

Syllabus
Ling 597.02
Language and the Law: A Cross-Cultural Perspective

Instructors: Professors David Odden and Craige Roberts

The seminal legal work *The Language of the Law* (Mellinkoff 1963; Boston, Little, Brown) states cogently that “the law is a profession of words”, and the central aspect of language of importance for the law is how statements are interpreted. Issues of interpretation are constantly before the courts, even in relatively homogeneous, monolingual cultures: One type of question which arises is to what extent the law, or expert opinion more generally, can determine the meaning of a word. What authority does a court have to interpret the language of a badly written law? What makes a dictionary an authoritative source about the meaning of a word? Are there times when that supposed authority should be over-ridden by evidence from colloquial usage? Is a corporation a kind of person? Who (other than the U.S. Supreme Court) says a tomato is not a fruit? Of equal importance is the question of whether the law operates in terms of intent, or only in terms of the literal meaning of the words we use. For example, what a person is attempting to communicate is often not evident in the literal form of a sentence: “Can you pass me the salt?” is most often used not to ask about a person’s physical abilities, but is an indirect request for salt. And we know that in determining libel or perjury it can be entirely misleading to take what someone says out of context. But even though we know the context in which someone’s utterances were made, how can we determine confidently what that person intended?

Language is used in special ways in the court, and this usage can have a profound impact on legal proceedings. Language prejudices may play a role in evaluating witness credibility. How does the wording of a question influence eyewitness memory, or jury interpretation? There are also many linguistically-related evidentiary issues including hearsay, authentication, the scientific foundation of language material such as dialect, acoustic evidence (“voiceprinting”) or stylistics as grounds for making an identification, and the rules governing expert witnesses in these areas. Jury instructions can be of great importance in determining the outcome of a case, and are often the subject of careful scrutiny under appeal. But to what extent can a jury of peers understand and apply the law? Do they understand the concept “beyond a reasonable doubt” vs. “preponderance of evidence”? How does the law deal with jury non-comprehension?

Compounding all of this, our social environment is increasingly global, with networks of association extending across heterogeneous cultures with different languages and linguistic traditions. Nowhere are the challenges presented by this new melting pot more evident than in the practice of law. It is a common tenet of legal systems that it is the citizen’s responsibility to be informed of the law, so that ignorance is no excuse for violation. But is this a fair and reasonable assumption in a culture which effectively restricts access to the law, to legal documents, and to the understanding of legal proceedings to parties who speak the dominant language of that culture? Is this a fair and reasonable assumption even for those who speak the dominant language, when the

meaning of the law is derived by special rules, not the rules of colloquial usage? Do citizens have linguistic rights under law, as well as responsibilities? Do non-citizens? And how is the law to be codified and interpreted in a multi-lingual culture? When does a person whose first language is not that of the court have a right to an interpreter? Does an immigrant child have a right to be schooled in her first language? In a post-colonial situation, where the majority of the citizens of a country are not schooled in the language of the government and courts, how can the law be fairly disseminated and administered? If a law is to be administered in multiple languages, how can it be translated in such a way as to preserve the precise intent of the framers? In a related problem, in the European Union there are 20 different languages spoken by the citizens of the member countries. Each law enacted by the EU parliament must be translated into all of those languages. But translation is more of an art than a science, so that accurately preserving the intended meaning of the original presents serious difficulties. How can the laws of the union be effectively translated so as to carry the same meaning for all those citizens?

In this course, we will study the relationship between language and the law, touching on:

- the importance of language in the law and how the legal system views language
- the features and structures of legal language, and its origin and motivation.
- the role of interpretation under the law, the necessity of a dual standard of interpretation for citizens vs. legal professionals, and how these standards can be reconciled. Also, various kinds of linguistic misunderstanding and ambiguity in interpreting contracts and in analyzing legal cases.
- language rights in general, in a multicultural setting; how legal language affects comprehension, and what burden the law imposes on ordinary citizens to understand legal language.

In the discussion of questions of interpretation, we will focus on real court cases, mostly in the U.S. legal system, which illustrate the challenges and pitfalls that interpretation presents to the courts. We will study questions of language rights through a variety of international legal instruments, such as the UN's Universal Declaration of Human Rights, the UNESCO constitution, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the Treaty of the European Union, and the Charter of Fundamental Rights of the European Union. We will especially compare various national constitutions with provisions bearing on language rights, which range from the very extensive provisions in the constitutions of South Africa and India which are designed to protect linguistic rights, through legal systems which provide a definite prejudice in favor of one or two national languages, as in the constitutionally asserted duty of all Spaniards to know Castilian Spanish (which circumvents the citizen's right to an interpreter found in many constitutions and has been used to restrict the use of Basque in official functions), to more discriminatory constitutional requirements such as the Iranian requirement that official documents and even text books be written in Persian, culminating in the Turkish constitutional prohibition against the teaching of any language other than Turkish as a mother tongue. And we will look briefly at the closely related question of the rights of speakers of African American Vernacular English (aka *Ebonics* by the Oakland Schools) to special education in that dialect of English in the schools.

