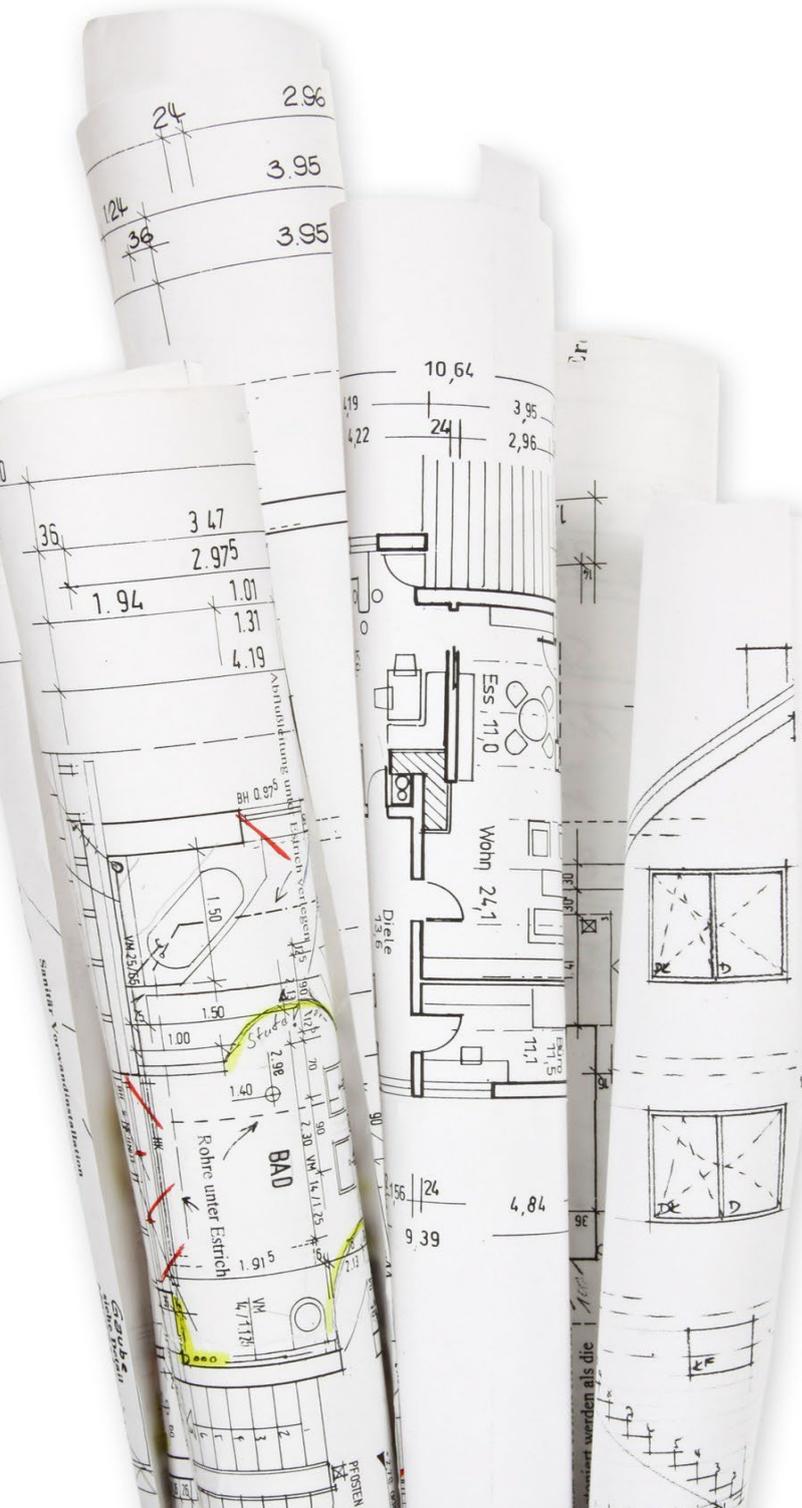


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Legalese in Professional Construction Industry Agreements

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Legalese contains long, wordy, complicated sentence structures utilizing passive voice and obsolete formalisms, and the usage of Latin, archaic or unnecessarily long words when simpler and clearer language exists. (*Even the prior sentence could be considered too long, and looks a bit “legalese.”*) By using plain language in contracts, you show those that you work with that you’re trustworthy. You are not hiding behind legalese. And there’s a lower risk of misunderstandings, disagreements, and possible lawsuits when using straightforward language.

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That being said, legalese still exists. It is the specialized language of the legal profession, according to Merriam-Webster. However, it's a type of business jargon with a bad rep for being confusing, dense, overly complicated, and wordy to the max. Lawyers may understand it, but what about everyone else?

