

### WARM WELCOME TO OUR NEW VICE CHANCELLOR/PRESIDENT

**W**ith great pleasure the Legal Office takes note of the appointment of a distinguished educationist, YBhg Emeritus Professor Dato' Dr Hassan Said who has been appointed the new Vice Chancellor of UiTM, effective 1 February 2016. He takes over from YBhg Tan Sri Dato' Sri Prof Ir Dr Sahol Hamid Abu Bakar whose term as Vice Chancellor of UiTM ended on 31 December 2015.

Prior to his appointment, Emeritus Professor Dato' Dr Hassan Said was the Vice Chancellor and President of Taylor's University, as well as the former Director-General of the Department of Higher Education, Ministry of Higher Education (January 2005 - April 2008). He holds a Bachelor's Degree in Mathematics from the University of Manchester, UK (1979), Master of Science from Brunel University, UK (1981) and a PhD from Brunel University (1984). He specialises in Computer-Aided Geometric Design.

We, at PPUU warmly welcome our new Vice Chancellor to UiTM. We are confident that in view of his excellent leadership record and academic achievements, YBhg Emeritus Professor Dato' Dr Hassan Said will take UiTM to a higher level, both in the richness of education and the quality of its staff.



*"Allah never changes a condition which  
He has conferred upon a people until they  
change what is in their own selves"*

*(Holy Qur'an, Surah 8:53).*

# Law and Language – Some Thoughts for Language Courses for Law Students

By: Shad Saleem Faruqi\*

## Introduction

**T**he link between law and literature is well known. The two constitute an intersecting circle.

The law, as David Mellinkoff says, is a profession of words. Language is the essential tool of a lawyer and of every legal enterprise. “Words are the raw material of the legal profession and the assiduous study of words and the proper use of words has always been part of the lawyer’s most desirable accomplishments”.<sup>1</sup>

The success or failure of a lawyer and a judge is “determined by the skill and art of their persuasive communication. Lawyers and judges have become “word merchants” in the best sense. The successful advocate should be able to synthesize a complex legal precedent in a few pithy sentences and articulate a point of view within the sweep of a compelling sentence”.<sup>2</sup>

In civil and criminal disputes that are played out daily in the courts, human passions and tragedies are paraded in a public place and determined by the vehicle of words.

Likewise, authors, novelists, dramatists and literary critics breathe new life into words and phrases, interpret or infuse meanings that are not so apparent and draw conclusions that require imagination and creativity of the highest order.

Obviously lawyers and litterateurs work a similar craft. Their business is human drama. Their tools are words and ideas.

However, I must also say that despite the similarity between the roles of the lawyer and the linguist, the interdisciplinary connection between law and language is not adequately studied.

## Law & Language are interesting circles

Law cannot be interpreted or understood in isolation. It must be plugged into a large cultural, philosophical or social science context to give it value and meaning.

Law is linked with many factors and forces in society. Criminal law, family law, contract and employment law re-enact the dramas of real life. Likewise, literature personifies life. It provides insights into the human condition.

All law faculties must, therefore, offer an optional, interdisciplinary course in “Literature and the Humanities” to enable law students to learn about human nature, compassion, empathy or other humanistic qualities that are crucial to competent lawyering or judging. As someone said poetically:

The law the lawyers know about  
Is property and land;  
But why the leaves are on the trees,  
And why the winds disturb the seas,  
Why honey is the food of bees,...  
They do not understand.<sup>3</sup>

The content of this course can vary and can be based on literary texts, whether fictional, dramatic, cinematic or poetic.

## Fluidity of legal and literary languages

There is mutability of meanings in all texts whether literary or legal.

Writers and interpreters of literature play fast and loose with words and add colours and depth to the literary canvas.

Lawyers do the same. Their pledge to promote simplicity, clarity and certainty cannot deny the existentialist reality of the open-texture, glorious uncertainty and fluidity of legal language. As Justice Holmes once said, “a word is not a crystal, transparent and unchanging, it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and time in which it is used”. The power of the lawyer is indeed founded in the uncertainty of the law.

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<sup>1</sup> Lord Birkett, Foreword, L. Blom-Cooper, *The Law as Literature*, 1961, ix

<sup>2</sup> David Shrager and Elizabeth Frost, *The Quotable Lawyer*, Aditya Books, 1992, p. vii

<sup>3</sup> H.D.C. Pepler, in WH Davies, *shorter Lyrics of the Twentieth Century (1900-22)* (1922). Quoted in Ronald Irving, ‘The Law is as Ass’, *duckworth*, 1999, p. 53.

