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A LINGUISTIC APPROACH TO LEGAL ENGLISH

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Chapter 1 - Preliminary Considerations

Of all professional registers, legal language is, we believe, the most complex not only because of its formal intricacy but also because of its profound social impact. Legal language is not only a register but a ritualistic code, a social instrument through which actions are performed and effects are produced. It is a vehicle for legal negotiation capable of altering the status and rights of individuals and entities and a means through which social order is instituted and maintained by way of laws and regulations.

Legal language in general and legal English in particular fulfil these functions through institutionalized linguistic patterns that have stood the test of time, while remaining sufficiently flexible to permit innovation and adaptation to contemporary realities. In this sense, legal language is a living system, continually subject to change, revision, appropriation and optimisation by its most competent users.

Legal language is the lingua franca used in achieving social order, its formulae functioning as a guiding thread throughout all legal instruments such as legislation, court decisions, regulations, contracts and deeds. The impact of legal language upon human civilization is as great as its scope or as the responsibility that it bears on individual, local, national and international levels. As Crystal (2010, p. 374, quoted in Durant and Leung, 2016, p. 66.) phrased it, legal language is:

> "pulled in different directions. Its statements have to be so phrased that we can see their general applicability, yet be specific enough to apply to individual circumstances. They have to be stable enough to stand the test of time, so that cases will be treated consistently and fairly, yet flexible enough to adapt to new social situations. Above all they have to be expressed in such a way that people can be certain

> about the intention of the law respecting their rights and duties. No other variety of language has to carry such a responsibility."[1]

This statement illustrates the *complex*, *polyfunctional* and *multidimensional* character of legal language whose study involves the analysis of its many types of discourse: the legislative discourse (normative), the judicial discourse (used in court), the contractual discourse (of contracts, treaties, conventions, agreements) and doctrinal discourse (of case law)[2].

In this study, the term *legal English* is used to designate the linguistic code employed across all legal contexts, registers, and settings (both spoken and written) which encompasses general English while also exhibiting features specific to the legal register. Throughout the text, we also employ the broader term *legal language* to refer to the language of the legal process in both common law and civil law jurisdictions, irrespective of its language of expression.

This research is intended for experts in pragmatics, functional linguistics, sociolinguistics, and conversational analysis, particularly those who are also interested in their applications in the study of legal English. Because it equally examines legal English from a foreign language learning perspective, it may also be valuable to professionals involved in language teaching. Students and scholars can benefit from the findings as the study incorporates multiple theoretical approaches to formal, functional and social functions of the legal discourse.

Moreover, the investigation may be further extended into areas such as forensic linguistics and its applications, the spoken discourse of vulnerable victims, topics that are mentioned but not explored in depth due to the study's limited scope and focus. Consequently, this work lays the groundwork for various future research directions, while acknowledging that it does not attempt to cover every aspect of the study of legal language.

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[1] Crystal, 2010, p. 374, quoted in Durant and Leung, 2016, p. 66.

[2] Stoichițoiu-Ichim, 2000, p.31.

1.1. The Object of Research

The object of the present study is the linguistic analysis and structural description of legal English language and discourse in its both written (legislative, contractual) and spoken (courtroom interaction) instantiations. It outlines the formal features of legal language as a register and describes its division into distinctive genres, while also examining the transformation of legal language into legal discourse when its use is situated within social and interactional contexts.

In other words, the overview of legal language entails a decontextualized, *in vitro* analysis of the register, whereas the study of legal discourse focuses on its *in vivo* use within a written context as well as in verbal interactions where it functions to reinforce institutional power dynamics, achieve specific professional or procedural goals, or simply maintain rapport through adherence to genre-specific conventions.

We believe that our study benefits from this dual perspective, both isolated and contextualized, as it captures the dual nature of Legal English: simultaneously precise yet adaptable to diverse communicative purposes and institutional settings.

Hence, in our examination of the distinctive features of Legal English, we draw on the most influential theoretical contributions in the field and illustrate them through examples from European and non-European legislative texts in English, courtroom discourse, legal dictionaries, the European Union Legal English Style Guide, and specialized online resources, all of which are referenced in the footnotes.

Moreover, given my dual role as a researcher in theoretical and applied linguistics and as a lecturer of Legal English in an ESP framework, this study also addresses the pedagogical dimension. In particular, it considers the teaching of Legal English to Romanian law students for whom English is a foreign language. Thus, the theoretical, comprehensive, and multidisciplinary characterization of legal language is complemented, where appropriate, by methodological insights into effective ways of conveying the complexities of this register to non-native learners.

1.2. Research Methods

In order to fully understand how language functions within the legal sphere, it is essential to investigate its features through multiple methodological instruments. This qualitative, synchronic exploration of legal discourse requires methodological approaches from various fields such as discourse studies, ethnographic methods, sociolinguistics, pragmatics, conversation analysis, legal semiotics, and functional grammar approaches. This diversity of methods is crucial because legal language is not only a form of communication but also a social institution, deeply intertwined with the functioning and structure of society. Its complexity and unique role in shaping social order require a broad, interdisciplinary framework that would provide insight into its distinctive nature.

When studying legal language which is both context-generated and context-dependent, one has to go beyond its formal lexicological, morphological or syntactic features and account for personal, social, discursive, ethnographic and pragmatic motivations that legal language users envisage.

In our view, we consider Relevance Theory to be the most valuable instrument in the analysis of legal English due to its main contention that utterances (but also written texts, we believe) are to be viewed as triggering inferential processes through which speakers/writers guide hearers/readers toward accurate interpretations with a minimum processing effort. This reduction in processing effort is governed by the principle of "constraints on relevance" (Sperber and Wilson, 1986), which requires speakers to simplify the inferential process for other participants in the conversation.

The importance of Relevance Theory also resides in its references to *contextual effect* and *processing effort* (Blakemore, 2003, p. 105; Cummings, 2010, p. 396; Sperber and Wilson, 1986). The premise from which the two concepts depart is that any communicated information interacts with its context in such a way as to generate sufficient contextual effects. Then, as Sperber and Wilson posit, no unnecessary processing effort should be required to recover these contextual effects. The two assumptions establish the principle of *optimal relevance* (Sperber & Wilson cited in Blakemore, 2003) which entails that communication should generate "clear and predictable expectations of relevance"[3] which assist the hearer/reader in interpreting the speaker's/writer's intended meaning as mentally comfortable as possible.

In written legal texts, the principle of *optimal relevance* presupposes that the drafter adheres to the established conventions and norms of the legal genre to which the text belongs, ensuring that both format and content are familiar to the intended reader. In this way, the processing effort is directed exclusively toward understanding the information communicated, rather than toward deciphering its form. *Optimal relevance* in legal drafting can thus be understood as involving the use of genre-specific lexical formulae, syntactic patterns, and text-organizational structures that facilitate efficient interpretation.

1.3. English for Specific Purposes – A Case of Legal English

As noted by Nodoushan (2007), English for Specific Purposes (ESP) is inherently linked to English for General Purposes, given the fact that ESP instruction and research are grounded on the principles of EGP. Nodoushan lays emphasis on the fact that, from a pedagogical standpoint, effective ESP instruction must be preceded by a solid foundation of EGP in order to ensure

[3] Cummings, 2010, p. 396.

optimal learning outcomes. Therefore, attaining at least an intermediate level of English proficiency must be a prerequisite for successfully participating in ESP courses, particularly when the instructional time is limited.

However, Dudley-Evans and St. John (1998, pp. 4,5) point out that ESP instruction can, under certain circumstances, be carried out with beginner-level learners. Based on my personal teaching experience, I have observed that students lacking a sufficient background in general English often encounter notable challenges when confronted with the specialized vocabulary and complex discursive structures characteristic of Legal English. After two years of combined EGP and ESP instruction, such learners manage to achieve a functional command of (very) basic professional communication, the ability to draft and interpret simple administrative documents (e.g. notices, affidavits, eviction notices, employee handbooks, etc.) and to comprehend the general meaning of spoken legal discourse in English during listening activities.

Hutchinson and Waters (1987, p.12) view ESP not as a "*product*" but as an "*approach*" to language instruction that is fundamentally needs-based. In their view, all pedagogical decisions concerning methodology and content should be informed by clearly defined learning objectives. Hence, the emphasis of ESP is not solely placed on acquiring linguistic competence but also on a learner-centred pedagogy whose goal is communicative effectiveness and pragmatic-discursive competence. Conversely, Dudley-Evans and St. John (1998, pp. 4,5) stress the fact that language – specifically grammar, lexis and register – should remain central to ESP instruction.

Both perspectives offer valuable insights, particularly regarding the teaching of Legal English to Romanian Law School students who, during the first two years of legal education, have yet to determine their future professional trajectories. Given the uncertainty surrounding their eventual specialization, these students must be equipped with a versatile linguistic and communicative set of skills that will permit them to successfully function in a wide array of legal professions upon graduation.

1.4. Teaching Legal English in the Romanian Academic Setting

Proficiency in English has certainly become a major asset within Romanian institutions since our country's relevance, scope and involvement on the international stage has increased exponentially in recent years. From very young ages, students become aware that their professional success will not only depend on acquiring outstanding professional knowledge and skills but also on boosting their prospects of career advancement through the mastery of as many foreign languages as possible. For Romanian students, at least, English is a "safe investment" when it comes to choosing a foreign language to learn on account of its ever consolidated and repeatedly affirmed status of Lingua Franca in all daily and professional communication contexts.

However, within the present-day context, general English no longer suffices for being successful in a demanding and competitive business environment such as that of law firms, medical and pharmaceutical companies, food industry and tourism companies, in engineering or industrial facilities, etc. Mastery of the specialized technical English used in these domains provides a definite advantage, leading to a better professional status and higher income.

For Law School students, this awareness is a powerful motivator in their strive to acquire Legal English vocabulary, structures, and skills from the very start of their academic journey. But the Legal English ESP course is aimed to develop student confidence alongside their communicative competence, and this is accomplished by selecting and finetuning materials meant to even the occasional difference between the students' levels of general English to begin with. That is a very difficult stage precisely because it must happen during the already started acquisition of legal terms and structures. Given the fact that the instruction period for Legal English in Romanian universities is of maximum two years, no lecturer affords the luxury of going through the two stages consecutively but rather concomitantly and must carry it off somehow.

To add another challenge to the process, as pointed out (Matei, 2008, p. 148), Romanian first and second-year Law students are still in the process of becoming acquainted with the Romanian judicial system, with native legal terminology across various branches of law, and with the specificity of legal professions within the Romanian context. Consequently, they often experience frustration when no direct Romanian equivalent exists for certain English legal concepts, such as, for instance, court orders and injunctions in areas like childcare, but also for some crimes or legal documents.

There are also considerable differences between the Romanian judicial structure and those of the United Kingdom or the United States. At this early stage in their academic studies, students lack the motivation of learning about Anglo-American legal systems only for cultural insight as they do not appreciate the relevance of this endeavour. This is a paradox, in my opinion: they are driven and willing to learn Legal English, but their primary focus is rather on content that has direct correspondence and applicability to the Romanian legal practice.

English for Specific Purposes (ESP) is aimed, according to Hutchinson and Waters (1987, p. 12), to equip learners to operate effectively in a specific target situation for which they are being prepared and where they will use the relevant language register. Consequently, the initial step involves identifying the respective target situation, followed by isolating the linguistic features that define it and determining the appropriate methods for acquiring them.

Essentially, an ESP course prepares learners, from a linguistic standpoint, to function in a particular professional environment. For Romanian law students, this means becoming proficient in legal terminology in both their native language and English – often simultaneously, which is, quite frankly, a significant challenge. As a result, they often struggle to foresee the precise manner in which Legal English will benefit them in the long term (Matei, 2018, p.149). In other words, while students recognize the importance of mastering

Legal English and are motivated and eager to learn it, they are not yet able to fully grasp its relevance to their future legal careers. To a certain extent, the lecturer must anticipate a wide range of potential linguistic career needs, envisaging and addressing multiple professional situations in such a way as to equip students for as many professional contexts as possible.

Chapter 2 - Legal Language and Power

This chapter lays the foundation for an in-depth examination of the distinctive features of legal language and its functions within society. Before addressing matters of form and function in Legal English, we will first consider the distinction drawn in the literature between *legal language* and *the language of the law*. Subsequently, we will analyse the equally important distinction between *legal language* and *legal discourse*, situating it within the power dynamics that operate in institutional settings in general, and even more prominently in the power-governed discourse of the law. The following section elaborates on this conceptual differentiation as a foundation for analysing the structural, pragmatic and functional characteristics of legal English.

2.1. Legal Language and the Language of the Law

Legal language, in its broadest sense, refers to the specialized variety of English used within legal contexts, encompassing both oral and written communication produced by legal professionals. By contrast, *the language of the law* designates the formal, authoritative language of legal texts (i.e. statutes, contracts, regulations, and judicial decisions) through which legal norms are articulated and enforced. According to Mattila (2006, pp. 4, 5), legal language can be classified into multiple *sub-genres* based on specific criteria, including:

1. The professional subdivisions within the legal field, such as legal scholars, legislators, administrative officials, judges, mediators, attorneys, prosecutors, and notaries public.
2. The various branches of law, encompassing such areas as civil law, criminal law, family law, contract law, corporate law, constitutional law, property law, tax law, employment law, human rights law, and the law of tort, among others.

A significant challenge in teaching the extensive and specialized terminology associated with these legal branches lies in the interdisciplinary nature of legal discourse. As Mattila (2006, p. 5) observes, each legal domain frequently incorporates terminology from other technical fields. For instance, tax and corporate law heavily employ economic and accounting terminology, criminal law integrates medical vocabulary, chiefly from psychiatry, and property law draws on terminology related to land surveying.

Kurzon (1989, p. 284) offers a nuanced distinction between *legal language* and *the language of the law*. The former, the author points out, is the language used in textbooks or in discussions concerning legal matters. It is marked by a formal register, the use of fragmentary sentences, conventional expressions and specialized legal terminology (*terms of art*). In contrast, *the language of the law* is the language used in normative legal texts, documents which lay down the law, such as legislation, contracts, wills, and deeds, which are characteristically drafted in a formal, often archaic style.

