

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

**Note:** The course syllabus was updated 10/16/2004 in response to comments from the Humanities Curriculum Committee and from Professor Robert Kaufman (Sociology). Professor's Kaufman's comments (dated 09/9/04) were addressed to Dean Ed Adelson concerning the Department of Sociology's non-concurrence with the proposed course.

**Instructors:**

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Language is an inherently social phenomenon given its central role in communication among individuals and groups. As a result, it is intrinsically tied to the cultural setting in which it is used. The fact that our social environment is increasingly global, with networks of association extending across cultures with different languages and linguistic traditions, has a profound impact on both the legal rights of individuals as well as on how language is interpreted in law from one culture to the next. Nowhere are the challenges presented by this new melting pot more evident than in the practice of law.

The court is a rich context in which to examine language given the special ways in which it is used. This usage can also have a profound impact on legal proceedings. For example, 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.

In this course, we will study the relationships between language and the law noted above, touching on topics including:

- the importance of language in the law and how the legal system views language within the United States and throughout the world, including the European Union, Africa, India, Spain, Iran, Turkey, South Africa, etc.
- the features and structures of legal language, and its origin and motivation.
- the interpretation of language under the law:
  - the necessity of a dual standard of interpretation for citizens vs. legal professionals, and how these standards can be reconciled
  - how prejudices towards language based on cultural and social factors affect the interpretation of law
- the linguistic demands that increased globalization puts on legal systems, e.g. how is the law to be codified in a multi-lingual culture? 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, given that translation is more of an art than a science?
- various kinds of linguistic misunderstanding and ambiguity that arise in

- interpreting contracts and in analyzing legal cases
- language rights in a multicultural setting:
  - do citizens have linguistics rights under law, as well as responsibilities? Do non-citizens?
  - understanding the burden the law imposes on ordinary citizens in multi-lingual societies to understand legal language and how this effectively restricts access to the law, to legal documents and to the understanding of legal proceedings, e.g. is it a fair and reasonable assumption to require a citizen to understand the law if it is written in the dominant language (from either a local or international perspective), rather than in the colloquial variety used by the citizens? 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?

***GEC Issues of the Contemporary World:***

This course satisfies GEC category 8: “Issues of the Contemporary World”. In keeping with the guidelines for these capstone courses, the present course addresses contemporary issues of worldwide significance that illustrate global interdependence. The course bears on issues that are increasingly contentious in legal systems around the world, and that grow directly out of the increasing cultural diversity among people who fall under a single legal system: language rights and responsibilities of individuals, and the interpretation of law.

**Course Requirements:**

There will be three quizzes, one each in weeks 2, 5 and 7, which account for 30% of the grade . 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. Active participation in debates will figure into the participation grade. Brief debates on themes from the assigned readings, with students assigned conflicting points of view, will take place roughly weekly. These are intended to foster more student engagement and interaction in class, and to use classroom competition to spur students on to more careful argumentation.

Quizzes (3):	30%
Short paper:	20%
Term paper:	30%
Term paper draft:	5%
Class participation:	15%

**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](http://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.

Elias, T.O. (1997) *The Judicial Process in Commonwealth Africa*. Legon, The University of Ghana.

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.
- Nwabuese, B.O. (1977) Judicialism in Commonwealth Africa. London: C.Hurst & Co.
- 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](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 (iPact 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](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](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](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.** This section of the course will introduce the student to legal basics. This includes U.S. law, but also introduces and contrasts several types of legal system from around the world.

Topics include: 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. *Elias* (Nigerian Supreme Court, selected pages tba). Nwabueze (Nigerian Supreme Court, selected pages tba).

**Meaning basics.** This section uses the English language and the common law tradition as the focus for two reasons: first, the student will be introduced to some complex issues in semantics, and to do this in an efficient manner it is important that all students in the class have access to subtle intuitions of meaning in the language under discussion; second, the central texts and cases relating to this topic focus their discussions on cases in U.S. law (Tiersma, Solan), and in the common law tradition in English-speaking countries (e.g. Australia, Canada, India, Nigeria, Malaysia, UK, US). However, the issues under discussion are not restricted to either English or common law. These are general background issues that arise in any legal system. All legal systems must follow principles of interpretation of words and sentences to determine whether a given act falls into the class of acts proscribed by law.

Topics include: Literal meaning vs. conveyed meaning; presupposition; the role of context in interpretation; common ground; translation

**Read:** Cruse. Additional articles from course packet and cases (tba).

**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 including cases involving police-citizen interactions (UK, Australia).

**Read:** Tiersma (1999) Ch. 6; Gibbons (selected pages tba); 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): This section pertains to a number of general issues that have been discussed in the extensive literature on language and the law. At present, this literature focuses largely on cases from the U.S. although the instructors are searching for information on other legal systems. As this material is uncovered, references to additional cases and readings will be provided to the students.

#### **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). This section of the course is designed to bring the basic considerations from the first two sections to bear on matters which bear on language rights and responsibilities. Students 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 compare various national constitutions with provisions bearing on language rights, which range from the very extensive provisions in the constitutions of South African 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, such as in the constitutionally asserted duty of all Spaniards to know Castillian 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 textbooks be written in Persian, culminating in the Turkish constitutional prohibition against the teaching of any language other than Turkish as a mother tongue. We will also 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.

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

**Read:** Chaplinsky v. New Hampshire; Roth v. US; Tiersma (1987); Greenawalt; on-line declarations, charters, and constitutions

**Language rights and the legal status of languages.**

**Read:** Kontra; Nunberg; Monaghan; on-line declarations, charters, and constitutions to be assigned in class

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

**Read:** Joseph; Kunz; Smith; Norgren & Nanda; on-line declarations, charters, and constitutions to be assigned in class; European Charter for Regional or Minority Languages: <http://conventions.coe.int/Treaty/en/Treaties/Html/148.htm>