

Saxon Words and Romance Words

By Wayne Schiess

What are Saxon words and Romance words?

In reading about writing, I've run across the following advice, here from H. W. Fowler:

Prefer the Saxon word to the Romance.¹

And here from Strunk & White:

Anglo-Saxon is a livelier tongue than Latin, so use Anglo-Saxon words.²

But I never paid much attention because I didn't know what it meant. When I finally learned, I saw that the advice could apply to legal writing, too. This article gives some background, offers some recommendations, and suggests some new techniques.

Two key sources of English words are Anglo-Saxon and Latin; many words of Latin origin are also French and are sometimes referred to as being of "Romance" origin. Yes, I'm skipping the history lesson, but some common examples can help make the point. Here are four paired synonyms or near-synonyms; the first is of

Anglo-Saxon origin and the second is of Latin/French/Romance origin:

- break/damage
- come/arrive
- make/create
- need/require

We can immediately make some generalizations. Saxon words tend to be shorter—often single-syllable—and harder in sound. They also tend to be concrete rather than abstract and less formal, too. We might say that Saxon words are plain and that Romance words are fancy:

- boss/superior
- job/position
- wish/desire
- lawyer/attorney

Test yourself. Here's Quiz 1: Name the Romance synonym for these Saxon verbs: *ask, buy, eat, see, talk*. (Answers at the end.)

What can we do with this knowledge? Replace Romance words with Saxon words—although not always. The best writing advice is rarely "always" or "never." Instead, generally choose Saxon words but use your editorial judgment, considering audience, tone, persuasion, and legal terms. Consider these before-and-after examples taken from appellate briefs.

Before: The City Planner agreed that Hemet's lot was *adjacent* to the single-family homes.

After: The City Planner agreed that Hemet's lot was *next* to the single-family homes.

This is a sensible edit that substitutes a shorter Saxon word for a longer Romance word, making the text a bit more readable.

Before: Mr. Castillo asserts that Ms. Castillo has no constitutional right to the effective *assistance* of counsel in a divorce suit.

After: Mr. Castillo asserts that Ms. Castillo has no constitutional right to the effective *help* of counsel in a divorce suit.

Probably not a good edit. "Effective assistance of counsel" is a standard legal phrase. Don't replace Romance with Saxon when the Romance term is, or is part of, standard legal language.

Before: But a video camera won't *prevaricate*.

After: But a video camera won't *lie*.

This is a solid edit. If you're willing to begin a sentence with *but* and use a contraction, the Saxon *lie* fits the tone you've chosen and delivers more force than the Romance *prevaricate*.



"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 35 years. To contribute an article, contact Prof. Kimble at WMU-Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, Google "Plain Language column index."

We can immediately make some generalizations
We might say that Saxon words are plain and that Romance words are fancy.

Old legal language isn't necessarily bad legal language, so how should legal drafters address these doublets, triplets, and longer strings?

"But wait," you might be saying. "I can achieve the same clarity and force in my writing just by using a short word in place of a long one. How does it help me to know that the short words are Saxon and the long ones are Romance?"

I hope it helps in two ways. It raises your writing IQ, something that I believe lawyers, as professional writers, should seek. And that knowledge can lead to other insights based on the Saxon/Romance distinction, which we'll discuss next.

Saxon words and Romance words in contracts

We've now learned a new way to think about plain words versus fancy ones: sometimes it's the difference between words of Saxon origin and words of Romance origin. To set the stage for this section, try Quiz 2: For each Saxon-named animal, give the French (Romance) name for the type of meat: *chicken, cow, deer, sheep, pig*.

Now think about contracts and other binding legal documents. You may have noticed that they often contain what we now know are Saxon–Romance pairs:

- agree and covenant
- cease and desist
- due and payable
- hold harmless and indemnify
- sell and convey
- true and correct
- will and testament

Why?

During the 1200s, French became the primary language of the law in England. In the 1400s and after, English began to replace French as the language of the upper classes. (History lesson omitted.) Hence the Saxon names for animals and the Romance names

for their meat when served—as seen in Quiz 2.

But English also began to replace French as the language of the law. Thus, as explained by David Crystal in *The Stories of English*, legal scribes often had to decide what words to use when "French and English each provide a copious supply of relevant items."³ Often they didn't choose—they used both.

As Crystal puts it, "Old English *goods* and Old French *chattels* resulted in Middle English legalese, *goods and chattels*."⁴ Sometimes the pairs were synonyms, sometimes they were subtly different, and sometimes they were paired out of "stylistic habit, perhaps fostered by their undoubted rhythmic appeal in oral performance."⁵

Many of these doublets persist today, as we see in the pairs listed above. We also see triplets:

- give, devise, and bequeath
- ordered, adjudged, and decreed
- right, title, and interest

Old legal language isn't necessarily bad legal language, so how should legal drafters address these doublets, triplets, and longer strings? My advice here relies on my preference for plain, direct words and on the expertise of Kenneth Adams in his *Manual of Style for Contract Drafting*.⁶

First, do enough research to decide whether the doublet, triplet, or string contains words that differ in meaning or whether they're true synonyms. (Sources to consult: Adams's *Manual of Style*, *Garner's Dictionary of Legal Usage*, and *Black's Law Dictionary*) If they're not true synonyms, decide which meanings you intend and keep only the words you need.

Second, if you have true synonyms, do your best to pick one word that conveys your intended meaning and delete the oth-

ers. For example, in most contracts, *sell and convey* can be shortened to *sell*. If you intend separate actions—selling the item and then conveying it to the buyer—then separate provisions requiring the seller to both sell the item and deliver it would be better.

What about the stock judicial phrase *ordered, adjudged, and decreed*? Certainly it's harmless as is, but shortening to *ordered* would also certainly be harmless.

