Legal Language—An Introduction

I. Terms and Conventions of Legal Writing

- This chart has two distinct purposes: (1) to help you understand judicial opinions as you *read* them, and (2) to help you *write* within the conventions of legal language. For this reason, it includes both more oblique terms and phrases that I would not recommend you use and common contemporary phrases that I would—please see the notes on meaning and use before using them in your own writing. The chart also includes some substantive definitions for legal terms that are sufficiently common in practical legal writing to be immediately useful.
- Terms are in alphabetical order.

Word/Phrase	Meaning/Use
"Accordingly,"	Used to demonstrate a conclusion; in a judicial opinion usually indicates some kind of holding (e.g., "Accordingly, we affirm.")
"Ad hoc"	Latin for "to this" as in "to this particular set of circumstances." Used to mean "designed exclusively to address a particular problem or set of circumstances." It is typically used pejoratively in legal writing; if you refer to the "ad hoc" law or judging in a particular area, you are suggesting that the case law is not based on coherent legal principles but just the facts of each particular case.
"Adduce"	"Put forward;" invariably used with "evidence" (e.g., "The government has failed to adduce sufficient evidence of intent . . . .")
"Allege"	This has a formal legal meaning you should be aware of. In ordinary speech, allege just means claim without definitive evidence. In the law, we say that the plaintiff "alleges" violations of the law before putting forward evidence, or that the government "alleges" violations of criminal law. As you'll learn in civil procedure, a plaintiff puts these "allegations" in a document called a complaint that initiates a lawsuit. You generally don't want to use "allege" in legal

	contexts unless you are using it in its formal legal sense, so don't use it to refer to claims that have been proven in a court of law even if you are trying to convey skepticism that they are true. (e.g., "The plaintiff alleges that the defendants breached the contract on four separate occasions.").
"And," "But," and "Because"	Routinely used to start sentences in legal writing, and there is nothing wrong with that
"Analogous"	A case is "analogous" if the legally-relevant facts are sufficiently similar that the outcome of both cases should be the same. (e.g., "*Dixon* is analogous.").
"Arguendo"	Latin; "for the sake of argument," generally used with "assuming" (e.g., "Assuming *arguendo* that the plaintiff has alleged that the defendant breached a duty, she still cannot show damages.")
"As here"/"in this case"	Two ways to refer to the case currently under discussion. ● "Where, as here, ..." can be an efficient construction for conveying a rule and beginning the analysis of its application in this case ● "In *Jones*, as here," can be an efficient construction for analogizing meaningful facts from *Jones* ● These ways of referring to "this case" mean the same thing and are almost always better than more archaic (you will definitely see them, but I would not recommend using them) constructions such as "the case at bar" and "the instant case"
"barred"	An argument or claim is "barred" when some procedural or jurisdictional rule prevents it from being heard. A claim is "time-barred" when the statute of limitations is the procedural rule that bars it. (e.g., "Because the appellant did not raise the issue of estoppel in her initial brief, she is barred from asserting it in reply.").

“bear/carry/meet the burden”	When a party has a “burden” under the rules of procedure (e.g., the plaintiff has the burden of showing by a preponderance of the evidence each element of his claim), we say that the party has “borne,” “carried,” or “met” their burden when they have put forward sufficient evidence (e.g., “The plaintiff has not carried his burden to show that the defendant owed him a duty.”)
“Black letter”	Used to refer to two distinct things: (1) the standard phrasing of a widely-accepted legal principle, generally of the common law; synonymous with the “treatise law” or “hornbook law” in this context (e.g., “The black letter law is that contracts entered into without sufficient mental capacity are voidable.”); (2) law school courses that focus on substantive legal doctrines, also referred to as “doctrinal courses,” typically in contrast to seminars or clinical courses (e.g., “I was surprised how much I enjoyed my black-letter courses in law school.”)
“Body” of cases/case law	A number of similar but not necessarily directly related cases, possibly from many different jurisdictions, with similar holdings (e.g., “There is a body of case law in the federal courts holding that review of administrators’ decisions under ERISA is only for abuse of discretion.”)
“Bright-line rule”	A determinate, binary rule. This term is used in contrast to a “standard” or “balancing test,” which are legal rules that involve more judgment and discretion for judges (e.g., “Given the vast complexity of this area, we decline to impose a bright-line rule and resolve to judge each case on its facts.”)
“Bring” a case	We say that a plaintiff “brings” a case when they sue. (e.g., “The plaintiff brought this case on October 9, alleging violation of the Fair Credit Reporting Act.”).
“Cabin”	Of arguments or principles; to limit or constrain. We often say that courts “cabin”

