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Losing the Latin

By Joseph Kimble

Many Latin terms have entered the legal vocabulary either as technical terms (*subpoena, prima facie, habeas corpus*) or as common terms that even most nonlawyers will understand (*caveat, pro bono, bona fide, quid pro quo*). We can argue about the value of some (*de minimis* versus *minimal* or *insignificant*), but some others are pretentious legalisms that judges and lawyers should normally steer clear of. Here are several common examples, all quoted from judicial opinions.

***inter alia* (= "among other things")**

- On appeal, plaintiff argued, ~~*inter alia*~~ **among other things**, that the trial court erred by failing to consider his request for costs and attorney fees.
- Dr. Khurana opined, ~~*inter alia*~~ **among other things,** that Plaintiff was capable of light exertional work.

***arguendo* (= "for the sake of argument," typically superfluous)**

- Even assuming, ~~*arguendo*~~ **for the sake of argument**, that defendant's waiver of the right to appeal is invalid and thus does not preclude our review, we conclude that the sentence is not unduly harsh or severe. [Yes, the edit is longer, but it's plain English. And is *assuming, for the sake of argument,* even needed? Consider the next two examples.]
- Even ~~assuming, arguendo, that~~ **if** plaintiff was "without fault," that does not meet plaintiff's burden on the motion of establishing defendant's negligence.
- ~~However,~~ **But** ~~assuming arguendo, that~~ **even if** the parties had such an agreement, the purpose would clearly have been to work a fraud on the bona fide bidders.

***sub judice* (= "before the court")**

- In the **present** case ~~*sub judice*~~, anyone but Henry could have been afforded coverage as a permissive user of a covered vehicle.
- ~~The~~ **This** lawsuit ~~*sub judice*~~ and the *Williams* case involve some of the same parties.
- Rather, the issue in ~~the~~ **this** case ~~sub judice~~ is whether a person inside their home exposes themself to public areas, such as streets or sidewalks. [If *this case* might be ambiguous, then *the present case.*]

***vel non* (typically meaning "or not" and typically superfluous)**

- The existence ~~vel non~~ of probable cause is a matter of law for the Court.
- The defendant's appellate argument is limited to the admissibility ~~vel non~~ of the challenged hearsay statements.

***ab initio* (= "from the start," "from the beginning")**

- Plaintiff argues only that the search was invalid ~~ab initio~~ **from the start** because the arrest was invalid.
- The inquiry is whether the removal was proper ~~"ab initio"~~ **from the beginning**.

***sua sponte* (= "on its own motion," "on its own")**

Admittedly, this term is not always easy to replace, as in "The trial court's *sua sponte* order deprived the defendant of due process." Would *unprompted* work? I'm not sure that it has quite the same legal flavor. And in some contexts, you'll read about a "motion to *sua sponte* reopen immigration proceedings" — however illogical that might be (if there's a motion, then the court wouldn't be acting on its own). Nonetheless, when the substitution is easy, substitute.

- For these reasons, the Court recommends that the district judge, **on its own motion**, dismiss Petitioner's complaint ~~*sua sponte*~~ with prejudice.
- The court erred in dismissing the complaint ~~sua sponte~~ **on its own**.
- Because the Court finds that the claims are patently insubstantial, it will, ~~*sua sponte*~~ **on its own**, dismiss the case for lack of subject-matter jurisdiction.

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***a fortiori* (= "even more so," "with greater reason")**

- What we have said of state requirements is ~~*a fortiori*~~ **all the more** true of standards set by private organizations.
- From this, it follows ~~*a fortiori*~~ **with greater reason** [or omit entirely] that the state court's conclusion was not "contrary to" clearly established precedent.
- As the trial court noted, if an ordinance violation, standing alone, cannot serve as a basis for imposing a legal duty under a theory of negligence, then ~~*a fortiori*~~ **obviously** a regulation violation, standing alone, cannot either. [Too radical a substitution? The plain equivalents of this bit of Latin may be a little more varied than the others above.]

***to wit* and the abbreviation *viz.* (= "namely," "that is," "specifically")**

Both are traceable, directly or indirectly, to Latin, and both belong in the dustbin. *Non est disputandum*. (I'll forgo examples here.)

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