Course Requirements:

There will be three quizzes, one each in week 2, 5 and 7, which account for 30% of the grade each. Students will be assigned a short paper (five pages) which address a theme drawn from the first half of the course, due in week four; which will account for 20% of the grade. Students will also write a longer term paper (ten pages) which accounts for 30% of the grade; suggestions for themes will be offered by the instructors during the fourth week of the term. A rough draft of the term paper must be turned in for comments by the end of week eight; students will receive 5% of their grade for turning in a complete draft, without any expectation that it will be polished at that point. Class participation (readiness, evidence of thoughtful consideration of the issues at hand, contributions to class discussion) will account for the remaining 15% of the grade.

Students with Disabilities: Students who need some accommodation because of a disability must contact the instructor to arrange an appointment as soon as possible to discuss the course format, to anticipate needs, and to explore potential accommodations. The instructor relies on the Office of Disability Services for assistance in verifying the need for accommodations and developing accommodation strategies. Students who have not previously contacted the Office for Disability Services are strongly encouraged to do so (614-292-3307; www.ods.ohio-state.edu).

Academic Misconduct: Academic dishonesty will not be allowed under any circumstances. Cheating on tests or on other assignments will be reported to the University Committee on Academic Misconduct. The most common form of misconduct is plagiarism. Remember that any time you use the ideas or the materials of another person or persons, you must acknowledge that you have done so in a citation. This includes material that you have found on the Web. The University provides guidelines for research on the Web at <http://gateway.lib.ohio-state.edu/tutor/>.

Readings:

The basic texts for the course will be:

Solan, Larry (1993) *The Language of Judges*. University of Chicago Press.

Tiersma, Peter (1999) *Legal Language*. University of Chicago Press.

We will also have a reader, including:

Cardozo, Benjamin. (1921) *The nature of the judicial process*. Yale University Press, "Introduction", pp. 1-30.

Coleman, Linda & Paul Kay (1981) Prototype semantics: the English word *lie*. *Language* 57: 26-44.

Conley, John M. & William M. O'Barr (1998) *Just Words: Law, Language, and Power*. University of Chicago Press. Extracts.

Crawford, James (ed.) (1992) *Language Loyalties: A Source Book on the Official English Controversy*. University of Chicago Press. Selected chapters from Part VI: International Perspectives on Language Politics.

- Cruse, Alan (2000) *Meaning in Language: An Introduction to Semantics and Pragmatics*. Oxford University Press. Chapters 1-3.
- Diamond, S. & J. Levi (1996) Improving Decisions on Death by Revising and Testing Jury Instructions. *Judicature* 79.
- Eagerlson, Robert (1994) Forensic analysis of personal written texts: a case study. In John Gibbons (ed.) *Language and the law*, Longman, London.
- Greenawalt, Kent (1995) *Fighting words: individuals, communities, and liberties of speech*. Princeton University Press. Ch. 4: Insults, epithets and 'hate speech'.
- Johnson, K., D. Pisoni & R. Bernacki (1990) Do voice recordings reveal whether a person is intoxicated? A case study. *Phonetica*.
- Joseph, John E. (1995) Indeterminacy, translation, and the law. In Morris (1995).
- Kontra, Miklos (1996) Language Rights arguments in Central Europe and the USA: How similar are they? In Douglas A. Kibbee (ed.) *Language Legislation and Linguistic Rights: Selected Proceedings of the Language Legislation and Linguistic Rights Conference*. IMPACT: Studies in Language and Society, Volume 2.
- Kunz, Keneva (1995) Where the Devil Meets his Grandmother: Iceland and European Community Legislation. In Morris (1995).
- Monaghan, Leila (1997) Column on the Ebonics controversy for the February 1997 newsletter of the Society for Linguistic Anthropology. Available online at <http://www.stanford.edu/~rickford/ebonics/>.
- Morris, M. (ed.) (1995) *Translation and the Law*. Philadelphia: John Benjamins. Selected articles.
- Norgren, J. & S. Nanda (1988) *American Cultural Pluralism and the Law*. New York, Praeger. Ch. 10: Language, culture, and the courts.
- Nunberg, Geoffrey (1992) Afterward. In Crawford (1992).
- Smith, Sylvia A. (1995) Culture Clash: Anglo-American Case Law and German Civil Law in Translation. In Morris (1995).
- Solan, Larry (1999) Refocusing the burden of proof in criminal cases: some doubt about reasonable doubt. *Texas Law Review*
- Tiersma, Peter (1987) The language of defamation. *Texas Law Review*.
- Tiersma, Peter (1990) The Language of Perjury: 'Literal Truth,' Ambiguity, and the False Statement Requirement. *Southern California Law Review* 63.
- Tiersma, Peter (1995) Dictionaries and death: do capital jurors understand mitigation? *Utah Law Review*.

