Language and the Law: A Cross-Cultural Perspective

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A lot of crucial material will be made available via the web page, so plan to use it extensively.

Course Description:
Mellinkoff states cogently in *The Language of the Law* (1963; Boston, Little & Brown) 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. To what extent can the law, or expert opinion, determine the meaning of a word? What authority does a court have to interpret the language of a law? Should authoritative meaning be over-ridden by evidence from colloquial usage? Is a tomato a fruit, and why does it matter? 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. It can be misleading to take utterances out of context, and even if we know the context of an utterance, can we determine confidently what that person intended?

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. 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?

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 citizens to understand legal language.

Course Requirements:
There will be two quizzes, one each in weeks 5 and 9, which each account for 15% of the total grade. Students will be assigned a short paper (3300 words—roughly five pages), due in week four, which will account for 20% of the grade. Students will also write a longer research paper (6600
words—roughly ten pages) which accounts for 30% of the grade. A rough draft of the final paper must be turned in for comments in the beginning 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. Late work will not be accepted. Students should have read the assigned materials before the class meeting on which they are scheduled to be discussed; lack of preparation to discuss them in class will count against the class participation portion 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 (this will be the subject of your first paper).

Readings: The basic texts for the course will be

Relevant cases to read will be announced later (look under the “essential cases” link). We will also assign the following articles and book chapters. Two are handed out (“H”), some are available online (“O”) for which check the “online readings” part on the web page; the rest are in the reader (“R”) through Zip Publishers:

R Barker, Chris (in press) Lexical Semantics. LALI 2: Elsevier
O European Charter for Regional or Minority Languages.


O Solan, Larry (1999) Refocusing the burden of proof in criminal cases: some doubt about reasonable doubt. 78 Tex. L. Rev. 105

O Tiersma, Peter (1987) The language of defamation. 66 Tex. L. Rev. 303


R Tiersma, Peter (1999) *Legal language.* U. Chicago Press (Ch 4-5, 10, 14)

**Topics and Readings:**

**I. Basics (3.5 weeks)**

*Week One: Tues 3/29 & Thurs 3/31:*

**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”.

*Week Two: Tues 4/5 & Thurs 4/7:*

**Meaning basics.** Basic semantic concepts and relations: literal meaning vs. conveyed meaning; entailment; synonymy; presupposition and implicature.

*Week Three: Tues 4/12:*

**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

*Weeks Three and Four: Thurs 4/14 & Tues 4/19:*

**Word definitions and the law.** Cases where word meaning is central.

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

**II. Language in the Courtroom (3 weeks)**

*Weeks Four and Five: Thurs 4/21, Tues 4/26 & Thurs 4/28:*

**Lying, perjury, fraud**

*Week Six: Tues 5/3 & Thurs 5/5:*

**Legal Discourse and Power in the Courtroom.** How attorneys guide courtroom interaction, and thereby wield greater power than witnesses; the impact of this inequality on disadvantaged witnesses. The dynamics of asking questions and shaping juror inferences.

*Week Seven: Tues 5/10:*

**Jury instructions:** Do jurors understand what they are supposed to do?

**III. Language and Law Across Cultures (3.5 weeks)**
Weeks Seven and Eight: Thurs 5/12 & Tues 5/17:
Laws about language. Freedom of speech, defamation, obscenity.

Weeks Eight and Nine: Thurs 5/19, Tues 5/24 & Thurs 5/26:
Language rights and the legal status of languages.

Week Ten: Tues 5/31 & Thurs 6/2:
Translation and the law. Legal proceedings in multi-lingual jurisdictions.

Course Schedule:

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<tr>
<th>TUESDAY</th>
<th>THURSDAY</th>
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<tbody>
<tr>
<td>Week 1</td>
<td>3/29 Legal Basics</td>
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<tr>
<td>Week 2</td>
<td>4/5 Meaning Basics. Read: Chierchia &amp; McConnell-Ginnet, Handout</td>
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<tr>
<td>Week 5</td>
<td>4/26 Lying, perjury, fraud, cont’d. Quiz #1: covering readings and lectures from Part I of course. Read: Tiersma (1990)</td>
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<td>Week 8</td>
<td>5/17 Laws about language, cont’d. Draft of final paper due in class. Read: Greenawalt, European Charter</td>
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<td>Week 9</td>
<td>5/24 Language rights and the legal status of languages, cont’d. Quiz #2: covering Part II of course and Laws about Language. Read: Nunberg; Monaghan</td>
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<tr>
<td>Week 10</td>
<td>5/31 Translation and the law. Read: Kunz</td>
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Notice is hereby given that the aforementioned course shall henceforth be conducted in compliance with the provisions of Ohio Revised Code sections 4705.01 and 4705.07, and that said instructors to wit those who are engaging in the instruction of the said course renounce any and all implications as to any statutory entitlement under the aforementioned Ohio Revised Code to act, conduct business as, or practice those activities so stated under ORC 4705.01 to be restricted to those parties who have been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, to wit, those actions referred to and commonly know as but not limited to being a “lawyer,” “attorney at law,” “counselor at law,” or other equivalent words, by the act of conducting the act defined as “instruction” with respect to said course. The aforementioned instructors do hereby testify, swear and give oath that except as provided by ORC 4705.07 (A)(3), those educational activities pursued in the said aforementioned course are in compliance with all applicable statutes and regulations to the best of the knowledge of the parties of the first part, and should in no way be construed as constituting the act of “practicing law” or “giving legal advice” as hitherto proscribed, regulated and prohibited in accordance with Ohio statutes. Compliance with ORC 4705.07 (A)(3) is to be determined in accordance with the provisions, conditions, stipulations and procedures established and set forth under and wholly contained in ORC 4705.07 (B)(2): no representation, material, factual, substantive or otherwise, is made as to the said statutory conditions, in compliance with the conditions of ORC 4705.07. The conditions of this disclaimer are subject to all applicable state, local and federal laws, rules, regulations and administrative of judicial decisions rendered by duly authorised regulatory, legislative and judicial bodies, and do not in and of themselves disparage any further rights which may or may not be guaranteed statutorily by any parties so affected, or otherwise.