The distinction also implies a difference in audience and function. *Legal language* is chiefly used by legal professionals within institutional and academic contexts to talk about normative legal texts. On the other hand, *the language of the law* must be accessible to the general public, who are expected to understand and comply with legal norms, interpret court rulings, comprehend the general provisions of wills and contracts, and respond appropriately to official notices and legal warnings, often in the absence of professional legal assistance. Hence, *the language of the law* is used in a text which *is the law*, whereas *legal language* is used in a text which *talks about the law.* To exemplify this distinction, consider Article 9 of the Constitution of Romania:

“ARTICLE 9

Trade unions, employers' associations, and vocational associations

Trade unions, employers' associations, and vocational associations shall be established and shall carry out their activity according to their statutes, according to the law. They shall contribute to the protection of rights and the promotion of their members' vocational, economic, and social interests.”[4]

Article 9 of the Romanian Constitution is an example of the *language of the law*, as it establishes the legal status and functions of trade unions, employers' associations, and vocational associations. By contrast, a statement such as "Article 9 guarantees the organizational autonomy of these associations and recognizes their role in protecting the interests of their members" constitutes *legal language*, since it comments on and interprets the constitutional norm rather than enacting it. Therefore, the constitutional text (i.e. *the language of the law*) creates the legal norm, and its commentary is *legal language* because it does not itself create rights or obligations; rather, it **describes, explains, and interprets** the constitutional provision.

The distinction between legal language and the language of the law could be introduced to students as early as the second year of Legal English ESP instruction, once they have acquired a sound foundation in legal vocabulary to engage with such concepts. An effective way of familiarizing students with this distinction would be through text-transformation activities, which may take either a written or an oral form.

[4] The Constitution of Romania, Article 9. Retrieved from https://www.presidency.ro/en/the-constitution-of-romania, last accessed 7 June 2026.

In a writing exercise, students could be asked to draft a complaint addressed to a public institution on behalf of a client, explaining in more accessible (yet legal) language the provisions on which their petition is based. In a speaking activity, students could role-play a court hearing or a legal consultation in which, acting as legal professionals (judges, attorneys, or prosecutors), they are required to explain and interpret legislative texts for the parties involved in the proceedings. Such activities would enable students to develop the ability to navigate different forms of specialized legal discourse while tailoring their communication to the needs and expectations of non-specialist audiences.

2.2. Legal Language and Legal Discourse

The connection between language and discourse is made by Teun van Dijk's well-known definition (quoted in Wodak, 1997, p. 6). He describes discourse as a specific mode of language use and social interaction, essentially, a communicative event embedded within a social situation. Discourse, as defined by the same author, can be understood as text situated within context and enacted as action that is inseparable from other forms of social practice.

Ruth Wodak (1996; 1997) also supports this perspective, emphasizing that it entails a dialectical relationship between discourse and the social, institutional, or situational structures that frame it. While legal discourse is socially constituted and conditioned, it also possesses the capacity to shape, maintain, and reproduce existing social structures.

Similarly, Schiffrin (1987, pp. 4, 5) highlights that any analysis of discourse, equally of legal discourse, presupposes the idea that language always occurs within cognitive, cultural, or social contexts. For Schiffrin, language is inherently *context-sensitive*: it both reflects and constitutes the conditions of its occurrence. At this point, language transcends its basic function and becomes discourse.

A more comprehensive account of discourse context was proposed by Dell Hymes (cited in Brown and Yule, 1983, pp. 38, 39). Hymes outlines several contextual features that play a role in identifying a particular type of speech event. Within such events, the participants are the *addressor* (speaker/writer/legal drafter) and the *addressee* (hearer/reader/audience). Expectations are shaped by factors such as *topic* and *setting*. Additional coordinates include the *channel* (e.g., speech, writing, dialect, or style of language), *message-form* (e.g., debate, sermon, court pleading, testimony, ruling), *event* (e.g., trial, lecture), *key* (e.g., dramatic, stern, sarcastic, humorous, pathetic, solemn), and *purpose* (i.e., the intended outcome or effect of the discourse). These elements, as Hymes suggests, collectively determine the communicative event (Brown and Yule, 1983, pp. 38, 39).

Legal discourse and its specific genres are used by speakers or writers in full accordance with the context in which it is intended to be used. For instance, during a return of a verdict in court we are dealing with an addressor who is the judge and an audience formed of attorneys, parties, other officers of the court, law enforcement personnel (if it's a criminal case). The topic is certainly the measures or sentence imposed by the court whereas the setting is the majestic environment of a courtroom. In the context of legal discourse, the *channel* is oral speech, while the *message-form* takes the shape of a ruling, delivered in a solemn *key* during a trial event. The *purpose* of such discourse is simultaneously personal and social.

On a personal level, a verdict or ruling seeks to provide redress for the wronged party, offer remedy for damages sustained, or impose punishment for criminal acts. On a broader social level, legal discourse contributes to the maintenance of social order by establishing legal precedents and setting deterrent examples, thereby seeking not only the resolution of individual disputes but also the prevention of future transgressions.

It would be highly beneficial for students to develop the ability to identify the defining features of discourse in relation to its context and constituent elements. One possible activity would involve providing students with transcripts of a trial, negotiation, or arbitration proceeding and asking them to identify the discourse elements outlined above: *the addressor, the topic, the setting, the channel, the message form, the event, the key, and the purpose*. Their findings could then be examined in light of the actual context of the event. Subsequent class discussions would enable students to reflect on their observations and establish analytical frameworks that would help them situate legal discourse within its broader communicative and institutional context.

2.3. The Power Dynamics of Legal Language

As Fairclough (1989, p. 68) observes, power is not a fixed or permanent attribute possessed indefinitely by any individual speaker or social group. Instead, it constitutes a negotiated discursive status that requires continual reaffirmation by those who seek to hold it. Power, therefore, is never static; it is exercised, contested, and sustained – whether at institutional or non-institutional levels – as part of a broader social struggle.

As stated elsewhere (Matei, 2012, p. 115), the dynamics of this struggle are evident in diverse relational contexts: parents and children, interviewers and interviewees, managers and subordinates, doctors and patients, magistrates and witnesses, among others. These interactions often involve negotiations or confrontations in which discursive power is asserted or resisted. Crucially, the aim of such exchanges is rarely outright dominance. Rather, they tend to revolve around the pursuit of equality - that is, the attempt to resist or escape subordinate discursive positions that speakers, regardless of age, gender, or social status, typically find uncomfortable.

It is important to note that discursive power, particularly in institutional encounters, is often not a matter of individual choice but rather the result of structural or institutional constraints. Officials, for example, may occupy authoritative positions not because of personal preference but because their institutional roles require it. Discursive power can thus be analysed from multiple perspectives. Any negotiation aimed at achieving a more authoritative position necessarily involves at least two competing forces, creating structural asymmetry between participants. This imbalance may stem from differences in social status, institutional role, age, gender, or household position, among other factors.

Tannen (1993, p. 167) argues that *power* regulates asymmetrical relationships in which one party occupies a subordinate position, whereas *solidarity* regulates symmetrical relationships characterized by social equality and similarity. From this perspective, the negotiation of discursive power relations may be viewed as an effort to bridge these two dimensions. In less formal interactions in particular, negotiation may facilitate the emergence of discursive solidarity within relations of power. However, it would be an overstatement to suggest that negotiation can produce complete symmetry; indeed, such an outcome may not even be desirable in certain contexts, such as courtroom interactions or other strict types of discourse in institutional settings.

Speakers frequently make attempts to negotiate their communicative position, particularly when they feel uneasy about their assigned or perceived status within the interaction. While participants in a speech event may be socially and institutionally equal, negotiation can still arise. In such cases, negotiation does not necessarily reflect struggles over power; rather, it often involves collaborative, symmetrical, and supportive forms of interaction. Within this framework, negotiation should not be narrowly understood as aggressive verbal competition or the undermining of another's position, but as a broader process of managing discursive roles.

Institutional talk represents not only the most regulated type of discourse but also one of the most strongly shaped by power relations. In institutional encounters, there is typically a dominant participant who controls the direction of interaction – often by holding the exclusive right to ask questions or by regulating the contributions of less powerful interlocutors. As Thornborrow (2002, p. 4) observes, institutional discourse establishes positions for speakers to talk from, simultaneously enabling participation for some while limiting others' access to certain types of discursive actions.

What is particularly noteworthy is that institutional interaction is inherently asymmetrical, with unequally distributed power, most of which is held by the institutional participant. The unequal relationship in institutional verbal interactions does not always involve power being used in a controlling or negative way. In a courtroom, for example, a lawyer questioning a witness on their own side uses their authority and language skills to support the witness's testimony, shaping their questions in such a way as to help the witness present the strongest version of their case. When lawyers cross-examine an opposing witness, though, they adopt very different strategies. This shows that dominance, enabling, and restricting in institutional talk depend on who is speaking, when they are speaking and for what purpose. (Coulthard and Johnson, 2007, pp. 15-16).

Examples of such institutional settings include medical examinations, courtroom proceedings, police interrogations, media interviews, and corporate board meetings. In these contexts, discursive power is frequently negotiated. Even in highly formalized exchanges, less powerful participants strive to resist imposed patterns, attempting to preserve a dignified and agentive image of themselves through their linguistic behaviour. Within institutional discourse, participants commonly function as objects of scrutiny (e.g., in medical examinations), sources of information (e.g., in police or courtroom questioning), compliant respondents (e.g., in interviews), or task-oriented contributors (e.g., in board meetings) (Matei, 2012, p. 118; see also Matei 2010a, Matei, 2010b).

Excerpts from interactions such as those described above could be used in Legal English ESP classes to facilitate the identification and analysis of power dynamics, institutional discourse patterns, constraints on turn-taking, and strategies for acquiring greater discursive power when institutional authority is absent. Speaking, listening, and writing activities could also focus on grammatical features such as modal verbs and the passive voice, examining their role in mitigation, politeness, and the negotiation of power within legal discourse.

Chapter 3 - An Interdisciplinary Perspective on Legal Language

Legal language is inherently and concomitantly technical, indeterminate, normative, performative and intertextual register, according to legal philosophers and linguists (Bhatia, 2013; Cao, 2007; Gotti, 2012; Halliday and Hassan, 1985; Jackson, 1985; Jenkins, 1980; Jori, 1994; Kurzon, 1986; Mattila, 2006, 2012, Tiersma, 1999, etc.).

In the following sections, we will examine the fundamental characteristics of legal language from an interdisciplinary perspective in order to gain a comprehensive view of its linguistic particularities. The study of legal language requires an interdisciplinary approach, drawing on perspectives from discourse analysis, ethnography, sociolinguistics, pragmatics, conversation analysis, semiotics, or functionalism. This methodological pluralism is necessary due to the intricacy of legal language which is both a linguistic and a societal phenomenon whose inherent characteristics are utterly complex and whose social function supports the organization and operation of society itself.

3.1. The Normative Nature of Legal Language

Legal language is *normative* because it is linked to norm creation, norm production as well as to norm expression on account of its prescriptive character. Cao (2007, p. 13) states that the normative nature of the language of law is given by its basic societal function of guiding the behaviour of individuals and of regulating human relations. Law is the embodiment of the ideals and standards people strive to attain in such areas as equity, justice, rights, liberty, equal protection and general welfare (Jenkins, 1980, p.98). Hence, law has a normative existence because it aims to accomplish these ideals and principles which are the very existential goal of law. The latter exists as set of prescriptions having the form of imperatives which define and enforce the relationships, procedures and patterns of behaviour that must be followed in society (Jenkins, 1980, p. 98)

The language used in law to achieve its purpose is chiefly prescriptive, directive and imperative (Cao, 2007, p.13; Marmor, 2008, p. 425). Thus, the language of laws is not used just to express or convey knowledge but to direct, influence and modify people's behaviour either by a legal enactment, judicial decision or by a contract. As Maley (1994, p. 11) also pointed out:

> "In all societies, law is formulated, interpreted and enforced … and the greater part of these different legal processes is realised primarily through language. Language is the medium, process and product in the various arenas of the law where legal texts, spoken and written, are generated in the service of regulating social behaviour."

To sum up, legal language is a normative means to the ultimate end of regulating human behaviour in society. It possesses the strength to inform, regulate as well as bring about order in human social interactions, status and relations.

Law students can be exposed in ESP classes to a range of legal texts and asked to identify the words and expressions that convey obligation, authority, or imperative force, as well as to explain their function within the given context. To reinforce their understanding, students may complete multiple-choice, matching, or cloze-type activities requiring them to select and insert appropriate words and phrases expressing obligation into legal texts.

3.2. Legal Language is Performative

As previously stated (Matei, 2012, p. 63), a central characteristic of discourse in institutional settings is the presence of a defined set of constraints governing participants' contributions to the communicative event. Hence, Joanna Thornborrow (2002, p. 4) describes institutional discourse as a form of talk that establishes positions for speakers and restricts their access to particular kinds of discursive actions.

Although turn-taking, language use, and power relations are regulated within established structures such as courtroom testimony and affidavits, attorney-court interactions, etc., breaches may still occur, disrupting an otherwise orderly linguistic exchange.

The most distinctive feature of institutional discourse lies in its strict attributional constraints imposed on participants. In this context, the dominant context is external, as it is the participants' social roles that regulate both the internal dynamics and the context of interaction. Turn-taking, permissible linguistic forms, and hierarchical power relations are all determined within these pre-allocated patterns. Whether in a courtroom or outside it, adherence to these structured norms is obligatory, with variation arising only in the specific rules that differentiate one institutional context from another.

3.2.1. Shaping Reality Through Performativity

The central characteristic of legal language is its *performative* function, which underscores the importance of pragmatics in legal discourse and calls for the differentiation between descriptive and prescriptive propositions (Matei, 2018, p. 150). As pointed out by Gioroceanu (2023, p. 30), the prescriptive and descriptive propositions derive from the relationship IS vs. MUST BE, between the ontic and the deontic. The semantic, lexical and syntactic features of Legal English must therefore be examined in conjunction with its pragmatic dimensions, as legal language enacts legal realities through its usage.