	legal rules when they limit the set of factual circumstances to which they apply. (e.g., "In *Washington v. Davis*, the Supreme Court cabined the application of the Equal Protection Clause to cases involving intentional discrimination.").
"Cause of action"	The formal mechanism allowing a particular plaintiff to bring a lawsuit for a particular kind of harm against a particular defendant (or the set of facts that satisfy the formal requirements for bringing such a suit). If there "is no cause of action" for a particular kind of harm, the plaintiff simply cannot sue based on that harm. It is often used interchangeably with "claim" (in its formal sense) in legal writing. (e.g., "The common law recognizes a cause of action for breach of contract where . . .").
"Case law"	The law created by judicial opinions, as opposed to statutory or regulatory law. (e.g., "There is a great deal of case law on the meaning of 'the equal protection of the law.'").
"Claim"	This has two common uses in legal writing: (1) As a formal legal term, referring to the plaintiff's "claim" for a remedy from a defendant for violating the law (e.g., "The plaintiff brought a claim for negligence against the defendant.") (2) In its ordinary English meaning, to cast skepticism on a story that you do not agree with. ("The defendant claims that none of this took place . . . .").
"De minimis"	An amount that's too small for consideration in law. You might use it where the word "negligible" goes too far in suggesting that it's effectively nothing, but it's still too small for consideration. (e.g., "Although Sanchez may have received some de minimis benefits from her employer's advertising . . . .").
"Dispositive"	A fact or case that answers the question and closes the case (e.g., "The dispositive fact is

	that my client was not drunk, and therefore cannot be guilty of drunk driving.")
"Distinguishable"	Used to describe potentially analogous cases that are in fact meaningfully different from this case (e.g., "*Jones v. Smith* may appear to govern this case—indeed, *Jones* similarly involved A, B, and C. But *Jones* is distinguishable.")
"Doctrine"	A legal "doctrine" is a longstanding legal rule supported by a large body of consistent case law. So the "doctrine of capacity" is the rule that says that one must have sufficient mental capacity to enter into a contract, and explains what that means through cases. In law school, we speak of "doctrinal" classes as those focused on teaching legal rules, such as most of your 1L courses.
"Evince"	Reveal; generally used to describe someone else's misunderstanding (e.g., "The opposing party's reliance on *Jones v. Smith* evinces their misinterpretation of the facts of this case."), or congressional intent (e.g., "We have found no legislative history evincing a congressional intent . . . .").
"equipoise"	Used to refer to when the evidence is roughly equal both ways, and when the burden of proof is dispositive (e.g., "Where the evidence is in equipoise, the party with the burden loses.").
"estop/estoppel"	Basically just Old French for "stop," though has a more technical procedural sense, about which you will learn in Civ Pro. Used to refer to when, for reasons of basic litigation fairness, a party is stopped from adopting a particular position. (e.g, "Because the defendant led the plaintiff to believe that it would not be relying on the statute of limitations as a defense, it is estopped from doing so now.")
"Facially"/"on its face"	Used to refer to a quality of a text that is