And this monster is still sometimes used with security interests: *grant, assign, convey, mortgage, pledge, hypothecate* [what?], and *transfer*. Adams says that it can be shortened to *grant*.⁷

To those who say that the extra words are harmless, so there's no reason to excise redundancies, I can say only this: you're mostly right. But the best writers try to avoid redundancy. What's more, litigation over the standard phrase *indemnify and hold harmless* (that's Romance and Saxon) gives pause. Some courts say that the terms are synonyms, while others say that they're not.⁸ Ultimately, a knowledge of Saxon–Romance pairs might help you streamline and improve your contracts.

Saxon words and Romance words for persuasion

Here we discuss two techniques for creating memorable, persuasive prose. By the way, how are you doing at spotting Saxon and Romance words? Here's Quiz 3: name the Saxon alternative for each Romance verb: *cogitate, emancipate, imbibe, inundate, masticate*.

In persuasive writing, some judges prefer Saxon words: "[The best advocates] will master the short Saxon word that pierces the mind like a spear..." Hon. Robert H. Jackson, United States Supreme Court.⁹ Another example: "A healthy respect for the robust Anglo-Saxon appeals more than does the Latin..." Hon. Wiley B. Rutledge, United States Supreme Court.¹⁰

We can take advantage of this preference with two persuasive-writing techniques that combine Saxon words with Romance words—relying on differences in tone, formality, and force. The two techniques are the Saxon Restatement and the Saxon Finish.

Holmes builds up to a big idea with Romance words; then he states the idea with Saxon words. The result is a forceful wrap-up.

The Saxon Restatement

With this technique, you state a proposition using primarily Romance words and then restate it using primarily Saxon words (or vice versa). Abraham Lincoln did it in his House Divided speech:

I do not expect the Union to be dissolved;
I do not expect the house to fall.¹¹

Lincoln essentially says the same thing twice: with Romance words (*union, dissolve*) and then Saxon (*house, fall*). He names lofty concepts and then brings them down to earth, creating a forceful, memorable couplet. Winston Churchill did something similar in a famous speech:

I have nothing to offer but blood, toil, tears, and sweat. We have before us an ordeal of the most grievous kind.¹²

Here Churchill reversed the pattern, starting with Saxon (*blood, toil, tears, and sweat*) and reiterating with Romance (*ordeal and grievous*). The real, physical sacrifices are named and then connected to the abstract concepts.

I've created examples by modifying text from appellate briefs:

The jury justifiably relied on the photographic evidence because images are unable to prevaricate; pictures cannot lie.

Here, *image, able, and prevaricate* are Romance; *cannot and lie* are Saxon. The lofty legal concepts are made concrete. Another example:

Albrecht's only obligation under the order was to remunerate the seller for the vehicle she purchased—to pay for what she bought.

The Saxon Finish

With this technique, you state a single proposition, but after beginning with Romance words, you finish with Saxon. Oliver Wendell Holmes did it well. Here are two examples from his dissenting opinions—the Saxon Finish is italicized:

If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be *given their chance and have their way*.¹³

[I]f there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but *freedom for the thought that we hate*.¹⁴

Holmes builds up to a big idea with Romance words; then he states the idea with Saxon words. The result is a forceful wrap-up. I'll give it a try:

Petrolco asks this court to affirm the trial court's interpretation of section 216(b) so that punitive damages are grafted onto the text—an interpretation that produces an entirely different class of remedy from mere legislative silence. Petrolco asks too much.

The drug would be located in the deceased's system only under illicit conditions because having the drug is against the law.

Granted, these techniques are used most often used in speech. Still, you should add them to your toolkit for persuasive legal writ-

ing. They constitute sophisticated rhetorical devices—they're tools of plain English.

Quiz answers

1. ask/inquire, buy/purchase, eat/consume, see/observe, talk/converse
2. chicken/poultry, cow/beef, deer/venison, sheep/mutton, pig/pork
3. cogitate/think, emancipate/free, imbibe/drink, inundate/flood, masticate/chew ■



Wayne Schiess teaches legal writing at the University of Texas School of Law and works in the school's Beck Center for Legal Research, Writing, and Appellate Advocacy. He is the author of *Legal Writing Nerd: Be*

One and Plain Legal Writing: Do It, and was the drafting consultant for the Texas Pattern Jury Charges Plain-Language Project. Find him and his blog, LEGIBLE, at <http://legalwriting.net>.

ENDNOTES

1. Fowler & Fowler, *The King's English* (Oxford: The Clarendon Press, 1906), p 1.
2. Strunk & White, *The Elements of Style* (4th ed) (Edinburgh Gate: Pearson Education Ltd., 2000), p 77.
3. Crystal, *The Stories of English* (New York: The Overlook Press, 2004), p 152.
4. *Id.*
5. *Id.*
6. Adams, *A Manual of Style for Contract Drafting* (3d ed) (Chicago: ABA Publishing, 2013), pp 6–7.
7. *Id.* at 7.
8. *Id.* at 292–293.
9. Garner, *Judges on Effective Writing: The Importance of Plain Language*, 80 Mich B J 44, 44–45 (2005).
10. *Id.*
11. Roy P. Basler, editor, *The Collected Works of Abraham Lincoln* (New Brunswick, New Jersey: Rutgers University Press, 1953), p 147.
12. Winston S. Churchill, editor, *Never Give In! Winston Churchill's Speeches* (London: Bloomsbury Academic 2013) p. 169.
13. *Gillow v New York*, 268 US 652, 673; 45 S Ct 625; 69 L Ed 1138 (1925).
14. *United States v Schwimmer*, 279 US 644, 655; 49 S Ct 448; 73 L Ed 889 (1929).