According to Cao (2007, p. 14), the performative nature of legal language entails the use of written words or speech to generate legal and social change through words. As the author phrases it:

> “ Words are not only used to speak with, but are also used to do things with, in the same way as language, its performative function dealing with conferring rights, prescribing prohibition and granting permission. By simply uttering words, people accept public and private responsibilities, assume different legal roles and qualities, transfer legal rights and impose or discharge obligations.”

The performative function of legal language must be considered when designing the teaching approach for legal language instruction. It is essential to adopt an appropriate teaching methodology that should enable students to master not only the syntactic and semantic dimensions of legal discourse but also its pragmatic features.

One of the defining characteristics of legal language is precisely its ability to enact justice through linguistic means, namely to produce legal effects via speech acts (Mattila, 2006, p. 31). According to Mattila, the performative nature of legal discourse allows it to serve as an instrument through which legal relationships can be altered. For instance, a judge may deliver a ruling or parties may enter into a contractual agreement through performative utterances (e.g. “On these grounds, the Court grants the claimant/respondent custody of the minor child”).

The laying down of the law should thus be analysed from a pragmatic perspective. Speech act theory, as developed by Austin (1962) and further refined by Searle (1969, 1976), provides a theoretical framework for examining how legal language constructs social and legal realities. Within this framework “the ordering of human relations is accomplished through *directives*" (Searle, 1969) which are binding insofar as they aim to uphold the law and promote the common good.

Searle's (1976) general classification of speech acts is used as a point of departure by Danet (1980) in her classification of legal discursive instances into several categories and events according to their type of performativity. Thus, Danet (1980, pp. 457-461) develops the following classification framework for legal speech acts:

1. Representatives – these are statements where the speaker commits to something or they assert the truth of a proposition, such as testifying, swearing, asserting, claiming, and stating.
2. Commissives – they involve the speaker making a commitment to a future action, typically seen in contexts like contracts, marriages, and wills.
3. Expressives – they convey the speaker's emotional or psychological response to a particular situation; these include apologising, excusing, condemning, deploring, forgiving, and blaming.
4. Declaratives – these are speech acts that, when successfully performed, bring about a change in reality that is in direct correspondence to their propositional content, such as in marriage ceremonies, bills of sale, receipts, appointments, nominations, lawyers' objections, sentences, indictments, confessions, pleas of guilty/not guilty, and verdicts.
5. Directives – these are future-oriented acts aiming to change the world, to get a person to do something, and are mostly present in legislation that imposes obligation.

Thus, performative language, which aims to change a reality or a status quo rather than just to describe, plays a crucial role in legal language. As Cao (2007, p.21) noted, legal utterances perform acts, create facts, rights, as well as institutions. The author described a statute as a master speech act with each of its provisions being individual speech acts. Among the performative markers used in legal texts, the author (Cao, 2007, p. 22) mentions performative verbs such as *declare, announce, promise, undertake, enact,* *confer,* and *amend* as being very frequently used in legislation in which "saying is doing" (Cao, 2007, p. 21).

Law students should be able to identify the most commonly used performative verbs in legal discourse and understand the functions they serve in legal communication. Furthermore, learners of Legal English should be capable of recognizing and providing examples of situations in which utterances themselves bring about legal or social consequences, thereby altering reality through language. Reading comprehension and speaking activities are particularly well suited to developing this understanding, as they enable students to analyse and discuss performative acts within authentic legal contexts.

Bhatia (2013, p. 102) indicates that the illocutionary force of the utterly impersonal and decontextualized legislative writing is independent of the legal drafter or the reader of the respective text because its general function is directive, its rationale being that of imposing obligations or conferring rights. The author lays emphasis on the specificity of the communicative purpose of legal writing which is that of being "all inclusive" thus covering all possible (and foreseeable) scenarios that the legal provisions can address:

> "As legal draftsmen are well aware of the age-old human capacity to wriggle out of obligations and to stretch rights to unexpected limits, they attempt to guard against such eventualities, by defining their model world of obligations and rights, permissions and prohibitions as precisely, clearly and unambiguously as linguistic resources permit. A further complication is the fact that they deal with a universe of human behaviour which is unrestricted, in the sense that it is impossible to predict exactly what may happen within it. Nevertheless, they attempt to refer to every conceivable contingency within their model world and this gives their writing its (…) key characteristic of being all inclusive."[5]

[5] Bhatia, 2013, p.102, abridged text.

To develop the analytical and drafting skills required of future legal professionals (and potentially future legislative or contract drafters) learners of Legal English may be assigned writing tasks that require comprehensive and precise descriptions of processes, relationships, or agreements. For example, students could be asked to draft a mock contract to be signed by their dormitory roommates regarding household rules and responsibilities. In preparing the contract, they would be encouraged to anticipate foreseeable disputes or contingencies and address them through clear contractual provisions. This activity would help students develop skills in legal drafting, and risk management. In addition, role-play exercises could be used to simulate the negotiation of such an agreement, allowing students to practise the language and communicative strategies involved in contractual bargaining and dispute resolution.

3.2.2. Legal Speech Acts: Linguistic Markers of Performativity

According to the literature, a number of linguistic markers are frequently employed to signal the performative dimension of legal discourse, among which we can include the following:

- The verb "to enact": e.g. "*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That…*" [6]

As Kurzon (1986, pp.10, 11) pointed out, the verb *to enact* is an exercitive performative (according to the classification of explicit perfomative verbs devised by Austin 1962, cited in Kurzon, idem.) which is in a passive imperative form with its subject *it* being the grammatical subject of the sentence. The real subject is the actual text of the statute which is placed in end-position within the sentence, after *That*.

[6] Enacting formula in the US retrieved from https://www.law.cornell.edu/uscode/text/1/101, last accessed 4 October 2025.

- The adverb "hereby": e.g. "*I hereby promise/declare/pronounce*." (Tiersma, 1999, p.104)

Kurzon (1986, pp. 6–7) observes that although *hereby* is an optional element within a performative utterance, it cannot occur outside a performative context. Consequently, the mere presence of *hereby* in a sentence serves as an indicator of that sentence's performativity. Mellinkoff (1963, p. 314), by contrast, argues that *hereby* is a vague expression whose sole purpose is to "give the flavour of the law." In reality, Mellinkoff's observation pertains only to the term's semantic dimension, which is indeed indeterminate – particularly in determining whether its meaning ("by means of this writing/declaration," etc.) extends to the document as a whole or applies only to a specific section. The function of *hereby*, however, is essentially pragmatic: it signals that the utterance constitutes a performative instance of legal discourse.

- The auxiliary verb "do": e.g. "*I do promise*."

According to Tiersma (1999, p.104 - 105), in legal discourse, *do* is often used in declarative sentences, but it does not convey the emphatic or contrastive meaning as in ordinary speech. In legal language, the auxiliary verb *do* "indicates that the following main verb creates or modifies legal institutions or relations"[7]. The author gives an example of such use from the Preamble of the United States Constitution:

> "We the people of the United States … *do* ordain and establish this Constitution for the United States of America."[8]

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[7] In Tiersma (1999, p. 104)
[8] Ibid. (original emphasis)

Tiersma (1999, p. 104, 105) further draws a comparison or rather establishes a functional analogy between *hereby* and *do*. The author points out that both *hereby* and *do* mark the succeeding verb as being performative, or having the ability to actually perform "an operative legal act"[9]. Performatives, according to the author, are quite frequently used in legal English because they allow a person to change a state of affairs or an institution to enact something into law by means of a simple utterance. For reasons of caution or habit, lawyers use both performative markers in the same context such as in the following example:

> "I *do hereby* nominate, constitute and appoint my husband, Vasil Pavlinko, as Executor of this my Last Will and Testament." [10]

However, Tiersma (1999, p.105) argues that the use of the two markers of performativity, either separately or together, is necessary only when there is doubt regarding the performative nature of the ensuing verb and only with the purpose of disambiguation.

- The modal "shall", which conveys obligation and is typically used to express the illocutionary force of legal directives imposed on human or non-human agents. (Matei 2018, p. 151)

Below is an example taken from a Legal English textbook that I use with my first year Law students precisely with the aim of exposing them to formulaic legal discourse whose performative function must be internalized and its illocutionary force fully comprehended.

> "Except with the prior sanction of the holders of more than 50 per cent of the issued share capital of the Company from time to time <u>the Directors *shall*</u> procure that <u>the</u> <u>Company *shall*</u> not sell, transfer or otherwise dispose of the whole of its undertaking, property or (save in the ordinary course of trading) assets or a part thereof being

[9] Ibid.

[10] Tiersma, 1999, p.105, original emphasis.

> substantial in relation to its total undertaking, property and assets (…).”[11]

- The phrase “by these presents” (i.e. by this document) or the extended formula *Know all men by these presents*, often found in legal instruments such as bills of sale, deeds, powers of attorney and stock powers. (Tiersma, 1999, p.104)
- The verb “to undertake” (Matei, 2018, p. 151) encodes the concept of mutually committing to a common professional goal or, more commonly, that of adhering to an agreement or contract. The following excerpt from a Legal English textbook illustrates the contextual application of the term:

> The Shareholders undertake with each other that they shall not without the prior consent of the other parties while a shareholder in the Company become involved in any business other than that of the Company (…).[12]

3.2.3. Legal Speech Acts: Felicity Conditions

Kurzon’s *It is Hereby Performed: Explorations in Legal Speech Acts* (1986) represents a seminal contribution to the application of speech act theory to legal discourse, shedding light on how this framework can explain the manner in which parliamentary acts (statutes), private legal documents (wills or deeds), and judicial decisions function as speech acts with the illocutionary force of enacting.

In his examination of the language of statutes, Kurzon (1986) focuses on the function of the *enacting formula* that typically appears at the beginning of

[11] Adapted from Brieger, N., 2002, p. 63, emphasis added.
[12] Adapted from Brieger, N., 2002, p. 65, emphasis added.

legislative texts. He argues that the act of 'enacting' is inherently performative in both its linguistic form and legal function, aligning it with Austin's category of exercitive acts – those speech acts through which an authority "indicates a decision that something is to be so from a judgement that it is so"[13]. The *perlocutionary effects* (Searle, 1969) of such enactments, Kurzon observes, result in the establishment of obligations, permissions, and prohibitions that govern the actions of others.

Kurzon (1986, p. 5) identifies two main categories of features relevant to legal speech acts: **(1) linguistic features**, which function as "syntactic markers"[14] (See 3.2.2.), and **(2) pragmatic features**, often termed *felicity conditions*. The pragmatic aspect focuses on the performative dimension (i.e. the clearest form of speech acts) where the performative verb (such as *to enact*) is explicitly included in the enacting formula. This formula, containing the performative expression, determines the illocutionary force of the entire text. Following Fotion (1971, cited in Kurzon, 1986, p. 5.), Kurzon lays emphasis on the fact that the performative of enactment is the "master speech act" of the discursive context of its occurrence without necessarily being the *only* speech act in the respective text. Thus, the *master speech act* may have secondary speech acts supplementing the obligations that the legal (written or spoken) text imposes on its readers/hearers.

Performatives cannot be evaluated in terms of truth or falsity, as they do not possess any truth value. An order, for instance, is felicitous if the issuer has the proper authority over the receiver and infelicitous if s/he is not in such a position as to give orders. Kurzon (1986, p. 8) adapted Searle's (1969, p. 66) analysis of a request or command in terms of its felicity conditions to an enactment that, with regard to those conditions, is very similar:

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[13] Austin, 1961, p. 154 cited in Kurzon, 1986, p. 8.
[14] Leech 1981, p. 322, quoted in Kurzon, 1986, p. 5.

"Propositional content		future act A of hearer H
Preparatory conditions	(a)	He is able to do A. S(peaker) believes H is able to do A
	(b)	It is not obvious to both S and H that H will do A in the normal course of events of his own accord
	(c)	S is in a position of authority over H
Sincerity condition		S wants H to do A
Essential condition		counts as an attempt to get H to do A in virtue of the authority of S over H."[15]

We can safely claim that requests and orders issued in non-legal contexts certainly must consider the essential role of the hearer who is responsible for the correct interpretation of the message as a performative and comply on account of his/her inferior position in relation to the issuer. However, in legal enactments, the role of the receiver does not presuppose any kind of agency from the hearer/reader. Rather, by virtue of the legal and institutional authority of the issuer, the hearer or reader is expected to adhere to the prerequisites of the enactment, whether they are understood, explained or enforced upon them.

The felicity conditions fulfilled by a statute, as enumerated by Kurzon (1986, p. 13) are the following:

- The addresser of the legislative body is the legislature which has the necessary authority to enact legislation (preparatory condition (c) according to the diagram above).
- The authority derives from either convention or long-standing custom (Britain) or from a written constitution (US, European countries).

[15] Kurzon, 1986, p. 8.

- The speech act of enactment must be performed on a specific occasion, in a particular setting or format, which would ensure its being felicitous.
- The preparatory conditions (a) and (b) from the analysis above are not relevant in the discussion of the felicity conditions of statutory legislation because the legislator would only enact laws that the "addressees are capable of obeying". Natural human activities such as eating or sleeping may not constitute the object of legislation.
- To be recognized as a speech act of enacting with its rightful illocutionary force by the particular cultural context of its occurrence.

Surely, context is essential to the study of speech acts, as it involves multiple coordinates that must be considered in their analysis – particularly when determining whether the felicity conditions for their successful performance have been met. According to sociological and discourse analytical frameworks (Hymes, 1977; Coulthard, 1977) that should always complement any pragmatic analysis, these coordinates include the participants, the setting, the outcome, the goal, the key, and so forth. For Hymes (1977, p.54), a *speech event* such as a statute, for example, may contain several individual speech acts whose felicitousness "does not depend on purely linguistic competence, but on sociological, political, and legal facts about the world"[16]. Building on Hymes's theory of speech events, Kurzon introduces the notion of the *master speech act*, which stands at the top of the hierarchical relationship between the superordinate (master) speech act and its subordinate speech acts in statutory legislation. The author defines this relationship as follows:

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[16] Kurzon, 1986, p.19.