	obvious and inherent, as opposed to in application of the text (e.g., "The contract is facially ambiguous" is the opposite of saying that the contract is applied in an ambiguous manner).
"First impression"	When a case must answer a legal question that has not yet been answered in the particular jurisdiction, it is a "case of first impression." The question is a "question/issue of first impression."
"First instance"	Often used in reference to the entity that should be entitled to consider a particular argument for the first time, subject to review (e.g., "Because this question turns on resolving complex issues of fact, the jury ought to be permitted to rule on the claim in the first instance.")
"Finds no support"	A common phrase used in arguing that a particular interpretation of a statute is wrong (e.g., "The defendant's strained interpretation of the ACA finds no support in the text or history of the statute.")
"governing/controlling"	Used to refer to binding precedent or statutes (e.g., "Under governing case law, ..."; "*Jones v. Smith* controls here;" "*Jones v. Smith* governs.").
"gravamen"	Used to refer to the "essential point" (e.g., "The gravamen of the plaintiff's case is that the defendants conspired to defraud her.").
"indemnify"	A legalese word meaning "to compensate for loss;" its technical sense usually refers to compensating for loss caused by or to a third party (e.g., "Defendant agreed to indemnify plaintiff for any loss arising from their repair of the boiler.")
"In pertinent/relevant part"	Used when quoting or referring to only the relevant part of a larger statute or case (e.g., "The Food, Drug, and Cosmetics Act, in pertinent part, requires the FDA to review applications for new drugs.").

“In re”/“Ex parte”	Most of the cases you read are titled X v. Y. Some will be In re X or Ex Parte Y. This does not really matter, these are just the names of the cases. What is actually going on here is that some American legal proceedings, like probating a will, are not adversarial.
“Inapposite”	Used to mean the same thing as “distinguishable,” or, perhaps even more strongly, “irrelevant.” (e.g., “*Jones* is inapposite”)
“Injunction”/“enjoin”	An injunction is a court order (an “equitable form of relief,” see “equity” below) to prevent someone from doing something. That is, it is an order that actually affects behavior, as opposed to providing “damages,” or compensating for a breach of the law after it happens. The verb form of the word is “enjoin,” so, “The plaintiff sued the government to enjoin enforcement of the statute alleged to be unconstitutional.”
“Instructive”	We say a case is “instructive” when it is “analogous” or where analyzing the facts of the case help illuminate something important about the rule in this case (e.g., *Smith* is instructive.”)
“Inter alia”	Means “among other things” in Latin (e.g., “The defendant was charged with, *inter alia*, possession of a firearm by a convicted felon.”)
“Line” of cases	A historically sequential series of related cases from a single jurisdiction that can be characterized as having a progression (e.g., “In a line of cases culminating in *Miranda v. Arizona*, the Supreme Court made clear its skepticism towards confessions and the police practices then used to obtain them”)
“Moot”	This has a technical legal definition, so be careful about using it in your writing—a case is moot when the court has no power to afford relief in actual fact because of events that took

	place after the filing of the case. For example, a case is moot if the law the plaintiff was claiming was unconstitutional is repealed before the court can rule on it, or if a student who sued to get into a school was let in anyway and they have now graduated—in both instances whatever the court says has no direct and immediate effect on the world. There's a whole body of law about what makes a case moot and exceptions to it that you will learn elsewhere, but for now only use the word if you are trying to use it in this technical sense, not in its broader ordinary sense.
"Notwithstanding"	A staple of legal writing, this means "even though" or "in spite of." (e.g., "Notwithstanding its constitutional infirmity, the plaintiffs rely exclusively on the statute to bring this case.").
"Of opinion"	A weird and archaic way some courts announce their holdings (e.g., "We are of opinion"). Do not recommend.
"On point"/"not on point"	A case is "on point" if the legally relevant facts are analogous to the facts of this case, it is "not on point" if the legally relevant facts are meaningfully different. (e.g., "Because test looks only to the defendant's intent and not the surrounding circumstances, *Jones* is on point, notwithstanding its otherwise idiosyncratic facts.")
"over/underinclusive"	A rule is overinclusive if it applies to more people and situations than it is really intended to; a rule is underinclusive if it only applies to a subset of the people that it is really intended to. Lawyers generally acknowledge that all rules are necessarily over and underinclusive to some extent, but it is bad if a proposed rule is "wildly" over or underinclusive.
"Police power"	The power of state governments to regulate the welfare, health, and morals of their citizens. The extent of the "police power" is circumscribed by federal constitutional

