedents — in contrast to highly popularised legalese forms. Moreover, some of the existing plain English documents differ significantly, which reveals how varied the approaches to the reform are. The discrepancies between plain language policies of different governments and organisations lead to noticeable inconsistencies of the reforms.

There is much that can be done for the improvement of legal English in general. The intensive promotion of plain language should be continued and the standardised plain legal forms should be popularised more extensively. What also might increase the pace of the reforms would be the better cooperation between the plain English organizations. Much can be done also on the micro level — there is a great need for individual lawyers to change their attitudes. Courses on modern drafting should be run at universities for the would-be lawyers in order to form good habits from the very beginning. The increasing number of lawyers and law firms choosing plain language will also make it more popular among lay clients who, once they discover the endless advantages of having their documents drafted in plain English, will start to avoid the services of traditional drafters. Finally, it is significant that not only the English-speaking lawyers participate in the reform. Representatives of other professions also can contribute, such as legal translators, linguists, information designers, and others.

On balance, although the legal English language seems to be moving in the right direction, there is still much work to be done. Ousting legalese and the permanent implementation of plain English is not impossible, although this is going to require much patience from those who fight for it.

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