> “The hierarchical relationship between speech acts such as the case of statutes where a master speech act controls the occurrence of other speech acts may lead to a situation in which an utterance performs two speech acts (or more) at the same time. Not only does a constituent sentence of a statute perform the speech act of, say, ordering, but it also performs the act of enactment itself, that is to say, each of the sentences may be seen as an enactment in its own right.”[17]

This opinion is also expressed by Searle (1976) in his contention that the promulgation of a law has two *illocutionary points*. One would be promulgating (or *enacting* in Kurzon’s terms) and the other is what derives from the propositional content of the speech act, i.e. the subsidiary speech act of permitting, ordering or prohibiting. Kurzon (1986) follows Searle’s theory and states that the constituent sentences of a statute often have (at least) one of the illocutionary forces of permitting, ordering or prohibiting.

3.2.4. The Potential Speech Acts – The Pragmatic Delegation of Power

Encountered solely in British legislative texts, the pragmatic strategy termed *potential speech act* is used by the legislator to perform the legislative function of delegating authority to another administrative body (Kurzon, 1986, pp. 31-36). This secondary body is thereby empowered to enact legislative measures on behalf of the primary legislator, a process referred to as *delegated legislation* in the field of constitutional studies. The rationale for the existence of such speech acts is explained in the following:

[17] Kurzon, 1986, p.19. Adapted and abridged text.

> “the legislature, referred to as the *initial performer*, is the body that has the sovereign power to legislate, to pass laws affecting the lives of the members of the particular community. Moreover, because of the intricacies of modern life and the difficulties and perhaps unwillingness on the part of the legislature to pass laws dealing with the nitty-gritty of legal administration, the legislature empowers other bodies, e.g. ministers, local government, referred to here as the *secondary performer*, to legislate on specific matters in certain ways.”[18]

Such atypical speech acts are realized through the use of the modal verb *may*, which encodes a directive speech act of the initial performer disguised as permission. Below are some examples:

1. “The Commissioners may direct that the functions of the pension authority shall be performed by such other authority as is so specified.
2. The Minister may by order stipulate that the value of the goods shall be taken to be its open market value on a sale by retail.”[19]

The sentences above may be glossed, according to Kurzon, as “The initial performer permits the secondary performer to stipulate or to provide or to direct … that …”[20] The illocutionary force of permission conveyed in these enactments implies that the delegated authority possesses the discretion to exercise or refrain from exercising the conferred power as it deems appropriate. However, depending on the intention of the delegating legislator, the modal *may* might also carry the illocutionary force of an order, functioning as the equivalent of *shall*. (Kurzon, Idem.) It is noteworthy that an important formal feature of a *potential speech act* is that it is never negated; consequently, one would never encounter a formulation such as the following:

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[18] Kurzon, 1986, p. 32.
[19] Examples provided in Kurzon, 1986, p. 32.
[20] Kurzon, 1986, p. 32.

* “The Minister may direct that the Act shall not extend to the Isle of Man.”[21]

Apart from statutory legislation which uses the pragmatic strategy of *potential speech acts* to delegate power, wills and deeds also resort to this linguistic strategy (Kurzon, 1986, pp. 31-36). The formula whereby the initial performer delegates the secondary performer to command the stipulated action, should they so choose, is the following, or similar:

1. “My Executor/the Trustee shall have the following powers (…) to apply for the benefit of any infant beneficiary as my Executor thinks fit the whole or any part of the income from that part of my estate to which he is entitled or may in future be entitled. (Wills)
2. (…) to authorize any improvement to be made out of capital which in the opinion of the Trustees will be for the permanent benefit of the trust. (Deeds)”[22]

Both examples envisage a future speech act which is left at the discretion of the *secondary performer* who can command that a certain action take place. However, as Kurzon (1986, p. 40) emphasized, there is a key difference between the power delegated through statute and that conveyed by will or deed. In legislative texts, the scope of the secondary performer’s authority is typically more precisely defined (e.g. through references to statutory duties or administrative functions). By contrast, wills and deeds tend to confer broader discretion, often marked by phrases such as *“as my Executor thinks fit”* or *“in the opinion of the Trustees.”*

[21] Kurzon, 1986, p. 34.
[22] Examples provided in Kurzon, 1986, pp. 39, 40.

3.2.5. Repairs in Legal Discursive Interactions

Legal language is perhaps the most performative of all specialized discourses (Kurzon, 1986) as it has the ability of changing a reality. As Gotti (2012, p. 57) rightfully pointed out, the mere verbal declaration of guilt or innocence made by a judge constitutes a legal act, irrespective of whether the individual in question actually committed the crime. A court may declare a missing person to be legally deceased, even though that individual may have relocated or assumed a new identity and is therefore not physically dead.

Such instances, Gotti (2012, p. 57) further notes, highlight the significance of speech acts, which, through their performative orientation, employ a first-person pronoun and a conventional legal formula to establish legal validity. This performative force is legitimized by subsequent courtroom procedures that transcribe everything that had been stated, any acknowledgement of guilt by defendants and further issues documents attesting the newly changed reality.

In the following example, the accused admits guilt in a factual sense but is asked by the court to perform the act of pleading guilty within the official legal framework, thereby producing juridical consequences:

> "CLERK: Do you plead guilty or not guilty?
> DEFENDANT: Yes, I did it. I said I did it.
> CLERK: No. Do you plead guilty or not guilty?
> DEFENDANT: Yes, I did it. I just want to get it over.
> MAGISTRATE (to probation officer): Can you be of help here?

The probation officer goes over to the defendant and eventually goes out of court with her. Later in the morning the case is 'called on' again.

> MAGISTRATE: Do you plead guilty or not guilty?
> DEFENDANT: Yes, I did it.

MAGISTRATE: No, I'm asking you whether you plead guilty or not guilty. You must use either the words 'not guilty' or 'guilty'.

DEFENDANT: (Looking toward probation officer) She said, "Say guilty."

MAGISTRATE: No. You must say what you *want* to say.

DEFENDANT: Yes, I'll say what you like. I did it.

MAGISTRATE: No, you must use the language of the court. (To probation officer) Did she understand?

PROBATION OFFICER: Yes, she understood."

The probation officer once more approaches the dock, whispers to the woman and the word 'guilty' emerges.[23] This example demonstrates the performative dimension of legal discourse and the requisite formulaic expressions through which it is actualized, i.e. the very standardized speech acts to be performed in order for a certain reality to change. It is obvious that the accused is unaware of how important this correct uttering is, hence the interactional failures and subsequently prompted repairs.

Building on Canale's (1983, p. 2) description of the nature of communication, we can assert that talk-in-interaction often takes place under limiting psychological conditions, such as memory constraints, fatigue, limited educational background, mental health difficulties, stress-induced nervousness, and various other distractions. The range of problems that may prompt repairs is broad, as difficulties can occur in turn-taking, word choice, comprehension of individual words, or even the interpretation of entire messages, among other issues.

According to Schegloff's classification (as cited in Liddicoat, 2007, p. 178), the main types of repair are:

[23] Carlen 1976, pp. 110-111, quoted in Danet, 1980, pp. 460-461.

- **Self-initiated self-repair**: when the speaker identifies and corrects a problem in their own speech.
- **Self-initiated other-repair**: when the speaker signals that there is an issue, but the listener provides the correction.
- **Other-initiated self-repair**: when the listener points out the problem, but the speaker resolves it.
- **Other-initiated other-repair**: when the listener both detects and corrects the problem.

Liddicoat (2007:210), following Schegloff et al., notes that there is a strong preference for self-repair. Although other-repairs are generally disfavoured, when they do occur, they are typically carried out in a way that minimizes any threat to the speaker's face. As Liddicoat (2007:211) explains, corrections are not imposed but offered as suggestions, allowing the original speaker the option to accept or reject them. This practice aligns with what Sacks and Schegloff (cited in Liddicoat, 2007:211) describe as the **correction invitation format**, which ensures that the original speaker retains the opportunity to confirm or contest the proposed repair.

In the courtroom exchange presented above, we observe an **other-initiated self-repair** prompted by a (multiple) **correction invitation** from the judge who seeks to abide by the institutional pattern constrains. In legal proceedings, **other-repairs are not permitted**, as they may compromise the validity of the verdict and risk rendering it null and void on procedural grounds.

In order to acquire an understanding of the illocutionary force inherent in such speech acts as the ones provided above, or of the interactional constraints of legal discourse in general, learners of legal English must be exposed to an array of authentic samples drawn from both spoken and written legal discourse, including but not limited to case law, contracts, European Union directives and judicial decisions.

Comprehension of the pragmatic force of legal language primarily presupposes the development of reading, writing and listening skills. Extremely beneficial is the vast availability of legal texts online which allows learners to practice their reading and translation skills with the help of online dictionaries. Classroom writing and speaking activities in which learners acquire and practice juridical formulaic speech acts, which are particularly effective for more advanced ESP learners, may include simulated court proceedings or mock trials which replicate real-life communicative situations and allow for the practical application of performative structures (Matei, 2018, 2020).

3.3. The Technical Dimension of Legal Language

In spite of all debates on whether legal language is a technical language in its own right or just a specialized form of the ordinary language, there may be no doubt that legal language is a technical one on account of its highly specialized lexicon, singular syntax and pragmatic specificity.

Once we accept that legal language is technical, a survey of the main views on the technical nature of this type of discourse must be conducted because even if they share this common contention, the arguments in its favour are diverse and offer a comprehensive view on the topic. Cao (2007), who also supports this perspective, reviews the main theories that uphold the idea of legal language being technical.

Thus, Charles Caton (1963) holds the view that even though legal language is technical, any technical language is "an adjunct of ordinary language" (Caton, 1963, p. viii). His contention in support of this view is that technical languages share the same syntax with ordinary language and the speech acts of technical language are the same as in ordinary language, with the difference of being expressed by a specific vocabulary. As we shall see in the following, there are notable differences in all the above mentioned points of view as regards legal language. First and foremost, the syntax displays notable differences to ordinary language and even the speech acts may be similar.

Furthermore, the degree of performativity is higher in legal language and the illocutionary force of legal utterances and written texts is far greater not only than that of ordinary language but than any other existing technical language.

There are authors, however, who argue that the differences between ordinary language and technical language are quite significant due to the terminological and semiotic singularity of the latter. For instance, Schauer (1987, p. 571, cited in Cao, 2007, p.16) views legal language as technical because it operates in a context that confers different meanings from those that the respective terms possess in ordinary language. Cao (2007, p.16) rightfully notes that this view is conducive to the idea that legal language is parasitic on ordinary language.

The contention that legal language as a technical language must be considered different from ordinary language is put forward by several legal theoreticians such as H.L.A Hart (1954, 1961/1994, cited in Cao 2007) who argues that legal language is distinctive precisely because it presupposes the existence of a legal system and entails rules of law. Both the legal system and the rules of law constitute the background against which legal language acquires its meaningfulness and specific meanings. In other words, legal terms owe their meanings to the existence of a legal system and only through legal norms.

Bernard Jackson (1985) studied legal language from a semiotic perspective and argued that it is autonomous of the ordinary language on account of the fact that legal language "having a lexicon constituted in a manner different from that of the ordinary language, and involving terms related to each other in ways different from those of the ordinary language, must be autonomous of the ordinary language." (Jackson, 1985, p.47) His perspective is not contradicted by the possibility of a certain historical influence from ordinary language or by various correspondences between the two, which the author acknowledges. Despite all influence, the legal terms can be properly and solely understood in the context of the legal system as the term's comprehension also requires thorough knowledge of and affiliation with the legal system.

3.4. Legal Language as Register

Tiersma (1999, pp. 142 – 143), in a chapter entitled *So What is Legal Language Exactly?,* outlines the categories to which legal language might pertain but rules them out one by one explaining why they *do not* qualify to satisfactorily include legal language. Thus, according to Tiersma, legal language cannot be classified as a **dialect**, since dialect is typically associated with geographical variation, even though multiple varieties of legal English do exist. Likewise, it is insufficient to characterize legal language merely as **jargon**, since jargon pertains primarily to vocabulary, while the language of lawyers encompasses far more. The related term **argot**, which generally refers to the speech of insular groups often linked with secrecy or illegality, has sometimes been applied to legal discourse. However, this label is overly narrow and carries negative connotations, making it an unsuitable descriptor for the linguistic practices of the legal profession.

The concept of **style** offers a more promising framework, though it too presents difficulties, as linguists differ on its precise definition. Crystal and Davy (cited in Tiersma 1999, p.142), for example, define style as the language habits of individuals or groups. The linguistic choices made by lawyers - such as favouring passive constructions, specialized word lists, or other marked expressions - indicate the presence of a distinct legal style. Yet, legal language cannot be reduced to style alone. Its distinctive features include specialized vocabulary, divergent morphological and syntactic patterns, and the recurrent use of modal forms such as *shall*. These features demonstrate that legal discourse is not merely a stylistic variation of English, but a mode of communication that employs linguistic forms outside the ordinary repertoire of the language.

More recently, linguists have approached legal language in terms of **sublanguages**. A sublanguage may be defined as a specialized variety of language associated with a restricted subject domain, characterized by a shared vocabulary and consistent textual conventions within that domain. Sublanguages are specialized linguistic systems employed within specific disciplines or professional domains, such as medicine, aviation hydraulics, stock market analyses, or weather forecasting. The concept of a sublanguage implies that it constitutes a subset of the broader language, while simultaneously maintaining its own distinctive grammatical framework.

Several defining characteristics are typically attributed to sublanguages. First, they are limited in subject matter. Second, they exhibit lexical, syntactic, and semantic restrictions. Third, they permit the use of "deviant" grammatical rules that would be deemed unacceptable in the standard language. Finally, certain constructions tend to occur with unusual frequency.