	guarantees such as the First and Fifth Amendments. You will learn more about this in Conlaw. (e.g., "Pursuant to their police power, states may regulate the use of property so long as such regulations do not go so far as to constitute a 'taking' without just compensation.")
"Prima facie"	Pronounced in American English "prima faesha." "At first glance" in Latin. Generally used to refer to whether a plaintiff has plausibly alleged or put forward sufficient evidence to make an initial case that the defendant violated a particular law. In general, if the plaintiff has met the burden of showing a prima facie case, it does not mean he wins, but that the case can go forward, and the defendant will have an opportunity to rebut the case. Can also be used in a less technical sense in legal commentary to literally mean "at first glance."
"Probative"	Evidence that is helpful in answering a question. (e.g., "The defendant's diary is probative of her intent.")
"Progeny"	Used to refer to a line of cases following a particularly influential case ("*Miranda* and its progeny")
"Prong"	An element of a multi-step test (e.g., "The courts have outlined a three-pronged test for analyzing conflicts of interest.")
"Pursuant"	A somewhat annoying way to refer to the statute or regulation (or, less commonly, the judge-made doctrine), under which a case or enforcement action is being brought. It is common in formal, boilerplate legal writing like motions or indictments, but for general legal writing you should avoid it and replace with something more natural such as "Under" (e.g. "Pursuant to 18 U.S.C. § 1001, it is a federal crime to lie to a federal agent.")

"Quasi-"	This is a prefix that just means "sort of," or "not, but kind of like." A "quasi-judicial proceeding" is not technically a judicial proceeding, but is kind of like one.
"Rely"	We say that parties "rely" on cases, and where those cases are in fact distinguishable, their "reliance" is "misplaced" (i.e., "The defendant's reliance on *Jones* is misplaced, because, unlike here, that case involved an individual rather than a corporate defendant.")
"Standard of review"	The lens through which an appellate court considers a challenge to a lower court's ruling. There is a whole body of law determining the standard of review to be applied to particular instances, but there are basically two levels: ● "De novo" means that the appellate court considers the question on its own, without any consideration for what the lower court did. Applies to "questions of law" and appeals from summary judgment ● "Abuse of discretion" means that the appellate court will defer to the lower court's decision unless it misapplied the law or relied on a "clearly erroneous" interpretation of the facts. Applies to challenges to things that are considered to be within the discretion of the district court (evidentiary rules, sentences, trial sanctions) Of these, there are a number of particular variations, such as "plain error," which is a heightened form of abuse of discretion review that applies where a party did not object to the error in the lower court, and the appellate court has discretion to correct the error only if it dramatically upset the interests of justice.
"Statute"	A law passed by Congress or a state legislature, as opposed to principles of common law. (e.g., "The recent statute, not the old common law rule, governs this case.").

“Sua sponte”	When a court does something of its own accord, without anyone asking it to. (i.e., “The court questioned its jurisdiction *sua sponte* . . .”)
“Sub silentio”	Basically Latin for “silently” or “quietly;” used to refer to (particularly courts) doing something or making a legal change in effect, without announcing they are doing so. (“With its growing maze of exceptions, the Court had overruled *Chevron sub silentio* long before it announced it had done so in *Loper Bright*.”
“To be sure,”	A common way to concede a point in legal writing (i.e., “To be sure, our client did not behave admirably.”)
“To its facts”	A case is “limited” or “confined” “to its facts” where subsequent courts have made clear that its principles do not apply in what would appear to be highly analogous contexts, without overruling the case from which it is derived, such that the principle would in theory continue to apply to the facts of the original case. (e.g., “In more recent cases, the Supreme Court has made clear that *Bivens* is confined to its facts.”)
“Turns on”	We say that the viability or persuasiveness of claim or argument “turns on” the essential or dispositive facts (e.g., “The government’s drunk driving case turns on whether my client was, in fact, intoxicated.”)
“Under”	A common way to refer to the governing law, either statutory or judge-made (e.g. “Under the *Erie* doctrine, this Court must look to the substantive tort law of the state in which the relevant conduct took place.”)
—	The “em dash” is used far more ubiquitously in legal writing than other forms, as a replacement for commas, parentheticals, or colons.
§	This symbol just means “section” and is used to refer to sections of statutes in particular

