Legal Operative Language (LOL)

Legal Doublets

Legal doublet

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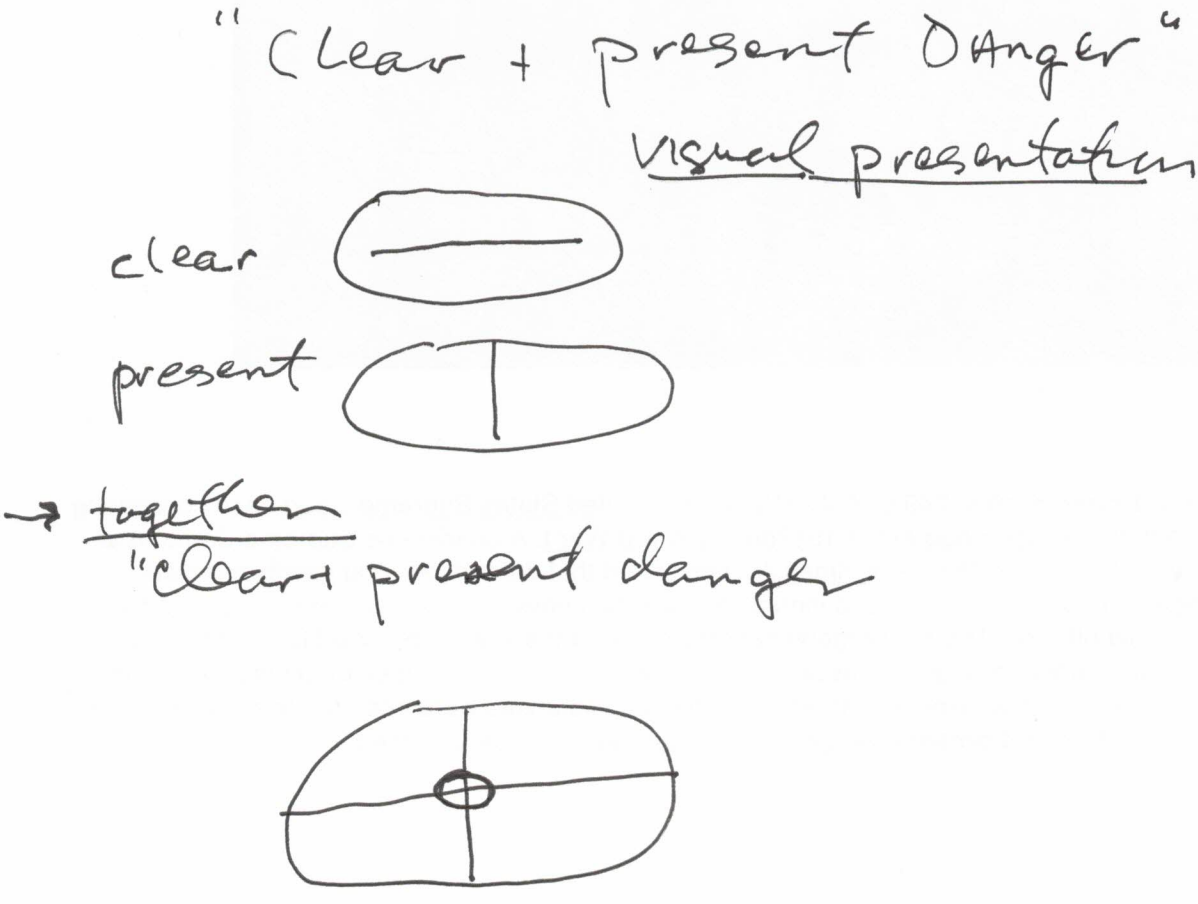
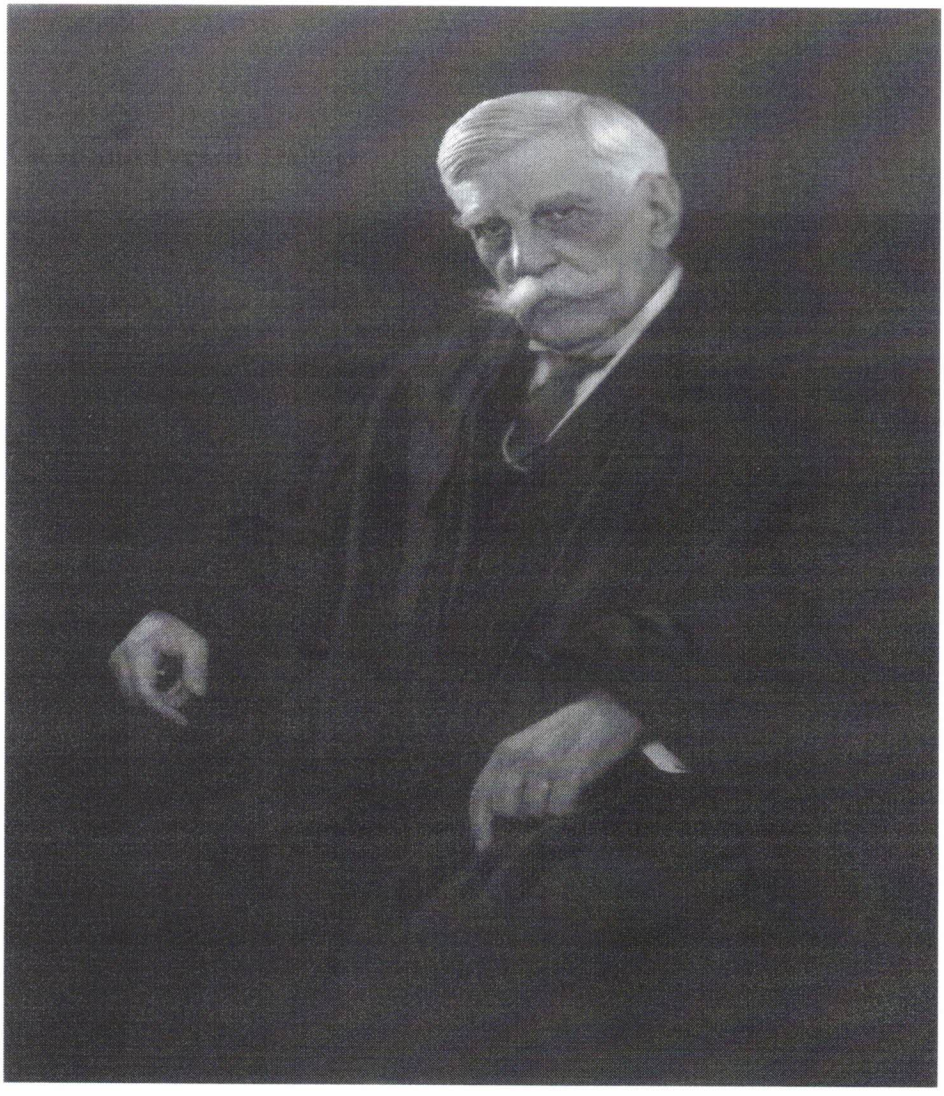
A **legal doublet** is a standardized phrase used frequently in English legal language consisting of two or more words that are near synonyms. The origin of the doubling—and sometimes even tripling—often lies in the transition from use of one language for legal purposes to use of another for the same purposes, as from a Germanic ([Anglo-]Saxon or Old English) term to a Romance(Latin or Law French) term or, within the Romance subfamily, from a Latin term to a Law French term. To ensure understanding, words of Germanic origin were often paired with words having equivalent or near-equivalent meanings in Latin (reflecting the interactions between Germanic and Roman law following the decline of the Roman Empire) or, later, Law French (reflecting the influence of the Norman Conquest), and words of Latin origin were often paired with their Law French cognates or outright descendants. Such phrases can often be pleonasms[1] and Siamese twins. In other cases, the two components did not arise through such synonym annotation but rather referred to two differentiable ideas whose differentiation is subtle, appreciable only to lawyers, long since obsolete, or a combination of those. For example, *ways and means*, referring to methods and resources respectively,[2] are differentiable, in the same way that *tools and materials*, or *equipment and funds*, are differentiable—but the difference between them is often practically irrelevant to the contexts in which the Siamese twin *ways and means* is used today in non-legal contexts as a mere cliché where one word would do (for example, "methods"), and because each of the words can practically mean "methods", the second can seem redundant in the clichéd, non-legal instances.



