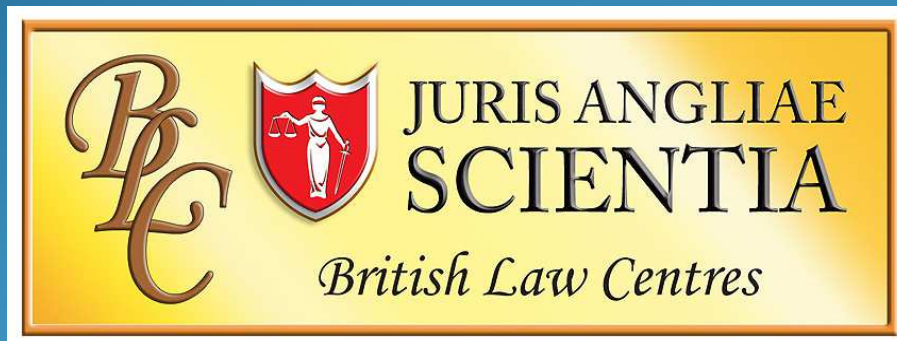


Cultural-legal sensitivities from the perspective of English civil law



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The usual disclaimers....

THE
AMERICAN AND ENGLISH
ENCYCLOPÆDIA
OF
LAW

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1910



I DON'T HAVE ALL
THE ANSWERS

JOEL OSTEEN

PICTUREQUOTES.COM

My hypothesis:

- The inclination of multitudinous translators is towards an intransigent deployment of obfuscatory, sesquipedalian nomenclature which both jeopardises the reader's cognitive discernment of the source text and leads one to the ineluctable inference that the mere continuance of one's literary perusal will result in one becoming inextricably embroiled in the calamity of having to begrudgingly indulge a braggartly, supercilious and lofty linguistic decipherer.

Discuss

An alternative hypothesis:

- Many translators use unnecessarily over-complicated language. This creates the risk that the reader does not understand the translated text. It also means that the reader thinks that the translator is a bit of a show-off.

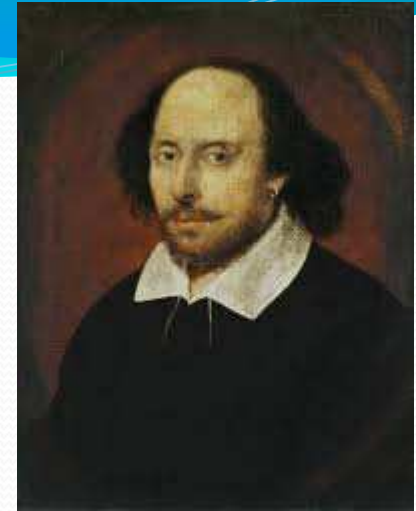
How to drive an English reader mad...



Non-legal examples

- Pomposity (Pompatyczność?)
- “One” (e.g. *One must see it with one’s own eyes if one wishes to believe it...*)
[You need to see it to believe it.]
[It needs to be seen to be believed.]

Are you making the author sound more pompous than their original text does?

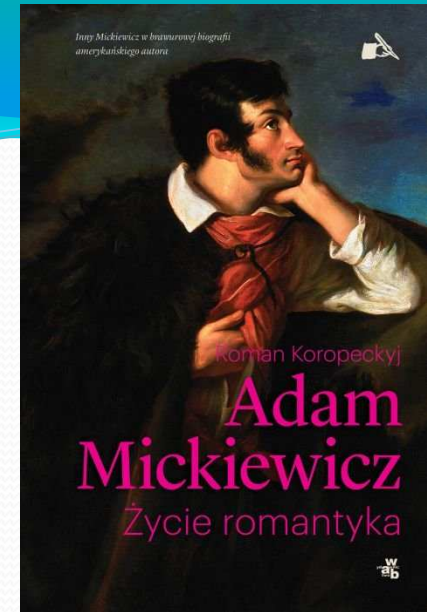


Non-legal examples

- Unnecessary length

Split it into two sentences!

Remember that what is
“normal” in Polish writing may
not be “normal” in English.



W większości przypadków, gdy spójnikiem jest „albo” oraz gdy treść pierwszego zdania wyklucza treść drugiego i nie jest możliwa równoczesna realizacja tego, o czym mówi zdanie pierwsze, z tym, o czym mówi zdanie drugie mamy do czynienia ze zdaniem rozłącznym. Zatem jest to zdanie współzrędnie złożone rozłączne.