II. The Language of Law School

- These terms are not generally required for reading or writing the law, but are staples of conversations in law schools and you will often hear them used by your professors.
- Terms are in alphabetical order.

"Bracket"	This term is used to describe setting one set of issues to the side so you can effectively discuss another set (e.g., "Bracketing the constitutional issues for a moment, this doesn't work as a matter of contract law.")
"Cold call"	When a professor calls on you by name to answer a question without your volunteering. This is a longstanding feature of legal education, but today some professors do it and some professors don't. Some students find this an effective way to learn; others are terrified. (e.g., "I was scared of my first cold call, but it turned out to be kind of fun;" "I hate classes with cold calling").
"Common law"	This is a broad but important term used in basically three related ways: (1) To distinguish Anglo-American/Commonwealth *legal systems* from the prevailing alternative Napoleonic system. Salient differences are that in Common Law systems the law is: (a) more judge-made and less reliant on promulgated codes; (b) more bound by precedent; (c) more adversarial (law only takes place in the form A v. B or State v. B); and (d) more dependent on lay juries. (2) To distinguish historically judge-made *bodies of law* in the American legal system from more recent statutory law. So we refer to Contracts, Torts and Property (which historically grew up through judge-made law and precedent, but now are regulated at least in part by statute) as "Common Law" courses, as distinct from Civ

	Pro, which arises from the Federal Rules of Civil Procedure. Similarly, we refer to crimes that have always been punished (murder, rape, arson, etc.) as "Common Law crimes" as distinct from "statutory crimes" such as insider trading or securities fraud (3) To distinguish the *process* of judge-made lawmaking from the legislature passing statutes. We refer to the "common-law method" of law gradually developing by judges resolving particular cases in light of precedent.
"Epistemology"/"Epistemic"	"Epistemology" is the philosophical study of knowledge, how we come to know, what it means to know, etc. You'll see this in legal scholarship, and professors will often use it (e.g., "Our adversarial system is based on the epistemic assumption that no individual has privileged access to the truth."). You're not going to use it in legal practice, generally speaking. "Epistemic" or "epistemological" claims are those that have to do with epistemology (e.g., "In the epistemic environment of modern social media, we may have to rethink our view of the public square as a marketplace of ideas.")
"Equity"	Historically in England there were two separate kinds of courts, courts of equity and courts of law. In the United States these were combined into the same courts and judges, but for a given suit the court sits "in equity" or "in law" depending on the nature of the claim. You will learn more about the distinction between law and equity in various law school classes—for now just know that it means something very different in judicial opinions and legal discourse than in ordinary usage ("equity" in this technical sense has nothing to do with "equality").
"Ex ante/ex post"	Latin for "from before" and "from after," respectively. Used to describe the temporal