These features are often associated with legal discourse, leading some scholars to argue that legal language constitutes a sublanguage of English. From this perspective, legal language diverges from ordinary speech not only in vocabulary but also in morphology, syntax, semantics, and other linguistic dimensions.

Tiersma (1999, p. 143) appears to favour the latter category as the most suitable terminological framework for encompassing legal discourse, though he does not make an explicit assertion in that sense. Instead, he concludes by stressing the fact that, irrespective of the terminology employed, legal language embodies the intricate linguistic practices of a historically rich professional tradition.

Halliday and Hassan (1985) and Halliday (2003) defined register as a functional variety of language or, in the authors' words, "what you are speaking at the time, depending on what you are doing, and the nature of the activity in which the language is functioning.".[24] Such a variety of language, according to the authors, is highly context-dependent, it is typical of certain

[24] Halliday and Hassan, 1985, p.41

occupational fields and are different from one another through vocabularies that express meanings as well as through particularities of grammatical features that also set them apart. According to Halliday (2003) a register is a "linguistic repertoire" of a community of practice and is derived from the uses of language in its particular cultural, social or professional context.

Register and context are closely interrelated, especially in spoken language, as they explain the variations of speech that can arise even within the same speech community. Register differs from dialectal variation because, as Halliday explains (cited in Davidse, 1987, p. 51), registers are tied to situation-specific uses of language, whereas dialects are linked to area-specific speech.

Halliday (in Davidse, 1987, p. 51; see also Morley, 2000, p. 8, 9; Eggins, 2004, p. 9) identified three key variables in register variation: **field**, or the social activity or subject matter of the text; **tenor**, defined as the social distance (power and solidarity) between participants in a speech event, which shapes the degree of familiarity in interaction; and **mode**, the medium of discourse (spoken, written) and the extent of feedback it allows.

As Cao (2007, p.18) pointed out, legal language can be categorized as a register, a variety of language use of a technical nature which is informed by all the previously mentioned variables of register variation in either spoken or written discourse. Even though legal language displays some common features with ordinary language, there cannot be an exact equivalence between them because there still are lexical, syntactic, textual and pragmatic features that set the technical legal language apart.

3.4.1. Genre Theory and Legal Language

We equally contend that categorizing legal language as a register is the most valid approach which also calls for a "generic differentiation"[25] of legal

[25] Gotti, 2012, p.61.

discourse, advocated for by discourse analysts. The concept of genre, by contrast with register, refers to the identification of the characteristics that make a written text or a stretch of discourse appropriate to a certain situation or legal discursive setting. Discourse analysts, as Gotti (2012, pp. 61 – 66) noted, have highlighted the significance of **genre** in understanding discourse, not only for examining the linguistic characteristics of texts but also for understanding their macrostructures. These structures tend to be fashioned according to expectations and conventions which are both specific to each genre, and embedded within their social and cultural context.

As Gotti (2012, p. 61) further observed, contemporary genre theory broadened its focus and emphasized the interaction between text and context. Thus, with this latter aspect in mind, scholars started to classify the contextual dimensions that distinguish between specific genres within specialized languages.

Danet (1980, p. 471) integrating Joos's (1961) stylistic categories of formality, developed a sociolinguistic model of legal genres categorizing them according to various stylistic levels. When analysing this model, Gotti (2012, 61) emphasized the fact that formality is not a feature that solely characterizes the written genres, but it can be a distinctive feature of some oral genres, as well.

What is to be remembered is that genre variation depends on factors such as the communicative purposes they aim to accomplish, the setting or discursive context in which they are used, the communicative situations in which they are most likely to be employed, the relationships between the interactants taking part in these communicative situations or events, as well as the amount of background knowledge that each participant in the communicative event possesses (Gotti, 2012, p. 62-63).

Along similar lines of reasoning, in discussing the necessity of integrating discourse and genre analysis into the teaching of Legal English as a variant of ESP, Bhatia (2013, p. 156) stated that language-learning must become more explanatory, enabling learners to grasp the rationale behind composing academic and professional texts in specific ways. Learning, therefore, is not merely about producing text mechanically but about developing sensitivity to genre conventions to ensure effective communication and (written and spoken) discourse production within the academic and professional contexts in which legal language is used. That is why the author advocates for the teaching of the "grammar of the genre"[26] rather than for an exclusive explanation of the general grammar of English. Bhatia (2013, p. 156) points out that an effective explanation of the grammar and vocabulary of Legal English

> "(…) comes not so much from the general grammar of English as from the grammar of the genre in which they regularly occur. In other words, these features of grammar carry genre-specific restricted values rather than general grammatical values. The teaching of general grammar, therefore, has very little role to play in ESP. In fact, it is not only counter-productive to teach grammar, as such, but inaccurate too. The explanation for the use of any aspect of syntax in ESP comes from the analysis and understanding of the genre in which it is conventionally used."[27]

This perspective is well-founded and aligns with the largely-held opinion that teaching Legal English requires a continuous adaptation not only of method but also of content. Legal English is particularly challenging due to the genre specificity of its discourse variants. Commonalities can be observed across various legal genres, particularly in relation to the shared legal lexicon. However, substantial differences also occur from variations in the degree of formality, from the grammatical specificities of each discourse variant, the extent of formulaic language employed and from the distinctive institutional contexts in which the genres function.

[26] Bhatia, 2013, p. 156.
[27] Bhatia, 2013, p. 156.

In this study, a synchronic approach to genre analysis is adopted in which the particularities of contemporary legal genres within the current discourse community of legal language users are accounted for, as shaped by present-day normative, structural and rhetorical constraints.

3.4.2. Danet's Model of Legal Genres

The presentation of Danet's (1980) sociolinguistic model for legal genres requires some preliminary considerations, drawing on valuable insights from discourse analysis and functional linguistics.

Firstly, according to the discourse analytical perspective of Brown and Yule (1983, pp. 2 - 3), language serves two primary functions that shape the very nature of communication. The first is the *transactional function*, which is concerned with the accurate transmission of factual information. This function relies on language, which is primarily aimed to transmit objective details without additional purposes. Consequently, it is commonly associated with scientific research, news reporting, medical documentation and legal proceedings.

The second function, *the interactional function*, appears when language is employed to express social relationships and personal attitudes. Human verbal interaction plays a crucial role in building and sustaining social relationships, as well as in shaping the social contexts in which communication takes place.

Secondly, as Dik (1987, p. 83) observes, the functional perspective assumes that language serves as an instrument through which individuals pursue goals situated within the complex network of social interaction. Within this framework, speakers of a language employ linguistic expressions in such a way as to transmit messages capable of influencing the hearer's/reader's mental or emotional state, thereby altering their knowledge, beliefs, feelings or even their realities.

A similar view is shared by other functionalists (e.g. Chesterman, 1998; Filmore, cited in Chesterman, 1998, p. 64) who view language as an instrument or as a means to a communicative end. They contend that, since means are shaped by ends, discourse must be examined in relation to the communicative purpose of its utterers.

Swales's (1990, pp. 24-27) sociolinguistic framework of genre analysis situates the *discourse community*, i.e. a group of language users with shared goals and communicative practices within a particular social or professional setting, at the very core. The author differentiates between speech communities which are linked by the common use of a certain linguistic code, whereas a discourse community shares, apart from a common linguistic code, a set of values, codes, schemata[28] and practices. Swales proposes that a genre consists of a class of *communicative events* that share specific communicative purposes recognized by expert members of the *discourse community*, which in turn define and justify the genre. In the author's words, genre is defined as follows:

> "A genre comprises a class of communicative events, the members of which share some set of communicative purposes. These purposes are recognized by the expert members of the parent discourse community, and thereby constitute the rationale for the genre. This rationale shapes the schematic structure of the discourse and influences and constrains choice of content and style. Communicative purpose is both a privileged criterion and one that operates to keep the scope of a genre as here conceived narrowly focused on comparable rhetorical action. In addition to purpose, exemplars of a genre exhibit various

[28] Schemata are mental representations or scripts shared by a group of individuals in a particular social or linguistic environment. They are based on past (linguistic) experience which is accessed in order to find the proper way to act or to verbally interact in distinctive circumstances. Schemata are activated by language and setting, they generate expectations as well as paths to interpretation. When expectations are subverted and incongruity with the schemata arises, there can be various outcomes such as humour, conflict, etc. (Snell, 2006, p. 59, cited in Coulthard and Johnson, 2007, p. 24)

patterns of similarity in terms of structure, style, content and intended audience. If all high probability expectations are realized, the exemplar will be viewed as prototypical by the parent discourse community. The genre names inherited and produced by discourse communities and imported by others constitute valuable ethnographic communication, but typically need further validation."[29]

In the case of legal language, the parent discourse community is that of all legal professionals who, alongside assuring the rationale of the legal genres, also perpetuate and validate them through the continual reproduction of their conventional patterns. The existence of such patterns entails that legal genres require the use of distinctive structures, styles, content, jargon and terms of art, designed to ensure intelligibility among their intended recipients.

In the light of Swale's (1990, p. 58) definition of genre, let's consider Danet's (1980, cited in Gotti, 2012, p. 62) sociolinguistic model for legal genres illustrated in Table 1 below and discover the profound connections between the two sociolinguistic perspectives and the two approaches to language, i.e. discourse analytical and functionalist, discussed above.

The entire 'Frozen' column, as well as the genres included in the Written – Formal section from Danet's table comprises, in our view, the legal genres with a prominently *transactional function*. These formal, rigid and most often formulaic discursive instances transmit factual information unidirectionally without entailing changes in the hearer. However, they do bring about changes to a reality or to a status quo given the fact that we are dealing with such legal genres as contracts, statutes, wills, indictments or verdicts, to mention only a few.

The *interactional function* is realized through the legal genres listed in the Spoken-composed Formal and Consultative sections, as well as through the ones in the Spoken-spontaneous Consultative and Casual sections. These

[29] Swales, 1990, p. 58.

genres involve bidirectional or multidirectional exchanges that facilitate the discursive construction of particular realities or the evocation of alternative ones through interactional negotiation.

Finally, all the genres contain specific language that serves as an instrument for the formal accomplishment of one genre or another. Language is not merely an instrument; it is rather a means whose use is shaped by the communicative end that the genre must fulfil within the discourse community of legal professionals. Legal genres also exhibit consistent patterns of similarity in structure, style, content, script, lexical and grammatical features as well as audience expectations. For example, the legal language used in wills will be very different from the one used in an indictment and the communicative purpose of the two genres will also differ substantially as will the intended audience.

Table 1. *Danet's Classification of Legal Genres (*Danet, 1980, p. 471, cited in Gotti, 2012, p. 62)

<table>
<tr><td colspan="5">STYLE</td></tr>
<tr><th>Mode</th><th>Frozen</th><th>Formal</th><th>Consultative</th><th>Casual</th></tr>
<tr><td rowspan="5">Written</td><td>Documents</td><td>Statutes</td><td rowspan="5">-</td><td rowspan="5">-</td></tr>
<tr><td>Insurance policies</td><td>Briefs</td></tr>
<tr><td>Contracts</td><td rowspan="3">Appellate opinions</td></tr>
<tr><td>Landlord-tenant leases</td></tr>
<tr><td>Wills</td></tr>
<tr><td rowspan="2">Spoken - composed</td><td>Marriage ceremonies</td><td rowspan="2">Lawyers' examinations of witnesses in trials and depositions</td><td rowspan="2">Lay witnesses' testimony</td><td rowspan="2">-</td></tr>
<tr><td>Indictments</td></tr>
</table>

<table>
<tr><td colspan="5">STYLE</td></tr>
<tr><th>Mode</th><th>Frozen</th><th>Formal</th><th>Consultative</th><th>Casual</th></tr>
<tr><td rowspan="3"></td><td>Witnesses’ oaths</td><td rowspan="2">Lawyers’ arguments, motions in trials</td><td rowspan="3"></td><td rowspan="3"></td></tr>
<tr><td>Pattern instruction</td></tr>
<tr><td>Verdicts</td><td>Expert witnesses’ testimony</td></tr>
<tr><td rowspan="2">Spoken - spontaneous</td><td rowspan="2">-</td><td rowspan="2">-</td><td>Lawyer-client interaction</td><td>Lobby conferences</td></tr>
<tr><td>Bench conferences</td><td>Lawyer – lawyer conversations</td></tr>
</table>

The sociolinguistic approach adopted by Danet in her classification of legal genres is complementary to the functional and discourse analytical approaches to legal genres previously discussed. This complementarity arises from Danet’s consideration of the social and professional contexts in which legal genres operate, along with the constraints that these contexts impose.

With regard to the distinctive features of genres, Coulthard and Johnson (2007, p. 56) stated that some characteristics are compulsory, whereas others are optional. Given that the contexts in which legal language is used are dynamic, variations from the core pattern of a genre are to be expected, as users adapt its form to the legal circumstances in which it is enacted.

Moreover, particularly in spoken institutional interactions, *genre hybridity* may arise (Hasan, 2000, p.29, cited in Coulthard and Johnson, 2007, p. 57) because participants in institutional talk can render the interaction more suitable to their purposes by constantly reclassifying discursive situations.

Hence, in Hasan's view, genres are inherently hybrid and dynamic as they mix "the recognized properties of different pre-existing genres"[30].

3.4.3. Categorization of Legal Documents

Tiersma (1999, p. 139-141) offered another useful categorization of legal documents, dividing them into two main types: *operative legal documents* and *expository legal documents. Operative legal documents* carry stronger legal authority, as they can create or alter legal relations, and typically employ highly formal, formulaic, and rigid structures, often incorporating performative legal language. Examples include pleadings, petitions, orders, statutes, wills, and contracts.

Conversely, Tiersma (1999, p. 139) noted that *expository legal documents* serve a primarily analytical and explanatory function. They address one or more points of law by using an objective tone. Their structure and language are less rigid and less formulaic than in operative legal documents, though still specialized. Among expository legal documents, judicial opinions, legal letters, and office memoranda may be included.