Take for example, Article 5(1) of the Federal Constitution: “No person shall be deprived of his life or personal liberty save in accordance with law”. The simple words “person”, “life”, “personal liberty” and “law” are loaded with moral and political meanings and scintillatingly rich and beautiful interpretations are possible.

The recognition of the fluidity of legal language, the mutability of meaning in all texts whether literary or legal, and the many possibilities of interpretation will indicate how much lawyers and linguists share a common ability to interpret words creatively, socially, morally and contextually. The Anglo-American jurist, Ronald Dworkin argues that the meaning of legal texts like any other genre of literature can only be discovered through interpretation.

### **Interpretation is an art, not a science**

Interpretations of law as the interpretation of literature are creative tasks. The golden rule of interpretation is that there are no golden rules. “The law is not a series of calculating machines where definitions and answers come tumbling out when the right levers are pushed”.<sup>4</sup> With ease, lawyers can twist words and meaning as they please. No poet ever interpreted nature as freely as a lawyer interprets the truth!

Likewise a literary critic can embellish or diminish a written work by his creative interpretation. It is amazing how even a nursery rhyme like “Jack and Jill went up the hill...” can be given Freudian interpretations!

The vast possibilities and openness of interpretation techniques give to lawyers and judges a power over our lives that are generally not acknowledged. Benjamin Hoadly said of this power: “Whosoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver to all intents and purposes and not the person who first wrote or spoke them”.

### **Content of Language courses for law students**

A good language course for law students must contain the following elements:

**Inclusion of a few great literary classics:** Given law’s link with life and literature’s supreme ability to mirror life, it is important that law staff and students must have some immersion in the outstanding literature of the age. Being steeped in literary works, especially those that have legal themes will sharpen lawyering skills for court room dramas.

**Inclusion of some beautiful legal literature:** An ideal course in language for law students should be built around beautiful or elegant pieces of legal writing from some masters of the craft. Law as literature is a rare phenomenon but not unknown. There are many court judgments, legal essays, autobiographies of law persons and books on legal quotations that distil the best in legal literature. There is a great deal of legal prose whose eloquence can set fire to reason. As Joseph Baron says: “Even as there are laws of poetry, so there is poetry in law”.

Witness for example the following definition of a Constitution:

“A Constitution is our document of destiny, our chart and compass, our sail and anchor, our armour of defence against the passions, prejudices and vicissitudes of politics. The Constitution is the guardian of our rights and the source of our freedoms”.<sup>5</sup>

Take this comment on a dissenting judgment:

“Dissents are appeals to the brooding spirit of the law, to the intelligence of another day”<sup>6</sup>

When in the slavery case of *Somerset v Stewart* (1772) Lord Mansfield intoned that “the air of England has long been too pure for a slave, and every man is free who breathes it” he was not only contributing to the law but also to legal prose. He enriched the annals of law as well as literature.

In the storied halls of the American courts, the writings of Justice Brandeis, Justice Cardozo, Judge Hand, Justice Frankfurter, Oliver Wendell Holmes, Justice Jackson and Justice Brennan are good examples of eloquent legal prose. In the UK Lord Denning wrote clearly and picturesquely. In India Justice Bhagwati wrote with passion. At home, Tun Suffian wrote with incredible simplicity and clarity. Justice Abdoocader fascinated with his ability to write a single sentence covering half a page and yet keep us engaged in his argument. Justice Azlan Shah (as HRH Sultan Azlan Shah was then) is known for his quotable quotes on the Constitution and the need to tame absolute power.

**Teaching of good legal writing:** George Orwell once wrote that “good prose is like a window pane”. I suppose what he meant is that when people read good writing they see whatever the author was trying to convey. Legal writing must emulate this advice. Good legal writing or legal oratory must exhibit some essential qualities.<sup>7</sup>

<sup>4</sup>William O Douglas, “The Dissent, A Safeguard of Democracy”, 32 Journal of The American Judicial Society, 105 (1948)

<sup>5</sup>Refer to chapter 2 of Shad Saleem Faruqi, Document of Destiny: The Constitution of the Federation of Malaysia”, 2008

<sup>6</sup>Irving Kaufman, “Keeping Politics out of the Court”, New York Times, December 9, 1984.