	perspective from which we are/can/should be analyzing a problem. Often also used as a dichotomy between expectations (*ex ante*) and what actually occurred (*ex post*) (e.g., "The law of intentional homicide requires us to focus on the defendant's intent *ex ante*, rather than the tragic consequences *ex post*.")
"First principles"	Formally, in philosophy, "first principles" are propositions that cannot be deduced from any other propositions; that are axiomatically true. In law school, we generally use this phrase somewhat more loosely to refer to core normative commitments. For instance, we might accept that democracy is good or that persons have an inherent dignity as a first principle.
"Hypo"	Short for "hypothetical." A common way to teach the law is to pose hypothetical scenarios to students and ask them to consider how their understanding of the law would apply in those circumstances. Part of succeeding as a law student is being able to respond to hypos on your feet, so it's worth considering hypothetical variations on the facts of cases as you read them—what if there were better evidence that the defendant had been acting maliciously? What if this piece of property were a family home? Engaging in this process of hypothetical reasoning helps tease out what is legally relevant and what doesn't matter. (e.g., "That hypo Prof. X gave you about a bear attack was wild")
"Legalese"	Used pejoratively to refer to oblique, technical, and incomprehensible legal writing. This is not a precisely defined term, but "legalese" is characterized by heavy use of jargon (particularly of Latin derivation), wordy, formal-sounding phrases, and cross-references. Think form contracts that are nearly physically impossible to read. Legalese is bad, do not do it. An example might be: "Notwithstanding the heretofore said, and

	pursuant to said statutory provision, *inter alia*, plaintiff hereby alleges violation of §§ 18 U.S.C. 1961, 1962, 1963, 1964."
"Normative"	"Normative" claims are claims about what *ought* to be, what is ethically best, supported by some theory of the good. "Descriptive" claims are factual claims about what *is*. So we might say that as a *descriptive* matter, the law *is* X, but that as a *normative* matter, it ought to be Y. Referring to something as a "normative question" is a common way for law professors to emphasize that it is not a "legal" question that can be answered descriptively. So a law professor might say "Well, the law is X, but whether that is a good or bad thing is a much-debated normative question."
"Policy" (judgment/implications)	Used to refer to the "real world" effects of a legal choice, as opposed to its legal effects, internal to the logic of the legal system. So objecting to legal rule X because it causes hardships on a particular group of people is an objection on "policy" grounds, where objecting because a rule is incompatible with other rules is "legal" grounds. Deciding between two equally coherent and plausible legal rules on the ground that one rule will be better for society is a "policy judgment." Explaining *why* a legal rule is good for society is a "policy rationale." Traditionally, policy arguments and considerations are somewhat looked down on in law school—professors want to teach you to reason within the law, not just make political or economic judgments about what you think would be best. But you'll find that this varies a lot from professor to professor and class to class, some professors really emphasize policy implications and some do not. In your legal writing, at least practical legal writing like memos or motions, generally try to avoid policy arguments or

	explanations as much as possible.
“Priors”	Refers to the background political/philosophical/factual assumptions that we all bring to legal analysis (e.g., “Depending on your priors, the exclusionary rule can either be seen as a irrationally letting criminals free or a necessary antidote to police misconduct.”)
“Prophylactic”	A purposefully over-inclusive rule designed to avoid some other bad thing that would be harder to police (e.g., “Although many statements said out of court are no doubt reliable and even true, the evidentiary rules of hearsay are a prophylactic against the jury’s reliance on unreliable evidence.”)
“Socratic Method”	This refers to the method of learning-by-questioning used by Socrates in Platonic dialogues. The theory is that pushing people to think through questions themselves helps them gain a deeper understanding than lecture. This claim is empirically somewhat controversial (and indeed, Socrates was executed for it!), but the Socratic Method has been a staple of legal education for at least a century. In law school, “Socratic” is also used somewhat loosely to refer to any class or professor that cold-calls, because cold-calling and the Socratic Method usually go together, but in theory you could have a Socratic approach without cold-calls or cold-calls without a Socratic approach.
“Work” as in “doing work”	We say that a fact or argument is “doing a lot of work” when it is essential to the conclusion, and “not doing much work” when it is ancillary or incidental. So we might ask, “How much work is the fact that the search took place in the defendant’s home doing in your analysis?”

- Thanks to Tala Doumani, Eugene Nam, James Payne, Sudheer Poluru, and Shailin Thomas for additional terms and phrases