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Reading Material for B. Com LL.B. X Semester

LEGAL LEXICON (continued...)

1.10 Frequency of *Any*:

Though the indefinite pronoun or adjective *any* is considered redundant, in legal documents, it is quite common. The expressions like *any child or children, any encumbrances, any other assets*, etc are found in plenty.

1.11 Use of Argot:

Argot is a specialized legal vocabulary in which words are not sufficiently technical, as to qualify as terms of art. Some of the examples of argot are *inferior court, contributory negligence, due care* etc.

Quite a few writers have opined that the legal lexicon consists of a reasonable amount of argot. The great writer MellinKoff uses the term to refer to a specialized language or means of communication with a group.

1.12 Use of Open Textured Words:

Open textured words are the words with flexible meanings, phrases like ‘gross negligence, reasonable person, undue influence, good cause, just and equitable etc.

1.13 Use of Repetitive and Resonant Words:

Legal language is full of repetitive and resonant words. Such expressions include a very popular legal expression found in movies and serials-*the truth, the whole truth and nothing but the truth*.

1.14 Attempts at Extreme Precision and Formality:

There are many bygone practices still in vogue on the legal sphere. The typical colonial practice of addressing the Court as the *Honourable Court*, Counsel is referred as the *learned counsel*, and a Judge is reverently called as *Your Honour* and so on. If such expressions are not used, it is considered derogatory and disrespectful.

1.15 The Dominance of some Word Classes:

In most of the legal texts, there is dominance and recurrence of certain word classes. Some word classes are used extensively whereas others find little scope for their use in the legal language. Word classes are not utilized uniformly. The word classes which are usually found and prevalent are nouns, verbs, prepositions and conjunctions. They are followed by adjectives and adverb. There is massive use of passive voice which belittles the importance of the pronouns. As a result of this, there is least appearance and occurrence of the pronouns. Numerals are also rare though definite article is found frequently.

1.16 New Adverbials:

Another unique feature of the legal lexicon is the admixture or blending of the adverbials of place and prepositions to create adverbials. Such adverbials are found in plenty in the legal discourse and a few of them have been used in the ordinary usage too. Here are some of the examples:

Whereof	wherein			
Hereto	hereon	hereby	hereof	herein
Hereinbefore	hereinafter	therein	thereafter	
thereto	therewith	thereat	thereunder	therefor
thereon	thereupon	hereunder	therefrom	thereof

Such words were quite common in medieval English. Instead of saying ‘under it’ or ‘under that’, medieval English speaker would say ‘hereunder’ or ‘thereunder’. These adverbials help to obtain precise references in the legal discourse. Moreover, they give the archaic impression of the language. However, Mellinkoff has denounced this habit and argued that the above terms are archaic and often imprecise.

Besides the above mentioned words and expressions, *forthwith* is another archaic expression. It is an imprecise and archaic expression. It is archaic and hence it is imprecise. Bryan A. Garner, in *A Dictionary of Modern Legal Usage* called it a “fuzzy word with no pretence of precision”. Professor Mellinkoff has traced its meaning from the Middle English, when it was ‘forthwith’ and meant “alongwith, at the same time with something else”.

The word ‘immediately’ is the best alternative to ‘forthwith’ if ambiguity and vagueness is intended to be avoided. Moreover, ‘immediately’ is commonly used in the everyday discourse outside law. Piesse (127-28.) says that ‘forthwith’ and ‘immediately’ are synonyms, ‘stronger’ than the expression ‘within a reasonable time’ and that they mean something like ‘without any delay’, speedy and prompt action and an omission of all delay.

1.17 The Use of Special Determiners:

The definite article ‘the’ is generally used to when something is certain, fixed or definite. However, in legal English, the definite article is often replaced by the legal determiners- *such as*, *said* and *such*. These are the distinctive determiners which represent the specific-the one that is being concerned and referred and no other.

1.18 Unusual Use of the Words ‘The Same’, ‘Such’ And ‘Said’:

One of the most common and ancient legalism in legal language is the use of ‘said’. It has been used in different situations. It is used as an article or demonstrative pronoun: John promises to pay a deposit. Said deposit shall accrue interest at a rate of five percent per annum. (J&K Houses and Shops Rent Control Act, 1966.)

In the above instance, the definite article ‘the’ or the demonstrative pronoun ‘this’ could replace ‘said’ and facilitate ease on the part of the reader. In an ordinary sense, ‘Said’ is also used as an adjective: the ‘said deposit’ is equally possible. It appears archaic too. Tiersma opines that the word ‘said’ could be substituted by the article ‘the’ or the demonstrative pronoun ‘this’ with no loss of meaning. The words the same, such and said have distinct identity in the legal discourse. The word ‘the same’ usually implies comparison to a similar object or person, but in legal use it refers to sameness of reference. In order to support the idea, the following example has been served:

“The tenant shall pay all the taxes regularly levied and assessed against Premises and keep the same in repair”.

In the above cited example, the word ‘premises’ has been referred or substituted by ‘the same’ which, according to Tiersma, can be done by the personal pronoun ‘it’. ‘It’ seems to be a more convenient option.

A close variant of ‘said’ is ‘aforesaid’. It is almost similar in meaning as ‘said’, because anything said ‘before’ or ‘afore’. According to David Mellinkoff, “the purpose of ‘aforesaid’ is to refer to something that has been said, and its chief vice is that you can’t be sure what it refers to”. ‘Said’ and ‘aforesaid’ are exclusively anaphoric, as they can only refer to something that has been mentioned previously.

Actually ‘said’ and ‘aforesaid’ are literal translations from Latin terms, ‘dictus’, ‘said’ and ‘predictus’, ‘aforesaid’.

Besides ‘the same’, ‘such’ is another unusual word found in plenty in the legal language. As far as the usual or general use of ‘such’ is concerned, it means ‘that sort’ or ‘this sort’.

“We conclude that the trial court’s order constituted an abuse of discretion in the procedural posture of this case which compels us to set aside such order.”(SLJ.) In the above cited example, ‘such order’ means ‘this (exact) order’. It seems that, the phrase ‘such order’ denotes ‘this order’. Therefore, *Such* acts similar to the demonstrative pronoun *this*. Moreover, employment of ‘such’ confuses because it has the possibility of being interpreted to mean ‘this kind of (especially in the plural).

Here is another example where such is used four times in a single sentence.

THE MAHARASHTRA PROHIBITION ACT

The 4 [State] Government may also invest any person 8* * * with such powers, impose on him such duties and direct him to perform such functions under this Act, rules or regulations or orders made thereunder, as may be deemed necessary. Such persons may be given such designation as the 4 [State] Government may deem fit.(advocatekhaj)

Concerning the function of the word *said* in legal drafting, it is used as an article or a demonstrative pronoun (Sabra 43). To illustrate this, we include the following example:

“Lessee promises to pay a deposit. Said deposit shall accrue interest at a rate of five percent per annum.”