Legal genres vary according to their communicative functions and the intentions of the writer or speaker. For example, as Gotti highlighted (2012, p. 63), legislative texts primarily fulfil a *regulative function* by imposing various obligations or by conferring rights. Legal textbooks, on the other hand, are essentially *informative*. Exchanges, either spoken or written, involving lawyers and witnesses are both *evaluative and informative*, whereas attorneys' arguments are chiefly *designed to persuade*.

Moreover, legal genres differ in terms of subject matter. Briefs and memoranda typically *address specific issues*, while statutes tend to *cover broader topics*. A significant distinction equally exists between statutes and contracts: a

[30] Hasan, 2000, p.29, quoted in Coulthard and Johnson, 2007, p. 57.

statute affects society at large, whereas a contract only concerns the individuals or entities who are parties to it (Gotti, 2012, p. 63).

Legal discourse employs specific discursive conventions that distinguish it from both everyday language and other specialized registers. Analyses of courtroom interactions have highlighted significant divergencies between ordinary norms of verbal exchange and those governing legal proceedings, particularly in the context of cross-examinations of witnesses and suspects. Such examinations, which may play a decisive role in determining the trial's outcome, demand that the questioning lawyer strategically mobilize linguistic resources to elicit admissions, expose contradictions, substantiate claims, and thereby reinforce a preferred version of the facts[31].

3.5. The Indeterminacy of Legal Language

Cao (2007, p.19) rightfully qualified language as indeterminate by its very nature because of its ambiguity, vagueness and generality which are significant features of natural languages. Legal language makes no exception as it is full of imprecise terms such as *fair and reasonable, due process of law, due diligence,* and *reasonable endeavours* which are vague. Moreover, the same author (Cao, 2007, p.19) points out that legal practice requires clarity and precision because any form of ambiguity or vagueness may lead to interminable legal disputes. It has often been the case. Moreover, Cao (2007) warns that linguistic uncertainty, which can take the form of vagueness, generality of ambiguity is serious enough when it manifests intra-lingually and even more so when it is inter-lingual, especially in the translation of legal texts.

Tiersma (1999, pp. 73-74) brought forward another confusion-generating feature of legal language, namely that of treating one morphological category

[31] Gotti, 2012, p. 63

as inclusive of others. For example, statutes frequently stipulate that the masculine gender encompasses the feminine and the neuter. Below is an example taken from the US Electronic Code of Federal Regulations:

> **§ 29.45 Meaning of terms.**
> When used in this subpart and in the forms prescribed under this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words in the masculine shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.[32]

Consequently, the pronoun *he* is said to include *she* and *it*, while *man* presumptively includes *woman*. The author remarks that, interestingly enough, the reverse is not usually the case as the feminine is rarely construed as inclusive of the masculine. Tiersma (1999, pp. 73), along with other critics of this tendency, draws attention to the fact that employing the masculine as the default form to describe all individuals perpetuates sexism and advocates for the adoption of more equitable alternatives of such gendered constructions.

Another paradoxical element of confusion is that both legal documents and statutes postulate that the present tense shall include the future and even the past in some of them. Also, the inclusion of the feminine by the masculine "leads to the rather absurd result that *one man is* could be legally equivalent to *two men were* or *two women will be.*"[33]

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[32] Electronic Code of Federal Regulations (e-CFR), 27 CFR Part 29 - Subpart C – Stills, § 29.45 Meaning of terms. Retrived from https://www.law.cornell.edu/cfr/text/27/29.45, last accessed 15 Sep. 25.

[33] Tiersma, 1999, p. 74. Original emphasis, adapted and abridged text.

Because of this deliberate imprecision, disputes often arise during legal proceedings, as attorneys advocate interpretations of ambiguous terms that best support their clients' interests. Ultimately, it is the judge or jury who determines which interpretation prevails.

3.6. Legal Language is (Mostly) Impersonal

Legal linguists (Melinkoff 1963, Tiersma, 1999) characterise legal language as impersonal in nature. One illustration of this tendency, according to Tiersma's (1999, p. 67) account of the characteristic impersonality of legal language, is the avoidance of first and second person pronouns (i.e. *I, we, you*) which are typically replaced by third person pronouns or even nouns. A clear example is the formulaic prefacing of a request that lawyers use when addressing a judge during a court hearing, *May it please the court,* where the noun court replaces what should have been the second person pronoun *you* in everyday, spoken communication.

Legal documents, court pleadings, contracts or statutory provisions almost invariably adopt the third person: "*the sex offender shall register*"; "*plaintiff alleges*" (rather than *I allege*); "*Buyer shall pay seller"* (instead of *I shall pay you*); "*It shall be unlawful".* (Tiersma,1999, p. 67). The use of the third person in statutes and similar legal instruments has a functional purpose. Such documents are designed to be broadly applicable and must address multiple audiences at the same time, hence the author very clearly explains how that is achieved by the mere use of the third person:

> "If a statute were simply directed to those who are to obey, it could realistically be phrased in the second person *you*, just like in the Bible (*Thou shalt* ...). But statutes must also instruct police officers about what is permissible behaviour, and they instruct the courts on how to deal with violations. To use the second person, the statute would not

only have to direct sex offenders that *you must register with the police*, but it would separately have to tell police that *you should arrest any sex offenders who do not register*, and it would need a further provision informing the courts that *you should punish any sex offenders who violate this statute*. It is more economical to declare, in the third person, that *sex offenders shall register with the police*, leaving the various affected parties to figure out when this means *you*."[34]

Similarly, the third person is used in contracts in order to avoid confusion around the contracting parties designated by *I* or *you*. It is easier to draft a contract of the type *Smith promises X and Jones promises Y* in order to conform to the conventions of precision, clarity, concision and accessibility required by the legal normative language[35].

Tiersma (1999, p. 68) further states that judges prefer the third person instead of *I* which is too personal and emanates vulnerability, or instead of the editorial *we* which, especially in England, may be confused with or evocative of the plural of majesty. Instead, expressions like *this court finds* are extensively used because they convey objectivity as well as the idea that the decision pertains not only to a human being, but to a powerful and legitimate institution.

Lawyers emulate this manner of addressing the court and resort to impersonal language that is both respectful, legitimizing, and in full accordance with the institutional setting of the interaction:

- "Has the court taken note of the documents?"
- "May counsel approach the bench?"
- "Your honor, may I call my last witness?" (US)

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[34] Tiersma, 1999, p. 67. Original emphasis.

[35] For an in-depth discussion of these terms in the Romanian normative legal discourse see also Stoichițoiu-Ichim, 2000, p. 44, 45.

- “I shall now call my last witness, if it please your lordship.” (England)[36]

The rare instance in which the first person is used is in wills which, in contrast to contracts, involve only one party, i.e. the testator, who expresses intent directly, in their own name. Statements or affidavits are also written in the first person as they are declarations of individuals who speak authoritatively in their individual capacity, such as in the common declaration mandatorily included in any sworn statement before the court:

> “I declare under penalty of perjury that everything I have stated in this document is true and correct.”

The impersonality of legal language has an utterly functional character. It actually covers, through the use of the third person, a wide array of possible addressees of the respective legal document. It is rather an instrument that fosters conciseness and renders the communication effective and all-encompassing. Equally significant is the fact that the use of the third person gives an appearance of solemnity, neutrality, and objectivity in legal texts.

However, spoken legal discourse (e.g. lawyers’ pleadings in court) can be characterized by what Hübler (1987, p. 371) terms *mode vécu*, which denotes a mode of discourse marked by expressivity and active speaker involvement.

Hübler (1987, p. 372) defines *mode vécu* as “speaker’s involvement,” a pragmatic concept presupposing that the speaker identifies emotionally with the communicative act. Within *mode vécu*, even connotative lexical choices acquire pragmatically expressive meaning, simultaneously revealing the speaker’s involvement and signalling the orientation of discourse.

[36] Adapted from Tiersma, 1999, p. 68.

Furthermore, Hübler (1987, p. 373) distinguishes between two forms of speaker involvement: *attitudinal attachment* and *attitudinal detachment*. *Attachment* refers to “living one’s involvement” and expressing it through language, whereas *detachment* represents an attempt to suppress involvement “without being entirely successful”. In practice, detachment often functions as a way of implicitly expressing involvement, for example, through statements like “I try not to be involved” which paradoxically underscores and draws attention to the very involvement it seeks to minimize.

While abiding by the formal conventions imposed by the institutional setting of juridical interactions, lawyers, only in their spoken discourse in contexts such as courtroom pleadings, during lawyer-client interactions, negotiations or interactions among peers, demonstrate their rhetorical competence through discursive displays of involvement, strategically employed to influence a court’s decision, shape client perceptions, or steer negotiations in directions favorable to their legal objectives.

3.7. Intertextuality in Legal Language

Legal discourse, as Gotti (2012, p. 66) noted, is characterized by a strong degree of intertextuality and interdiscursivity, especially evident in genres such as legislation, judgements, cases and textbooks. Law cases are essentially reports of judicial decisions whose records serve as precedents in subsequent cases. Such judgements are frequently reproduced in textbooks and discussed in university lectures, thus playing an important role in legal education.

The interpretation of legal arguments often depends on references to prior cases (or caselaw), making them a central basis for understanding legal principles. Earlier laws and regulations, the author further pointed out, are consistently referenced when drafting new legislation to ensure coherence within the broader body of legal texts.

3.8. Courtroom Interaction from a Conversation Analytical Perspective

Courtroom interaction can be viewed as a master genre with several subgenres (e.g. witness examinations, indictments, jury instructions, etc.) listed in Danet's account of legal genres (see 3.4.2.). The same view on courtroom discourse as a genre is held by Durant and Leung (2016, p. 71), who substantiate their position by emphasizing the contrast between everyday verbal interaction and courtroom communication.

Courtroom interaction "consists of specific moves and sequences"[37] that are dictated by the legal and formal nature of the setting, which rigorously regulates the interactional format. This idea was also illustrated in a previous section[38] discussing repairs in the context of performative courtroom language. The example of courtroom interaction presented there involved an accused person who, while admitting guilt in a factual sense, was required by the court to perform the act of *pleading guilty* within the formal legal framework, thereby generating juridical consequences.

The examination of courtroom interaction chiefly from a conversation-analytical perspective relies on the assumption that all instances of human verbal exchange, particularly those occurring within the formal setting of the courtroom, are shaped by personal, social, and cultural dimensions, further conditioned by the institutional constraints of the context in which they unfold.

[37] Durant & Leung, 2016, p. 71

[38] See section 3.2.5. Repairs in Legal Discourse Interactions.

3.8.1. Analysing Talk-in-Interaction: The Conversation Analytic Approach

Firstly, a terminological clarification is necessary. As Hutchby and Wooffitt (2008, p.13) noted, the term *conversation* is somewhat restrictive, as it fails to encompass the full range of interactions studied within conversation analysis. Consequently, following the two authors, this study adopts the term *talk-in-interaction*, which refers to both casual and formal communicative exchanges, including court hearings, media interviews, police interrogations, and classroom discussions. Unlike everyday conversation, which is characterized by spontaneity and minimal institutional constraint, these forms of interaction are structured by explicit rules, norms, and expectations that participants are compelled to observe. When speakers involved in institutional talk-in interaction fail to observe the formal pattern, they might compromise the speech event by depriving the speech act of its felicity conditions. In contrast, everyday conversational exchanges presuppose a shared social framework but operate with far fewer formal constraints.

Matei (2012) stated that conversation analysis has drawn upon several related disciplines, including sociolinguistics (which encompasses conversational behaviour as an element of human social conduct), ethnography of communication, pragmatics, and discourse analysis. The close connection among these fields is essential to any discussion about human conversational interaction, as each provides both a theoretical foundation and a methodological framework from which conversation analysis can cross the boundaries of language and extend its scope to the interactional context shaped by personal, social, and institutional variables.

Sociolinguistics, for instance, contributes to understanding how social context shapes conversational practices. Similarly, the ethnography of communication raises awareness of regional, gender-based, and age-related variations in speech, as well as issues of discursive coherence and cohesion in both casual conversation as well as in institutional patterns of talk-in interaction. Pragmatics, on the other hand, provides critical insights into conversational mechanisms such as repairs, turn-taking, face-work, adjacency pairs, and cooperative principles, i.e. concepts that form the theoretical backbone of conversation analysis.

This section will examine the key theories and methodologies underpinning conversation analysis, drawing upon the contributions of the aforementioned domains. It will function as a survey of major developments in the field while also offering interpretative commentary on influential studies and theoretical advancements.

Hutchby and Wooffitt (2008, p. 14) characterized Conversation Analysis as the systematic study of recorded, naturally occurring talk-in-interaction. The principal goal of Conversation Analysis is to uncover the ways in which participants orient to one another and to examine how interactional practices contribute to the organization of social activities. Language, therefore, is not understood only as a linguistic phenomenon but as a form of social action. Accordingly, words are not treated as isolated semantic entities but as instruments within the activities negotiated through talk-in-interaction (e.g. formulating requests, issuing proposals, voicing accusations or expressing complaints). According to Hutchby and Wooffitt, the production of order, sense, and coherence in talk-in-interaction is inseparable from the local circumstances of its occurrence; in other words, utterances derive their meaning from the interactional context in which they are produced.

Further, Hutchby and Wooffitt (2008, p.15) introduce the concept of the *next-turn proof procedure*, which functions as a methodological tool in conversation analysis. This concept relies on the assumption that speakers display in their subsequent turns an understanding of what the prior turn intended. The next-turn proof procedure thus allows analysts to interpret verbal exchanges as the realization of participants' conversational goals rather than as isolated linguistic components that can be analysed independently of context.

This methodological stance represents an effort to render conversation analysis as impartial and objective as possible, thereby reinforcing its scientific legitimacy. Nonetheless, we are definitely aware that a degree of subjectivity inevitably remains on the part of the analyst. Since analysis involves interpretive and inferential reasoning, it cannot be entirely detached from the analyst's perspective. Even though analytical tools aim to ensure a certain accuracy of analysis, the analyst is not omniscient and cannot claim to fully understand the precise intentions behind a speaker's actions (Matei, 2012, p. 52). Instead, as Sacks (1992, xviii) suggests, the analyst must interpret the talk in relation to both its interactional and sequential environments, subsequently testing and refining their assumptions.

