

## Why the Classic Legal Terminology of the Anglo-American Trust is in French, Not English: The “Law French” Phenomenon

[An excerpt from Charles E. Rounds, Jr., *Loring and Rounds: A Trustee’s Handbook* § 8.15 (2013), pages 1043-1045]

In that the trust evolved in England and not in France,<sup>3</sup> one might ask how it is that a good deal of trust-related terminology appears to be French-like, e.g., *cestuy que trust* (beneficiary)<sup>4</sup> and *cestuy en remainder* (remainderman).<sup>5</sup> For Rule against Perpetuities analysis purposes, one may qualify as a life in being though *en ventre sa mere*<sup>6</sup> when the contingent interest was created. These French terms and expressions are the last vestiges of what was once a customary practice of English lawyers, namely, to write their reports and professional notes in French.

One would expect that this practice began sometime around 1066. That, however, appears not to be the case. Recent scholarship suggests “that French may not have been used in the law courts until about the middle of the thirteenth century, by which time it had become known to some of the English gentry and perhaps to some of the ‘common people’ as well.”<sup>7</sup> In any case, it was not until sometime around the reign of Charles II that “law French” began to fall out of general usage in the English court system.

While French probably ceased to be spoken at the bar by English lawyers somewhere around 1362, the use of “law French” continued on as a kind of legal shorthand. “Sir Edward Coke said of Littleton's French that it was ‘most commonly written and read, and very rarely spoken, and therefore cannot be either pure or well pronounced’; but it could not be abolished without danger, because ‘so many ancient terms and words drawn from that Legall French are grown to be *vocabula artis*, vocables of art, so apt and significant to express the truest sense of the law, and so woven into laws themselves, as it is in a manner impossible to change them.’”<sup>8</sup> It was even said that English lawyers took perverse delight in mispronouncing the French.

In 1731, Parliament finally put an end to the use of law French in official legal pleadings and reports. “The only French heard in the courts thereafter was the *oyez* of the crier.”<sup>9</sup>

But thanks to Professor Leach, it will be some time before the law French phenomenon passes altogether from the collective memory of those who practice in the common law jurisdictions. We refer to his 1962 article.<sup>10</sup> With tongue firmly planted in cheek and due credit given to one of his “young lady” students, he introduced a new term into the law French lexicon,

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<sup>3</sup>See generally §8.37 of this handbook (the origin of the Anglo-American trust).

<sup>4</sup>One also sees the term spelled *cesui que trust*. See generally Sweet, *Cestui Que Use: Cestui Que Trust*, 26 L.Q. Rev. 196 (1910).

<sup>5</sup>Other terms from the law French include *surcharge*, *lien*, and *laches*. For a contemporary definition of the term *laches*, see §7.1.2 of this handbook (defense of failure of beneficiary to take timely action against trustee).

<sup>6</sup>In its mother's womb.

<sup>7</sup>J. H. Baker, *Manual of Law French* 1 (2d ed. 1989).

<sup>8</sup>Baker, *Manual of Law French* at 3–4.

<sup>9</sup>Baker, *Manual of Law French* at 6.

<sup>10</sup>*Perpetuities in the Atomic Age: The Sperm Bank and the Fertile Decedent*, 48 A.B.A. J. 942 (1962).

namely the child *en ventre sa frigidiaire*.<sup>11</sup> Though freshly minted, at least by law French standards, the term has already gained some currency in the halls of academia, both here<sup>12</sup> and abroad.<sup>13</sup>

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<sup>11</sup>Leach, *Perpetuities in the Atomic Age: The Sperm Bank and the Fertile Decedent*, 48 A.B.A. J. at 943, n.3.

<sup>12</sup>See, e.g., Paul Coelus, *Inheritance Problems of Frozen Embryos (The Child En Ventre Sa Frigidiaire)*, 7 Prob. L.J. 119 (1986) (U.S.).

<sup>13</sup>Rosalind Atherton, *En ventre sa Frigidiaire: Posthumous children in the succession context*, 19 Legal Studies 139 (1999) (U.K.); Rosalind Atherton, *Between a Fridge and a Hard Place: The Case of the Frozen Embryos or Children en Ventre Sa Frigidiaire*, 6 Austl. Prop. L.J. 53 (1998) (Australia).