<sup>7</sup>Adapted from Mark K Osbeck, “Elegant Expressions: Reflecting on the Nature of Great Legal Writing”, available at [http://works.bepress.com/mark\\_osbeck/1](http://works.bepress.com/mark_osbeck/1). See also Pamela Samuelson, “Good Legal Writing: Of Orwell and Window Panes”, 46 University of Pittsburgh Law Review 149 (Fall 1984)

1. It must be clear. To achieve this aim the following elements must be present –
  - We must have a point or a thesis
  - We must get to the point
  - We must adopt a structure – an introduction, background, facts, court decisions, analysis, policy implications and conclusion.
2. It must be concise.
3. It must be logically consistent and coherent with the whole body of law.
4. It must be engaging
5. It must be elegant. It must be beautifully written and aesthetic in nature. Elegance adds value to writing for the same reason that beauty is valuable in any human endeavour. Elegance may be rare but is not unknown. And, like all arts, it can be cultivated. One has to write from the heart. Only then will the words carry the colour and warmth of their birthplace. Perhaps some law teachers and language lecturers must come together to prepare an anthology of beautiful legal prose.

Regrettably, university-level language courses for law students in Malaysia rarely inculcate these qualities. Much of the time and efforts of the lecturers are spent in remedying seminal flaws of grammar and construction that should have been corrected at primary or secondary level.

**Teaching law students to write simply:** Lawyers are, on the one hand, among the most eloquent users of the English language while on the other its most notorious abusers. Most lawyers seem incapable of writing an ordinary, comprehensible sentence in a contract, deed or will. The joke is that the minute you read something that you can't understand, you can almost be sure it was drawn up by a lawyer!

Law faculties should take a stand on this issue. They should cease to be blind mistresses of the legal profession and should resist imitating the legal verbosity and technicality of legal jargon. The language course in law faculties should encourage law students and legal draftsmen to break free of the tradition of verbosity, technicality, convoluted legalese, legal claptrap and gobbledygook. Almost everything can be said plainly and effectively without resorting to words like “thereto”, “hereunto”, “theretofore”, “thereof” or “to wit” or by relying on Latin or French which could be easily translated into English or Malay. Take for example the words of a will:

“I, Helen Hoover, of the town of Goleta, County of Santa

Barbara and State of California, do hereby make, publish and declare this as and for my Last Will and Testament, hereby revoking all wills and codicils thereto heretofore by me made”.

The whole thing could more simply read: “I declare that this is my will and revoke any previous wills”.

**Relying on humour to polish up language skills:** The law is normally no laughing matter. Actually it teems with humour. The English judge Lord Evershed, discussing a standard form of contract, is reported to have said: “This contract is so one-sided that I am astonished to find it written on both sides of the paper”.<sup>8</sup>

Or witness this comment on a piece of land legislation:

The law doth punish man or woman  
That steals the goose from off the common,  
But lets the greater felon loose,  
That steals the common from the goose.<sup>9</sup>

Norman Mailer wrote in the Observer “You don't know a woman till you've met her in court”.<sup>10</sup> Tommy Manville, American millionaire remarked after his thirteenth divorce “She cried and the judge wiped away her tears with my cheque book”.<sup>11</sup>

And here is from the records of the Aetna Insurance company: “Gentlemen: I had an accident yesterday. I consider that neither vehicle was to blame but if either were to blame, it was the other one”.<sup>12</sup>

A Florida Ordinance required dancers to cover their buttocks. So it deemed it prudent to define buttocks as precisely as it could. Here is the definition of a buttock:

“The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two imaginary lines running parallel to the ground when a person is standing, the first or top of such lines being one-half inch below the top of the vertical cleavage of the nates (i.e. the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom line being one-half inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold) and between two imaginary lines, one on each side of the body ...”

As you can see, teaching law is not all dreary and dull! Much depends on who is teaching it and what is being taught.

<sup>8</sup>Ronald Irving, ‘The law is a Ass’, Duckworth, 1999, p. 55

<sup>9</sup>Ronald Irving, ‘The law is a Ass’, Duckworth, 1999, 48

<sup>10</sup>Supra 67

<sup>11</sup>ibid

<sup>12</sup>Ronald Irving, ‘the law is a Ass’, Duckworth, 1999, p. 68