A significant step toward objectivity, as Hutchby and Wooffitt (2008, p.35) note, was Sacks' (cited in Hutchby and Wooffitt, 2008, p. 35) attempt to conceptualize the organization of talk-in-interaction as a 'machine-like' system. This approach sought to account for the structural organization of conversation as something that operates independently of individual speakers, yet simultaneously provides the interactional resources upon which participants rely to construct their involvement in any given exchange.

Sacks (cited in Hutchby and Wooffitt, 2008, p. 35) observes that the structural resources employed in conversation are simultaneously *context-sensitive* and *context-free*. The latter indicates that the conversational techniques employed are not restricted to the local features of a particular event but are recurrent patterns encountered across multiple interactions. In this way, participants may utilize similar strategies in differing situations. Conversely, *context-sensitive* aspects of talk-in-interaction reflect how participants orient their speech to the specific circumstances of the interaction, taking into account prior turns, preceding conversations, and the broader contextual setting.

Heritage (cited in Liddicoat, 2007, pp. 7, 8) notes that talk-in-interaction occurs solely within context, which fulfils two principal roles: it shapes and renews the meaning of conversational contributions. The *context-shaped* aspect implies that speakers design their utterances in accordance with prior turns and the established conversational framework. Consequently, as Goodwin (cited in Liddicoat, 2007, p. 7) notes, conversationalists construct their speech to demonstrate how they interpret and build upon prior discourse, i.e. the "talk-so-far."

The *context-renewing* dimension, on the other hand, concerns the way each speaker's contribution modifies and extends the existing context by introducing new contextual parameters. This dynamic process requires subsequent speakers to orient their contributions to the newly formed context.

For Brown and Yule (1996, p. 83 - 84), contextualization in conversation is closely associated with *relevance*, as speakers tailor their contributions to align with the ongoing topic framework. A speaker's ability to integrate their utterance into the evolving thematic structure of discourse reflects what they describe as *speaking topically*.

Schegloff (cited in Liddicoat, 2007, p. 7) expanded the notion of context by distinguishing between *internal* and *external* contexts. The *internal context*, which is similar to Heritage's concept of context-shaped significance, emerges through participants' immediate talk and their orientation to preceding turns. In contrast, the *external context* encompasses broader social categories, institutional norms, and cultural settings that inform and constrain interaction.

Bonvillain (2007, p. 116, 117) likewise argued that individuals engaged in conversation operate with a set of culturally informed expectations concerning the situations they participate in, reflecting both shared understanding and socially constructed communicative norms.

Interlocutors rely on cultural models of interaction and shared expectations regarding behaviour and context, as well as on established conventions concerning the rights and obligations of participants within a given interactional event. Bonvillain argues that cultural norms determine what may or may not be expressed in specific contexts and dictate the appropriate modes of expression for what is permissible. Interlocutors who share the same cultural background find such processes more intuitive, as the underlying assumptions guiding interaction are not typically articulated or consciously recognized. Rather, they are acquired through socialization and gradually become embedded in everyday communicative practices.

These culturally grounded assumptions evolve into what Gumperz (1997) and Hymes (1997) termed *communicative competence*, a form of shared knowledge and cultural proficiency that is broader and more abstract than Chomsky's more narrowly defined concept of *linguistic competence*. Communicative competence includes, alongside *linguistic competence* (in Chomsky's acceptation of the term), a *pragmatic competence* which designates the speaker's ability to express in an adequate manner in full accordance with both the data of the extralinguistic context (social and cultural settings) and with the communicative intention[39].

Matei (2012, p. 54) claimed that such analyses expand the study of conversation beyond its strictly linguistic and interactional dimensions, situating it within the broader social and cultural contexts in which it occurs. This interdisciplinary space marks the intersection of conversation analysis, sociolinguistics, and the ethnography of communication. From this perspective, an interdisciplinary approach to conversational study is particularly valuable, as it allows for the inclusion of aspects that might otherwise be overlooked due to their exclusion from a single disciplinary framework.

Conversation cannot be wholly reduced to phonological or structural features such as intonation, stress, or turn-taking. Other dimensions (including speakers' social positions, the degree of familiarity between interlocutors, gender relations, and group affiliations) must also be considered, as these factors frequently act as the "strings" that organize the internal context of talk-

[39] Stoichițoiu-Ichim, 2000, p. 39.

in-interaction. A useful framework for understanding conversation might therefore integrate three interrelated contexts: an *internal context* (as defined by Schegloff, cited in Liddicoat, 2007, p. 7), an *integrative context* representing the continuously shifting and cumulative nature of talk, and an *external context* (also defined by Schegloff), encompassing the wider social and institutional environment in which interaction unfolds.

3.8.2. Courtroom Interaction

Heffer (2005, cited in Durant and Leung, 2016, pp. 72-73) examines courtroom interaction as a specialized genre of discourse from the perspective of participant roles and discursive goals at play within such a structured verbal exchange. If everyday conversation leaves little doubt regarding the identification of the speaker, hearer or overhearers, courtroom interaction requires a contextually adapted view on the roles of participants in the speech event. Drawing on Goffman's (1981) and Levinson's (1988) (both cited in Durant and Leung, 2016, pp. 72-73) models of speech event roles, Heffer argues that such interactions require an understanding of multiple layers of participation.

When a lawyer asks a question in a courtroom witness examination, s/he simultaneously fulfils several communicative roles: as **speaker** (***author*** and ***animator*** in Goffman's terms) of the utterance, while also functioning as the **legal representative** of their client. The witness is the **apparent addressee** whose task is to respond to the lawyer's prompts. However, the judge and/or jury serve as **the main intended audience**, since the aim of courtroom examination is not primarily to elicit information, but to shape an impression and build a persuasive narrative. Additionally, the opposing counsel acts as a **ratified hearer** (in Goffman's terms), whose participation in the speech event involves critical listening, the preparation of cross-examination, and the refinement of submissions made later according to what they hear in court.

Heffer contended that the courtroom setting, with its multiple participants and established institutional roles, constitutes a highly ritualised discourse genre. Within this genre, he identifies three principal subgenres: the **procedural** (e.g., juror selection and instructions), the **adversarial** (e.g., opening statements, examination and cross-examination, closing arguments), and the **adjudicative** (e.g., deliberation and judgment). Each subgenre is defined by particular communicative purposes and interactional coordinates.

Another significant distinction made by Heffer (2005, cited in Durant and Leung, 2016, pp. 72-73) within courtroom discourse is between sections consisting of **dialogue** and those consisting of **monologue**. Dialogic exchanges may occur between lawyers (often on procedural matters or points of law), between lawyers and witnesses (during witness examinations and cross-examinations), and between lawyers and judges (in matters of procedures, for example). Opening statements, jury instructions, closing arguments, verdicts and sentencing are monologic instances of talk where the discourse is dominated by a single speaker addressing an audience, and no response is expected.

However, the legal pattern of discursive interaction does not allow for a straightforward division of verbal exchanges into either monologic or dialogic stages. The typical trial setting requires some procedural deviations which are nevertheless acknowledged and accepted by the participants who thus show compliance to the discursive and institutional pattern. As Durant and Leung (2016, p. 73) remarked:

> "Difficulty in analysing courtroom discourse is increased further by the fact that neither the monologue nor the dialogue stages are purely one or the other. During examination of witnesses, for example, whatever 'dialogue' takes place is highly controlled. Witnesses appear to engage in dialogue, in that they respond to questions using their own words. But from the perspective of a lawyer taking a witness

> through his or her evidence, witnesses function almost as animated objects: they verbally produce content, evidence, which the lawyer either knows already or strategically anticipates; they are then dismissed once the relevant content has been elicited. Because lawyers normally have access in advance to essential matters to be presented at trial, courtroom presentation and testing of evidence in an adversarial system may to this extent be viewed as a controlled performance for the benefit of the judge or jurors more than an inquisitorial process of eliciting information, or a dialectical enquiry into truth."[40]

In light of the observations above, the participants in witness examination exchanges do not follow the same interactional patterns as those characteristic of casual conversation. Lawyers are generally unconcerned with facework or the management of interruptions, and their instances of repair seldom serve the purpose of ensuring a collaborative exchange. Rather, such repairs tend to be strategically oriented toward securing a more advantageous position within the litigation process. Mitigation of aggressive discourse occurs primarily out of concern for potential sanctions imposed by the court on grounds of ethics or procedural appropriateness.

An illustration of these considerations is the transcript below (divided into two sections), which features the questioning of a rape victim (the same victim in both sections) by the opposing counsel, a line of questioning called *cross-examination*. The first section hereunder is meant to manipulatively portray the teenage girl as frivolous, superficial, and careless in order to set the scene for a narrative "to be interpretable as implying consent rather than resistance."[41]

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[40] Durant & Leung, 2016, p. 73.

[41] Coulthard and Johnson, 2007, p. 115

“**Section 1**

1 Q: Your aim that evening then was to go to the discotheque?
2 A: Yes
3 Q: Presumably you were dressed up for that, had you?
4 A: Yes
5 Q: And you were wearing make-up?
6 A: Yes
7 Q: Eye-shadow?
8 A: Yes
9 Q: Lipstick?
10 A: No, I was not wearing lipstick.
11 Q: You weren’t wearing lipstick?
12 A: No.
13 Q: Just eye-shadow, eye make-up?
14 A: Yes
15 Q: And powder, presumably?
16 A: Foundation cream, yes.
17 Q: You had had bronchitis, had you not?
18 A: Yes
19 Q: You have mentioned in the course of your evidence about wearing a coat.
20 A: Yes
21 Q: It was not really a coat at all, was it?
22 A: Well, it is sort of a coat-dress and I bought it with trousers, as a trouser suit.
23 Q: That is it down there isn’t it, the red one?
24 A: Yes
25 Q: If we call that a dress, if we call that a dress you had no coat on at all had you?

26 A: No.

27 Q: And this is January. It was quite a cold night?

28 A: Yes it was cold actually."[42]

This "question-answer pre-allocation pattern"[43] renders the victim powerless and exposed because of her inability to retort, add context to the stated information or explain some of the circumstances. As it happens in this case, owing to her young age and vulnerable position, the victim is not fully aware of the verbal manipulation to which she is being subjected. An instance in which the victim does perceive the inferential path set by the lawyer is the answer given in line 22, which is marked by the correction-prefacing discourse marker *well* (Matei, 2012, p. 248). The victim thus uses this editing marker in her attempt to substitute the lawyer's statement-question in 21 with a more appropriate and more favourable description for the inferential path that the teenage victim is able to foresee. In lines 5 and 15, the question prefacing *and* marks topic connection as well as movement in the narrative build-up.

Another constraint is that the respondent's turns are also limited by the institutional patterns of courtroom interaction and are very likely to be cut short by the interviewing counsel or constrained to minimal *yes/no* answers by the question pattern. As evident in both sections, the lawyer's questions were not always syntactically interrogative but merely confirmation questions of previously known information to the interviewer and interviewee, but not to the audience. The victim/witness understands the institutional questioning pattern and abides by it irrespective of the discomfort of the asymmetrical power positions, as well as of the legally damaging effect that this line of questioning presupposes:

[42] Levinson, 1962, p. 83, cited in Coulthard and Johnson, 2007, pp. 113-114. Adapted text.
[43] Hutchby and Wooffitt, 2008, p.149.

“**Section 2**

Q: You have had sexual intercourse on a previous occasion, haven’t you?
A: Yes
Q: On many previous occasions?
A: Not many.
Q: Several?
A: Yes.
Q: With several men?
A: No.
Q: Just one?
A: Two.
Q: Two. And you are seventeen and a half?
A: Yes.”[44]

According to Searle (1969), there are two main types of questions: those that seek answers in order to obtain new information for the questioner, and those intended to test knowledge that the questioner already possesses. As Hutchby and Wooffitt (2008, p. 149) observed, the interaction under discussion corresponds to neither category. The previously stated fact that the lawyer’s purpose is not to assess whether the victim knows information already familiar to the questioner, but rather to induce the victim to acknowledge that information and articulate it explicitly in open court is what is underlined. The ultimate goal is to *impeach the victim’s credibility*, a legal concept whose meaning is that of discrediting the veracity of a person testifying in court and using facts and evidence to discredit the victim by undermining her credibility (also called *character evidence*)[45].

[44] Levinson, 1962, p. 83, cited in Coulthard and Johnson, 2007, pp. 113-114. Adapted text.
[45] According to Black’s Law Dictionary, 11th Edition.

Fairclough (1989) stated that through cross-examination the lawyer uses their interrogation skill to "naturally" assign blame and responsibility to the victim. The use of the conjunction *and* with a discourse-marking function in both sections of the transcript illustrates how an inferential path is constructed to appear as a natural continuation of the surrounding statements, while in fact generating a new inference.

In Section 1, lines 17-27, the discourse-marking *and* in line 27 establishes a connection between the fact that the victim was not wearing a coat and the fact that it was January. As Coulthard and Johnson (2007, p.115) remarked, the implication was that the victim was more interested in displaying her body than caring for her health. In section 2, lines 6-12, the discourse marking *and* in line 12 establishes a connection between the number of sexual partners and her age. This connection is further enhanced by the lawyer's repetition (in line 12 of Section 2) of the victim's answer (i.e. "two") and the ensuing question that contributes to the narrative of blame. In fact, as Coulthard and Johnson (2007, p.115) pertinently stated:

> "The connection provided by the lawyer through the conjunction *and* links material provided in the witness's answers with lawyer material which has inferential value. (…) Both connections [in sections 1 and 2 above] are evaluative too with evaluation of recklessness and promiscuity supplied by juxtaposition that produces inference, rather than by surface features of lexical choice."[46]

Nowadays, there are strict laws forbidding this type of questioning which blames or shames the victim; they are called *rape shield laws*[47] enacted to prevent attorneys from engaging in character attacks that rely on prejudicial

[46] Coulthard and Johnson, 2007, p. 115. Adapted and abridged text.

