

For Legal Eagles exclusively

© Aleksandra Broniek 2015

Many words in Legal English acquire new meaning or function in different contexts than in General English. Especially when word-formation becomes involved we have to pay attention to retain the meaning originally intended. Have a look at the following examples:

5. PREJUDICE – legal harm

- *A stay of the plaintiff's action will not prejudice his rights.*
- *The critical inquiry is whether counsel's performance was deficient and whether that deficiency prejudiced the defendant.*

WITHOUT PREJUDICE TO – without legal harm, with the reservation of, without dismissing or detracting from an existing right or claim

In the context of a contract, the phrase purports to indicate that **the foregoing provisions remain unharmed by the provisions that will follow**. Study the following examples:

- *The second notice will be served 'without prejudice to the validity of' the first notice.*

By using these words the serving party is making clear that he is relying on the first notice but, if that notice is found to be invalid, he will rely on the second notice.

- *My client accepts the formal apology without prejudice to any further legal action she may decide to take.*

If a decision or action is made without prejudice to a right or claim, it is made without having an effect on that right or claim.

If a court dismisses a lawsuit WITH PREJUDICE, the dismissal constitutes a bar to future action as the court has adjudicated the merits of the case. A dismissal WITHOUT PREJUDICE is not an adjudication on the merits, hence no right or remedy is foreclosed to the parties.

Look at the following examples of its usage and study its meaning:

1. **Without prejudice to the generality of the foregoing**, rules may be made under this section governing all or any of the following matters either generally or in particular circumstances, namely: (...)

This is a typical use of the phrase, indicating that the body of the text presented before remains in force and a small exception will follow.

2. We represent Mr. Lowell, the author and copyright holder to the sheet music for "Plain Jane." It has come to our attention that you have copied, and distributed copies, of this sheet music. Please be advised that your use of this material infringes upon and violates our client's copyright and various other exclusive proprietary intellectual property rights.

Accordingly, we hereby demand that you immediately cease and desist from any such use of "Plain Jane" and/or any variations therefore which may infringe our client's rights. If you do not immediately comply with the foregoing (and confirm to us in writing within 5 days of the date of this letter that you have done the same), we will have no choice but to immediately begin to pursue any and all legal and/or equitable remedies that may be available to our client.

The foregoing is without prejudice to all rights and remedies our client may have in connection with this matter, all of which are hereby expressly reserved.

3. (...)such person shall be deemed to have committed an offence and shall, **without prejudice** to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both: Section 138 in The Negotiable Instruments Act, 1881

For Legal Eagles exclusively

© Aleksandra Broniek 2015

4. **Without prejudice** to the generality of sub- clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81. Section 34 in The Arbitration And Conciliation Act, 1996
5. Before taking possession of any land under sub- section (1) or sub- section (2), the Collector shall, **without prejudice** to the provisions of sub- section (3)- (a) tender payment of eighty per centum of the compensation for such land as estimated by him to the person interested entitled thereto, and (b). Section 17 in The Land Acquisition Act, 1894
6. Where a return has been made under section 139, or in response to a notice under sub- section (1) of section 142,- (i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, **without prejudice** to the provisions of sub- section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly (...). Section 142 in The Income- Tax Act, 1995
7. (...) if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but **without prejudice** to the validity of anything previously done thereunder. Section 3 in The Central Excise Tariff Act, 1985
8. Provisional assessment of duty. (1) Notwithstanding anything contained in this Act but **without prejudice** to the provisions contained in section 46- (a) where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be (...). Central Government Act Section 18 in The Customs Act, 1962 18.

TASK 1

Study the meaning of the words: NOTWITHSTANDING, SUBJECT TO, WITHOUT PREJUDICE TO, and decide on their Polish equivalents.

		Sample sentence	Polish meaning
1	NOTWITHSTANDING	These obligations shall remain in force notwithstanding the termination or dissolution of the agreement(s) in question.	
2	SUBJECT TO	After the termination or expiration of the agreement(s) between the parties, each party shall, without delay, return to the other party the confidential information received from that party, subject to the right of the first party to retain one copy of such documents as proof of the test and certification results and for the event that a dispute between the parties arises.	
3	WITHOUT PREJUDICE TO	Article 9 Subcontracting DEKRA Certification shall be entitled to engage third parties for the performance of the activities agreed upon, but assumes the full responsibility and liability therefore, without prejudice to the provisions of Article 10. The provisions of Article 8.5 shall apply to such third parties.	

TASK 2

Rewrite the clauses in plain English so that the phrases in bold are easy to understand by non-lawyers.

1. **Notwithstanding** the provisions stated in the **foregoing** articles, in the event that the Other Party fails, fails to properly or fails to timely fulfill any of its obligations towards KEMA Quality, KEMA Quality shall be entitled to suspend performance of the agreement, or to dissolve the agreement **without** judicial intervention, in whole or in part, without any obligation for KEMA Quality to pay damages, **but without prejudice** to KEMA Quality's right to seek compensation [...]
2. In the event that the certificate(s) **in question** do(es) not have a limited period of validity, each party may terminate the agreement **with respect** to each certificate **subject to** three month's notice.