Non-legal examples



- **Word-for-word translations**

- *Odśnieżanie*

[Snow removal procedure? De-snowing? usuwanie śniegu?]

opłata za prowadzenie rachunku

[Account fees]

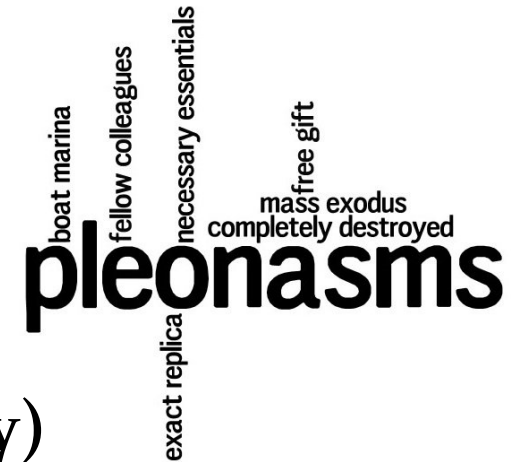
Non-legal examples

- **Pleonasm (a sub-species of tautology)**

The shares each have a nominal value amounting to/equal to [X PLN].

[The shares each have a nominal value of [X PLN]

Are you unnecessarily increasing the length of the text (and decreasing readability)?



Non-legal examples

- Use the Saxon genitive (please!)

Saxon
Genitive



“the principles **of the** Code **of** Civil law governing the liability **of the** members **of the** Management Board **of the** Company”

[21 words; 5 x “of”]

[The Civil law Code’s principles governing the liability of the Company’s Management Board members.]

[14 words; 1 x “of”]

Non-legal examples

- Comma-down... with your use of commas

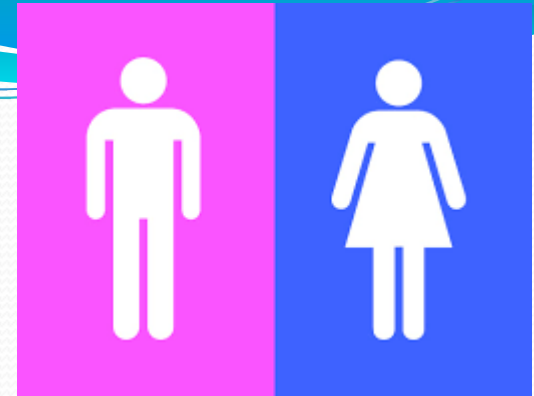


- “It should be noted, that the goods, which were sold are faulty and, that they need to be replaced.”
- BUT use them in numbers:
 $13.647.684,00 = 13,647,684.00$

Non-legal examples

- **Gender-crazy!**
- The statute [ustawa] envisages sanctions if **her** rules are infringed.
- “The Polish **legislator** has said that **he** wants to adopt new **provisions of law** on **the** environmental protection”
- “...this option has been explicitly excluded by **the Polish law-maker.**”

[Polish law explicitly excludes this option]



Non-legal examples

- “*The*” biggest problem...
- “*The insurance contract is governed by the French law and is subject to the exclusive jurisdiction of French courts.*”
- *The Polish law says...*



the



a the
ARTICLES
an

Strange official translations

- The **Minister of Economy** is responsible for maintaining the Register of...



- Agricultural and Food Quality Inspection

- ...so the Inspection conducts inspections?

Inspectors work for the
Inspection?



Summary on non-legal examples



To solve a problem
you have to recognize
your share of
responsibility.

If you only blame the
others,
you will never solve
it.

Civil Law examples:

Square-peg, round hole...

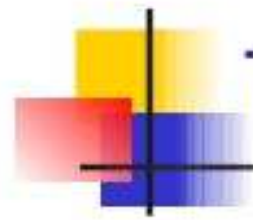


- Legal concepts and terminology have a specific meaning.
- The same concept simply may not exist in the legal system of the translation language...

