

Book Review



Reviewed by Richard A. Forsten, Esquire

Not All Greek: *The Party Of The First Part, The Curious World Of Legalese*

by Adam Freedman (Henry Holt, 2007)

Every profession has its own jargon and terms of art. As Adam Freedman demonstrates in his book, *The Party Of The First Part, The Curious World Of Legalese*, lawyers often use a language full of redundancy, foreign terms, and phrases that are not only incomprehensible to most layman, but incomprehensible to many lawyers, as well.

Take the familiar “last will and testament”—why is it both a “will” and a “testament?” The story goes that under old English law, a “will” was a document by which one left real estate, while a “testament” was necessary to convey personal property. So, a “will and testament” is necessary to convey both real and personal property. The problem, as Freedman demonstrates, is that this etymology isn’t correct. Rather, like much of our legal language, the phrase arises from the complex history of England and the common law. The term “will” comes from the old Anglo-Saxon custom by which people would say (and later leave documents saying) “ic wille” (“I desire”) that such-and-such go to so-and-so upon my death. Over time, these “wills” became legally binding. Meanwhile, the ecclesiastical courts developed a similar document known by the Latin name “testamentum,” which later became “testament.” English lawyers in the fifteenth and sixteenth centuries began calling documents “last will and testament” just to make sure they covered all the bases. It wasn’t until later that courts, following the rule that every word has meaning and is not surplusage, decided

that a will was for real estate and a testament for personal property. Similarly, the phrase “devise and bequeath” is sometimes said to be necessary because one “devises” real estate and “bequeaths” personal property. Again, this explanation comes after the fact. “Devise” comes from the Anglo-Saxon, and “bequeath” comes from the French. Following the Norman conquest of England, careful English lawyers used both terms (one from each language) so that the meaning would not be lost.

Indeed, as should begin to be obvious, most of our modern “legalese” can be traced to the linguistic history of England. Following the Norman conquest, there was Anglo-Saxon for the conquered and French for the conquerors. Moreover, to make things even more confusing today (but less confusing then), William the Conqueror declared that all legal business was to be conducted in Latin—a much more standardized language than old English or French, which both contained various dialects and variant spellings. Thus, today’s legalese often results from three different languages being used nearly one thousand years ago.

Freedman’s book is full of etymologies for various legal phrases, and he usually (but not always) tells these tales with a good turn of phrase. In describing “embezzlement,” for example, he writes:

“When businessmen steal from the till, they are usually accused of *embezzlement* (from Anglo-French *enbesiler*, ‘to

carry off’). Embezzlement—the pilfering of goods that one has lawful, but temporary, possession of—was originally aimed at light-fingered servants in English country houses. There had been a gap in the law: theft by a servant did not fit the technical definition of larceny because the servant did not *initially* gain possession of the goods illegally. The butler, for example, was perfectly entitled to handle the silver for the purpose of polishing it. Unfortunately, he sometimes forgot to put it back.”

Not every description though is quite so well turned, as Freedman also delights in bad puns:

“*Burglary*... is unlawful entry with the intent of committing a crime within the place entered. It appears that ‘burglary’ originally referred to the breach of a walled town rather than an individual house. The ‘burg’ in ‘burglary’ is most likely related to words like *borough* and *burgh*. The use of deadly force against a burglar is often justifiable; after all, a burgher’s home is his White Castle.” (You may now groan.)

Freedman’s book, though, is not just a collection of word histories. Forgotten etymologies play a role in legalese, but so do lawyers. Even as Freedman is engaging in an interesting history of many legal terms, he is also making a larger point—an argument for *plain* English. Take the following example from a prospectus describing certain notes to be issued by a bank:

“Each certificate will represent an undivided interest in the Trust and the

interest of the Certificateholders of each Class or Series will include the right to receive a varying percentage of each month's collections with respect to the Receivables of the Trust at the times, in the manner and to the extent described herein and, with respect to any Series offered hereby, in the Related Prospectus Supplement."

Got it? Now, applying the rules of plain English, the sentence would read: "The Certificateholders will receive interest and principal payments from a

varying percentage of credit card account collections."

Freedman believes that much of legal writing is too legalistic and there is always room to simplify and clarify. He should get no argument on that. His book is a light and breezy quick read on the virtues of keeping things plain and understandable. Much like, hopefully, this review. ☺