<https://thecontractshop.com/blogs/posts/ditch-the-legalese-why-plain-language-contracts-are-better>

HISTORY

Since and because of the Norman invasions, the legal language shifted over to Anglo-Norman and then to French, which is why many words in legal English we use now are actually derived from the French language. Current "legal English" is a mishmash (slang) of old English, Latin and French.

REASONS WHY LEGALESE HAS BEEN USED

If lawyers don't even like using legalese and barely anyone can understand it, why is it still used for legal documents? There are a few possible reasons.

- Some lawyers and non-lawyers can probably find templates written in legalese more easily than ones written in plain language.
- Legal professionals are used to legalese. Some accept it, from the people who agree that they're legally enforceable to those who sign contracts and just hope for the best.
- Overall, legalese is useful lingo in many scenarios. It allows lawyers to speak in an efficient way possible and allows them to communicate their points to one another and a judge in a way that is easily understood in the legal society.
- You might even think that legalese is used to protect the legal profession and keep lawyers in demand.

EXAMPLES OF LEGALESE

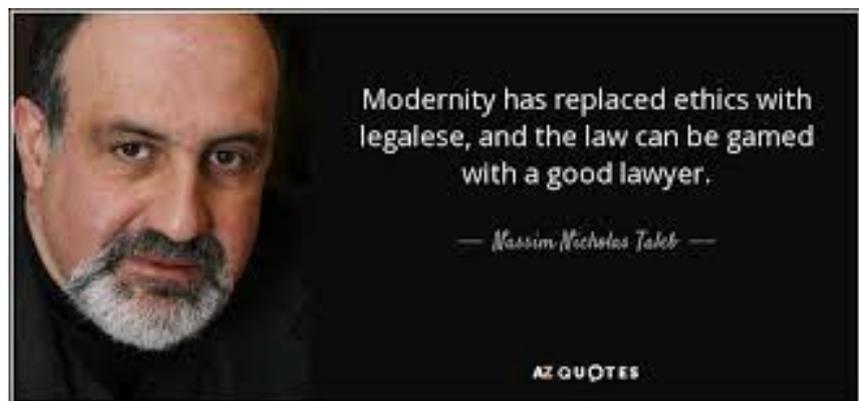
- **Indemnification:** The aforementioned **Second Party** agrees to indemnify, defend and hold harmless the **First Party** and its directors, officers, representatives, agents, consultants, sub-consultants and employees from and against any and all third party damages (either direct, indirect or consequential), losses, demands, claims, actions, causes of action, judgments and attorney fees in any dispute forum in the state and jurisdiction of the project location, to the extent arising out of or in connection with the breach contract or warranties (express or implied) and negligent acts or any performances, omissions, activities, or any of its officers, agents or employees, while the **Second Party** shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omissions of the **First Party**. *(A long convoluted sentence is to be avoided.)*
- **In witness whereof**, the parties hereunto have set their hands to these presents as a deed on the day month and year hereinbefore mentioned. *(Translated from legal speak to*

plain English, this sentence simply refers to the “Date” line that often follows a signature.)

- **For the avoidance of doubt:** A somewhat cerebral phrase often used to introduce such a rephrase, is for the avoidance of doubt (or, equally, for the sake of clarity). It attempts to make something explicit that should have been already be covered by the preceding wording but could (reasonably or arguably) be interpreted otherwise. *(But a rephrased sentence introduces a risk that the two sentences partly contradict each other.)*
- **As the case may be** is typical contract language and often redundant. In short, “as the case may be” means depends on the circumstances. *(The phrase ...as the case may be... is used immediately after a sequence of words of which only one word is applicable to the circumstances of the contract provision.)*
- **Hereinbefore mentioned** *(This can be replaced by “as previously stated.”)*

IN CONCLUSION

One thing is for sure, legalese will be used for the foreseeable future, despite its criticism.



<https://www.azquotes.com/quote/684198>

About the Author of this Risk Management Building Block Article

As a risk manager for the last 18 years for the design profession, Eric has experience in professional liability insurance and claims, architecture, engineering, land use, law, and a unique background in the construction industry. Prior to risk management, he has 25 years of experience in the practice of architecture/engineering, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 35 years at Kent State University's College of Architecture & Environmental Design.

As a Fellow of the American Institute of Architects and AIA National Ethics Council 2021 Chair, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals since 2000 on topics of ethics, contracts, and professional practice in various venues across the United States and Canada. He is a former member and chair of his city's Board of Zoning & Building Appeals for 24 years, and is a licensed architect, attorney, and property & casualty insurance professional.

His educational background includes a JD from Southwestern University School of Law, Los Angeles; Master of Science in Architecture from University of Cincinnati; and BA in psychology/architecture from Miami University, Oxford, Ohio.

The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities and should not be construed to represent a determination of legal issues but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.

Disclaimer: The viewpoints expressed in this article are those of the author(s) and are not necessarily approved by, reflective of or edited by other individuals, groups, or institutions. This article is an expression by the author(s) to generate discussion and interest in this topic.

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