Clear and Present Danger



Schenck v. United States, 249 U.S. 47 (1919), is a United States Supreme Court case concerning enforcement of the Espionage Act of 1917during World War I. A unanimous Supreme Court, in an opinion by Justice Oliver Wendell Holmes Jr., concluded that defendants who distributed fliers to draft-age men, urging resistance to induction, could be convicted of an attempt to obstruct the draft, a criminal offense. The First Amendment did not alter the well-established law in cases where the attempt was made through expressions that would be protected in other circumstances. In this opinion, Holmes said that expressions which in the circumstances were intended to result in a crime, and posed a "**clear and present danger**" of succeeding, could be punished.

Recap of Case problems 1 through 6 – Business Law

Case problem #1

Wrench v. Taco Bell - Implied in Fact – Does Copyright Act preempts state law claims based on breach of an implied-in-fact contract. Ruling - When a seller's claim arises from a contract to use an idea entered into *after*the disclosure of the idea, the question is not whether the buyer misappropriated property from the seller, but whether the idea had value to the buyer and thus constitutes valid consideration. In such a case, the buyer knows what he or she is buying and has agreed that the idea has value, and the Court will not ordinarily go behind that determination. **The "lack of novelty", in and of itself, does not demonstrate a "lack of value"**

Case Problem #2

Olson v Johnson – Offer and Acceptance - Olsen and Johnston had contracted for Olsen to purchase Johnston's interest in real property that they jointly owned as tenants in common. The court awarded specific performance to Olsen under the contract. We affirm.

In other words, an offeror that prescribes an exclusive mode of acceptance does not consent to be bound by the contract unless the offeree communicates acceptance in that particular manner. Section 28-2-501(2), MCA. An offeror who merely suggests one satisfactory manner of acceptance, however, consents to be bound by the offer as long as **the offeree communicates acceptance in any reasonable manner**. *Restatement (Second) of Contracts* § 60.

Case Problem #3

Access Organics v. Hernandez - Past consideration – Issue – Is a non compete clause enforceable as a matter of law. Hernandez testified that he **did not receive any independent consideration,** such as access to trade secrets, in exchange for signing the agreement. Access Organics failed to present any **evidence to the contrary**.

To be upheld as **reasonable**, a covenant not to compete must meet three requirements:

(1) [I]t **must be partial or restricted** in its operation in respect either to time or place;
(2) it must be on **some good consideration**; and
(3) it must be reasonable, that is, it should afford only a **fair protection to the interests** of the party in whose favor it is made, and must not be **so large in its operation** as to interfere with the interests of the public.

Case Problem #4

Nationwide Mutual v. Wood – Capacity - Under Alabama law, is an insurance company bound to a settlement agreement negotiated on behalf of an injured minor, if that minor dies before the scheduling of a pro ami hearing which was intended by both sides to obtain approval of the settlement?"

It is established law that a decedent's contract claims survive his or her death, and, because we have 987*987held that the settlement agreement was a **contract voidable at D.V.G.'s election**, we can think of no reason why a trial court could not make a determination of the **fairness of that contract even after the minor's death**. For these reasons, we answer the certified question in the affirmative.

Case Problem #5

Desgro v. Pack – Mistakes, Fraud - Plaintiff filed suit 13 months after the inspection was completed, and defendant moved for summary judgment, claiming that plaintiff's signed contract with defendant provided that plaintiff must file suit on any claims within one year of the date of inspection

It is the duty of the court to enforce the contract according to its plain terms, and the language used in the contract must be taken and **understood in its plain, ordinary and popular sense.**

Case Problem #6

Wood Care Centers v. Evangel Temple - Statute of Frauds - Wood Care later sued Evangel Temple and argued Evangel Temple was obligated to find other uses for the facility before terminating the Agreement and argued the **evidence is legally and factually insufficient** to support the trial court's conclusion that Evangel Temple did not breach the Agreement.

Based on the foregoing, after reviewing all of the evidence in the **light most favorable** to the trial court's findings, crediting **favorable evidence** if a **reasonable factfinder** could, and disregarding contrary evidence unless a reasonable factfinder could not, we hold that there is **legally sufficient evidence** to support the trial court's findings that Evangel Temple did not breach the Agreement. Likewise, after considering and weighing all of the evidence pertinent to the trial court's findings, we cannot say that the evidence supporting the trial court's findings is **so weak or contrary to the overwhelming weight of all the evidence**