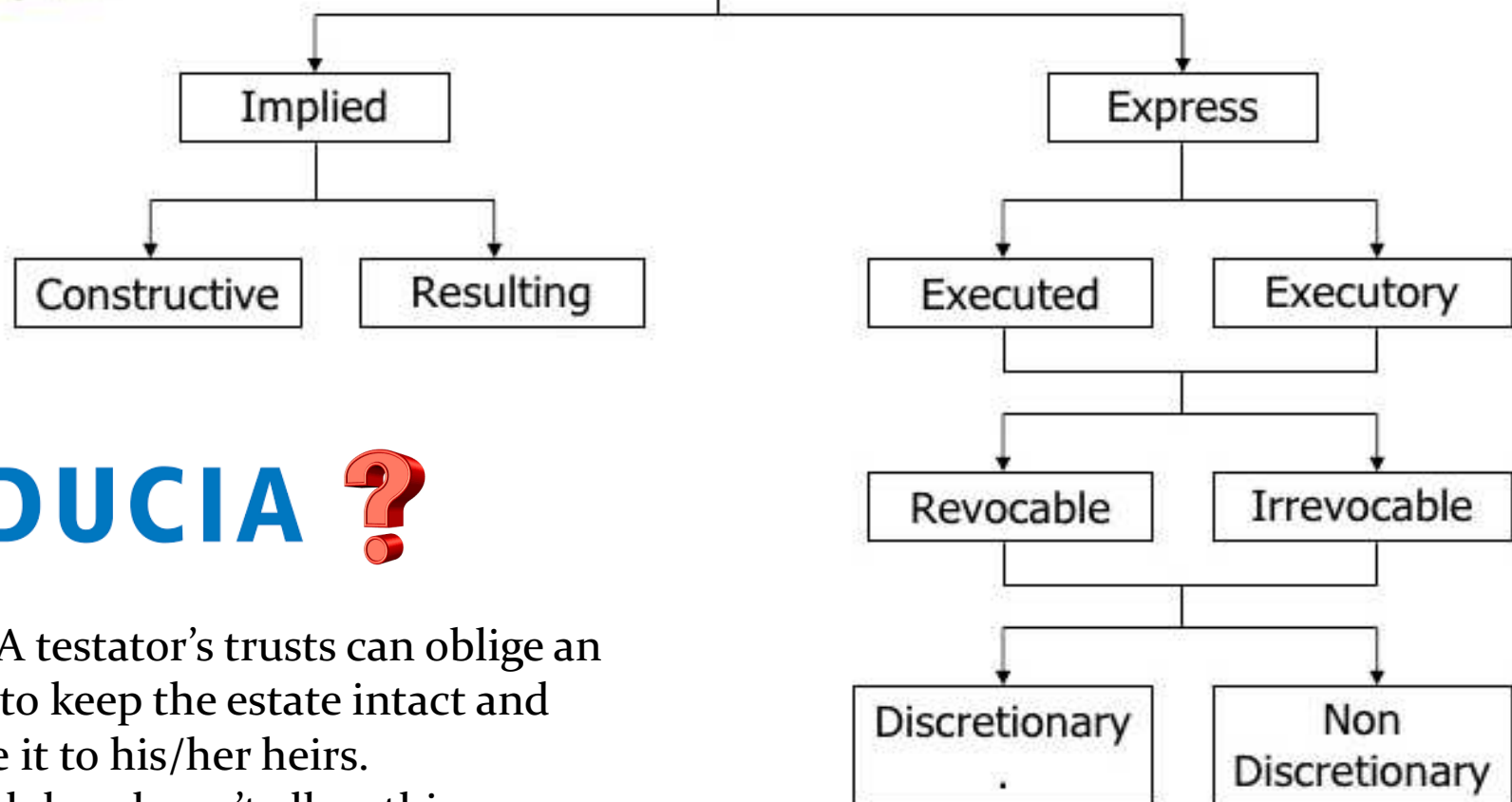


**Me
and
My
Shadow
(Director)**

English law trusts...



Types of Trust



FIDUCIA ?

NB. A testator's trusts can oblige an heir to keep the estate intact and leave it to his/her heirs.
Polish law doesn't allow this...

English law trusts...

Beneficial
Ownership:

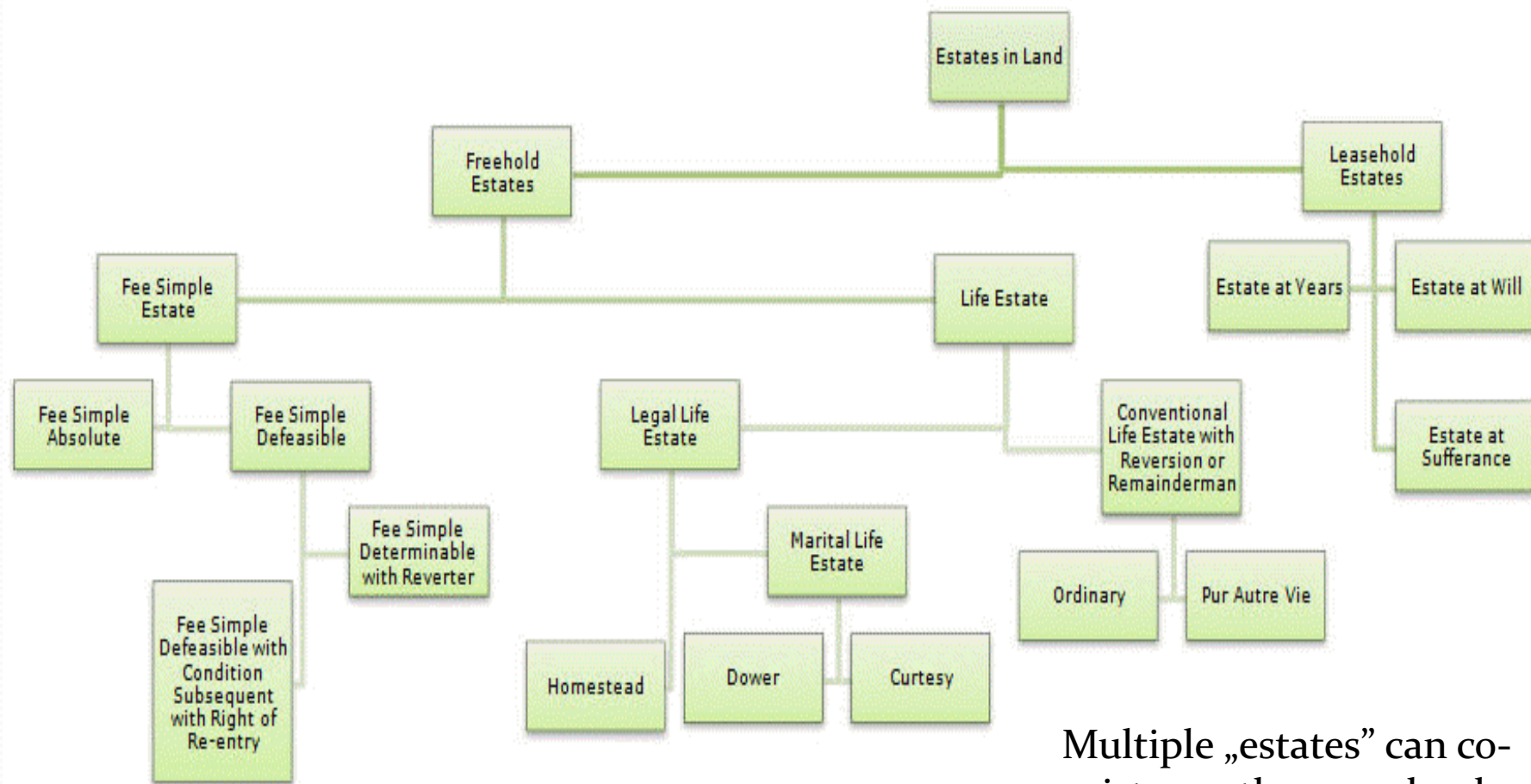
- **Fiduciary**

powiernik ?????

- 1. «człowiek zaufany, któremu ktoś się zwierza ze swoich spraw osobistych i tajemnic»
- 2. «osoba upoważniona przez kogoś do reprezentowania go w sprawach urzędowych, prawnych itp.»

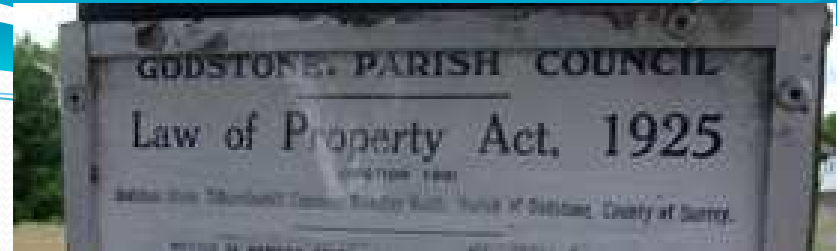
English land law

- Battle of Hastings 1066- feudal system



Multiple „estates” can co-exist over the same land.

English land law



- **Corporeal hereditaments:** all physical things which are attached to or are inherent in the ground, such as buildings, trees, minerals, subsoils, airspace.
- **Incorporeal hereditaments:** *not physical* things, but intangible rights (e.g. easements, rents, profits) which are inheritable.
- **Fixtures and chattels:** *fixtures* pass with the land; *chattels* do not. [This depends upon the degree and purposes of any annexation]
- **Joint tenancy:** right of survivorship (i.e. the estate of a joint tenant passes to the other joint tenant[s])
- **Tenancy-in-Common:** no right of survivorship (i.e. tenant can leave their share of the property to heirs.)

Contract law

- Offer vs. „mere puff” or „invitation to treat”
- „Postal rule”
- *„Consideration must be sufficient but it need not be adequate”*
- „Promissory Estoppel”
- Privity of Contract

Contract law

- Terms, representations and mere puffs
- Conditions, Warranties and Innominate Terms
- Parol Evidence Rule
- **Termination** of contract: *prospective* only
- **Rescission** of contract: *ab initio*
- **Repudiation** of contract (and “anticipatory breach”)

Contract law

- Frustration
- *Force majeure* (cf. *Viz major*)
- Liquidated Damages/Penalty Clauses
- Expectation/Reliance/Restitutionary damages
- Mitigation/rules of remoteness
- Injunctions/Specific performance orders

Final thought...





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