And the following statutes and legal decisions:

- Act No. 2972 of The Philippines
- Bronston v. US (409 US 352)
- Chaplinsky v. New Hampshire (315 U.S. 568)
- Church Of The Holy Trinity v. US (143 U.S. 457)
- Free v Peters (12 F.3d 700)
- Mcboyle v. US (283 U.S. 25)
- Meyer v. Nebraska (262 US 390)
- Nix v. Hedden (149 U.S. 304)
- People of the State of NY v. Network Associates (Supreme Court of New York, No. 400590/02)

Roth v. US (354 U.S. 476)
Smith v. US (507 US 197)
US v. Clifford, 704 F.2d 86, 90 (3d Cir. 1983)
US v. X-Citement Video (513 U.S. 64)
US v. Yermian (468 U.S. 63)
Weeks V. Angelone (528 U.S. 225)

The following materials can be accessed on-line:

The United Nations' Universal Declaration of Human Rights:
<http://www.un.org/Overview/rights.html>
The Constitution of the United Nations Educational, Scientific, and Cultural Organization (UNESCO):
http://www.icomos.org/unesco/unesco_constitution.html
The African Charter on Human and Peoples' Rights:
<http://diplo.diplomacy.edu/africancharter/>
The American Convention on Human Rights ("Pact of San Jose, Costa Rica"):
<http://www.oas.org/juridico/english/Treaties/b-32.htm>
The Treaty on European Union: <http://europa.eu.int/en/record/mt/top.html>
The Charter of Fundamental Rights of the European Union:
http://www.europarl.eu.int/charter/default_en.htm
The Constitution of the Republic of South Africa:
http://www.southafrica.info/ess_info/sa_glance/constitution/constitution.htm
The Constitution of India: <http://www.constitution.org/cons/india/const.html>
The Constitution of Spain: <http://www.congreso.es/funciones/constitucion/>
English translation: http://www.igsap.map.es/cia/dispo/ce_ingles_index.htm
The Constitution of the Islamic Republic of Iran:
English translation: <http://www.iranonline.com/iran/iran-info/Government/constitution.html>
The Constitution of the Republic of Turkey:
English translation: <http://www.mfa.gov.tr/grupc/ca/cag/I142.htm>

Class topics:

I. Basics (3 weeks)

Legal basics. Systems of law (common law, Roman law) and types of law (criminal and civil law), statutes and judicial construal; torts, statutes, fundamentals of contract law; the perspective of the "reasonable man"

Read: Cardozo.

Meaning basics. Literal meaning vs. conveyed meaning; presupposition; the role of context in interpretation; common ground; translation

Read: Cruse.

Plain language v legal language. How the historical foundation of the law results in specialized use of language in the quest for precision; a study of legalese, plain English as a vehicle for law

Read: Tiersma (1999) Ch. 1-5, 12-13.

Word definitions and the law. Case studies in how words are given special interpretations

Read: Tiersma (1999) Ch. 6; Solan (1993) Ch. 6; McBoyle v. US; Nix v. Hedden; Smith v. US; Church Of The Holy Trinity v. US; People of the State of NY v. Network Associates.

Utterance Interpretation in the Law. Meaning above the word level: anaphora, operator scope, and other issues in interpretation

Read: Solan (1993) Ch. 2-5; US v. X-Citement Video, US v. Yermian

II. Language in the Courtroom (3 weeks)

Lying, perjury, fraud

Read: Coleman & Kay; Tiersma (1990); Tiersma (1999) Ch. 10; US v. Bronston.

Courtroom conduct. The dynamics of asking questions and shaping juror inferences; linguistic factors regarding witness credibility.

Read: Tiersma (1999) Ch. 9; Conley & O'Barr

Jury instructions

Read: Tiersma (1999) Ch. 14; Free v Peters; S. Diamond & Levi; Tiersma (1995); Solan (1999)

Language evidence. Trademark infringement; speaker/author identification.

Read: Johnson, Pisoni & Bernacki; Eagerlson; US v. Clifford

III. Language and Law Across Cultures (4 weeks)

Laws about language (freedom of speech, defamation, obscenity)

Read: Chaplinsky v. New Hampshire; Roth v. US; Tiersma (1987); Greenawalt

Language rights and the legal status of languages.

Read: Kontra; Nunberg; Monaghan; on-line declarations, charters, and constitutions

Translation and the law. (promulgation and translation of laws and legal proceedings in multi-lingual jurisdictions)

Read: Joseph; Kunz; Smith; Norgren & Nanda; European Charter for Regional or Minority Languages: <http://conventions.coe.int/Treaty/en/Treaties/Html/148.htm>