[47] https://www.britannica.com/topic/rape-shield-law, last accessed 21 October 2025.

assumptions about sexual behaviour. By excluding evidence of a victim's sexual past, these laws ensure that trials focus on consent and accountability rather than on moral judgments about the victim. By outlawing questions aimed at impeaching the victim's credibility, legal authorities recognize the power of discourse in shaping a narrative (albeit an erroneous one) that can result in the legal outcome the respective narrative targets.

Following Durant and Leung (2016, pp. 77, 78) and Stygall (2012, pp. 373-380), what remains constant in the attorney's discourse within the contemporary courtroom interactional patterns is:

- The prohibition against questioners expressing personal opinions at any stage of the interrogation. Their task is "to elicit the stance, opinion or account of the one being questioned, but to do so at least technically without bias or prejudice." [48] It is the responsibility of the judge or panel of judges to sanction any discursive infringement of this rule.
- The lawyers' control of topic, pace and duration (e.g. they can ask fewer questions to a powerful witness and more to a weaker witness).
- Lawyers can still use *coercive question forms* (they either contain information that the respondent cannot easily accept but finds impossible to deny or the respondents are specifically instructed to provide only "yes" or "no" answers thus limiting their possibility to provide context or mitigating circumstances).
- The lawyers ask *leading questions* which consist of a declarative sentence and a question tag: e.g. You left the bar at eight, didn't you? This technique is controversial and objected to by opposing counsel, if noticed.
- The *use of personal pronouns* to mark *in-group* and *out-group* boundaries (e.g. lawyer and jurors referred to as *we* and the opposing party as *they*).

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[48] Hutchby and Wooffitt, 2008, p.151.

- The *form of address* towards the witness permits a lawyer to enhance witness credibility (e.g. by adopting such forms of address as *Dr., Professor, Your Excellency, Minister, etc.,* instead of *sir, madam* or their first name) (see also Gibbons 2003, cited in Durant and Leung, 2016, p. 78).
- The strategic use of *interruptions* especially when a damaging statement to the advocated case has been made.
- The *use of repetition* with rising or falling intonation to cast doubt on the repeated statement.
- The manipulative use of *dramatic silence*. Apart from a theatrical impact, silence may also function as an interactional resource that invites the interlocutor to fill the conversational space with additional information. It is well known that in formal and stressful settings, respondents often experience discomfort in response to an interviewer's silence, perceiving it as an indication that their previous contribution may have been incomplete or misunderstood. In the attempt to clarify it in a cooperative manner, respondents may unintentionally provide essential information.
- The use of *repairs* designed to have the witness repeat a key piece of information, thereby placing greater emphasis on it. (e.g. "*Excuse me, I'm not sure that I understood…*"[49])
- The strategic use of *lexicalized phrases*[50] formulated as *non-questions* (e.g. "*Would you share this with us …?*; *when you say …*; or *I'll hand you what has been marked as ___ Exhibit ___ and ask you to identify it …*; *Is that a fair and accurate representation of …* which are clauses used to introduce evidence into the trial record"[51]).

[49] Example provided in Stygall, 2012, p. 378.
[50] Stygall (2012, p. 378) defines this type of lexicalization as the process whereby "the phrase or clause is used so commonly that it becomes a unit".
[51] In Stygall, 2012, p. 378.

- The use of *rising intonation* to transform statements into answer-seeking questions (She was there?) and of *falling intonation* to place a strong, often dramatic emphasis on a witness statement usually detrimental to the opponent party's case.

Regardless of the linguistic strategy employed during witness examination, cross-examination, or *voir dire*[52], the attorney's objective is invariably not only to control the narrative but also to manipulate it in ways that serve the client's interests and, ultimately, contribute to securing a favourable outcome in court.

3.9. The Semiotics of Legal Language

Legal semiotics involves a comprehensive examination of legal communication, considering not only the inherent meanings of verbal and nonverbal signs but also the perspective of the recipient who interprets those signs within particular interactional and societal contexts. This approach draws primarily on Charles W. Morris's (1938) tripartite model of semiotics, which distinguishes between the **semantic** relationship between linguistic signs and their referents, the **syntactic** relationships among signs within a text, and the **pragmatic** relationship between signs, their users, and the contexts in which they occur. Hence, *semiosis* was defined by Morris (1938, p. 3) as the process whereby "something functions as sign" and whose four factors are explained as follows:

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[52] According to Stygall (2012, p. 373), to select a jury, potential jurors go through a questioning process called *voir dire*. The goal is to determine whether they can be fair, reasonable and able to follow the judge's directions. There are three common approaches to *voir dire*: the judge may conduct all the questioning (sometimes using questions provided by the attorneys), the judge may begin and then allow attorneys to ask follow-up questions or the attorneys may handle the questioning entirely. No matter how it is structured, the power in the conversation is uneven. Judges or attorneys ask the questions and jurors can only respond.

> "This process (…) has commonly been regarded as involving three (or four) factors: that which acts as a sign, that which the sign refers to, and that effect on some interpreter in virtue of which the thing in question is a sign to that interpreter. These three components in semiosis may be called, respectively, the *sign vehicle*, the *designatum*, and the *interpretant*; the *interpreter* may be included as a fourth factor. These terms make explicit the factors left undesignated in the common statement that a sign refers to something for someone."[53]

The semiotic approach to legal discourse enables a comprehensive analysis by accounting for the textual dimension, the contextual dimension, and how signs are interpreted by their recipients (the *interpretant*, in Morris's terms) or by any other (over)hearers/readers of the legal text (the *interpreter*). In a witness (cross-)examination, for instance, the *interpretant* is the lawyer conducting the questioning, while the *interpreters* comprise the judicial audience, including judge(s), jury, and opposing counsel, who not only interpret the meaning of verbal and non-verbal signs but also evaluate their implications for the case.

According to Mattila (2006, p. 13), legal semiotics explores how meaning is created and communicated through symbols in the legal system. Beyond spoken or written legal rules, the law uses many non-verbal elements that are imbued with authority and legitimacy. Examples include the architecture of courthouses, the formal clothing of judges, and how individuals are seated in a courtroom. These silently express the power and prestige of judicial institutions.

In the author's view, legal semiotics overlaps with legal linguistics. In spoken legal communication, meaning is shaped not only by language but also by paraverbal elements such as the tone of the judge or lawyer, pauses, and expectations of silence from the public. In written communication, physical features of documents (i.e. material, colour, layout, and decoration) convey

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[53] Morris, 1938, p. 3. Abridged text, original emphasis.

meaning as well. Official decisions express formality and credibility when printed in black text on white paper and marked with emblems or seals, signalling their authoritative nature.

Legal meaning, Mattila notes, is also conveyed using non-verbal signs, which semiotic theory can help analyse. Some legal rules are partially expressed through visual means. Charts, diagrams, and illustrations attached to laws or contracts can carry legal significance. When documents reference these visuals, they become an integrated part of the legal message.

Vlasenko (1997, pp. 28-32, cited in Mattila, 2006, p.13) places legal symbols within the broader category of legal symbolism, which includes non-language symbols used within the legal system and symbols that reflect the legal authority of those who issue the message. Legal signalling can take many forms, such as maps, traffic signals, uniforms, medals and even body language.

With reference to non-verbal semiotic acts, Mattila (2006, p.33) points out that many actions that communicate meaning without words are used in place of speech. The author provides the example of a presiding judge striking a gavel, thus signalling that a decision has been made or shaking hands which can signal concluding an agreement between negotiators. In some situations, gestures can also take the place of speech, such as when someone shakes their head instead of saying "no," especially for people who are sick or disabled. It can be difficult to distinguish between speech acts and semiotic acts because some behaviours combine aspects of both. For example, signing a document communicates agreement without using language directly, which makes it more of a semiotic act than a speech act.

In everyday situations like shopping, silent actions often replace spoken language. A customer can hand over items and payment without saying anything, and the assistant responds by giving a receipt. Benedetti (1999, pp. 138-139, cited in Mattila, 2006, p. 33) terms this kind of communication "silent law" (*diritto muto*).

Chapter 4 - The Functional Grammar of Legal Language

Teaching ESP in general and Legal English in particular must, of course, be grounded in formal grammatical structures and specialized vocabulary; however, its primary focus should be the integration of these formal elements into effective, contextualized professional communication. Grammar, comprising morphology and syntax, is a means to an end, namely the development of communicative competence within a complex and specialized domain of discourse that requires not only linguistic proficiency but also an understanding of genre conventions and institutional constraints governing its use. As Harmer (1991, pp. 24, 25) noted, it is all about teaching students to "perform language functions" appropriately in a given context, by means of accurate grammatical and lexical structures.

Complex as they may be, formal structures are but the groundwork. Although they are fundamental to learning Legal English as an ESP domain, they cannot always be assumed, given variations in students' general English proficiency and the fact that an intermediate level of general English, which is, in our view, the minimal foundation for developing Legal English competence, is not always assured. Therefore, the lecturer must approach grammar from a functional perspective (Vizental, 2008, p. 206) and consider it in the wider Hallidayan (1994, p. xiv) sense of a combination of *syntax* and *vocabulary* used in the production of meaning.

Actually, as Vizental (2008, p. 206) remarks, the focus of functional grammar is on meaning rather than on form, which entails the identification of an appropriate form to express an intended meaning. Halliday's (1994, p. xiv) definition of this idea is that "language is interpreted as a system of meanings, accompanied by forms through which the meanings can be realized" in such a way that forms are the means rather than the ends to a message that is in full accordance with its communicative goal, setting, and genre. Speakers and writers adapt styles and structures according to all the above mentioned coordinates, a view which is shared by Vizental (2008, p. 207):

> "The texts the members of society produce take shape in a context of use, and the speaker/writer organizes his message according to his assessment of this context (participants, physical and temporal location, activity type, etc.). If the speaker assesses the social relationship between him and his interlocutor as distant (e.g. student-teacher, petitioner-judge), the setting as official (e.g. school, church, court of law), and the activity type as formal (e.g. teaching, making a speech), then he will give a complex structure to his sentences and select his words from the formal register. Conversely, if his assessment tells him that the social relationship between him and his interlocutor is close (e.g. friends, peers), the setting informal (e.g. at home, during the coffee break) and the activity type casual (e.g. discussing things off record), then his structures will be simple, often elliptical, and his words will come from the colloquial, slangy vocabulary."[54]

In the following section, the syntactic structure of sentences and clauses in legal language and the lexical and pragmatic particularities that set this type of discourse apart will be addressed. The perception on legal documents and their layout is that they are "(…) dense on the page, lack punctuation, and appear formal and archaic (…)"[55].

Hiltunen (2012, p. 41) lays emphasis on the idiosyncratic character of legal syntax marked by the fundamental structural unit of the sentence, which

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[54] Vizental, 2008, p. 207.
[55] Durant & Leung, 2016, p. 54. Adapted and abridged text.

is traditionally built as a self-contained and context-free entity. This has, of course, significant implications for the drafting of legal texts. Among the most notable features mentioned by Hiltunen (2012, p. 41), a special mention must be made of the considerable length and syntactic complexity of sentences, the frequent use of both coordination (parataxis) and subordination (hypotaxis), and the marked preference for passive voice and nominalized verb forms. Furthermore, legal discourse often avoids grammatical links across sentence boundaries as well as pronominal and anaphoric references (Crystal and Davy, 1969, cited in Hiltunen 2012, p. 41).

(Matei, 2018) claimed that the impersonal, objective, and formulaic nature of legal discourse requires specific syntactic forms and structures which are predominantly found in legal texts or in references to such texts.

In the analysis of legal language, the functional theory of syntax and semantics benefits greatly from a pragmatic perspective, as it allows the investigation to extend beyond the textual level. This view is supported by Dik (1987, pp. 84, 85) and Gebruers (1987, p. 106), who argue that functional grammar can only be considered *pragmatically adequate* if it accounts for the interactive functionality of linguistic principles. Dik (1987) further explains that grammar achieves *psychological adequacy* when it aligns with hypotheses concerning language processing, which are shaped, activated, and modified by socio-cultural factors.

Dik's notions of pragmatic and psychological adequacy parallel Halliday's (in Davidse, 1987, p. 47) conception of the equivalence between language and *doing* (as opposed to merely *knowing*). Halliday posits that context and culture operate as two key agents constraining what individuals are able to 'do' in specific linguistic situations. For speakers to realize their linguistic behaviour, they must access the linguistic system through semantics. Halliday equates the latter with *socio-semantics*, which furnishes the speaker with a repertoire of meaning potential – that is, what the speaker *can mean* within a given context. This meaning is subsequently re-encoded by the speaker into an appropriate form of expression. The lexico-grammatical system, in turn, offers multiple options for what the speaker *can say* in order to realize the intended meaning.

The theories outlined above envisage a somewhat standardized or rather institutionalized way of producing meaning or discursive effects. It becomes clear that we are dealing with social practices that generate linguistic meanings, one of these social practices being the legal process which triggers contextual, institutionally-driven and purpose-oriented meanings through the use of legal language. As Halliday emphasized through the notion of *language doing*, language and its use are dynamic and fluctuating phenomena, dependent on the social practices in which they are embedded.

In the sections below the sentence grammar and vocabulary aspects that make legal English not only distinctive but also challenging for both non-professional native speakers and ESP learners to grasp will be outlined. The pragmatic dimensions of legal discourse, specifically how its use entails context-dependent processes of meaning-making, speaker intention, and audience interpretation that extend beyond the literal semantics of the text will also be attended to.

4.1. Length and Complexity of Sentences

Legal texts frequently feature extended (sometimes exceeding 100 words) and syntactically complex sentences. Such constructions often involve multiple layers of subordination, making the identification of the central meaning very difficult for learners of Legal English, for instance. As a result, they may need multiple readings to grasp the intended meaning.

In a stylistic analysis of Legal Language, more specifically of legislative documents, conducted by Crystal and Davy (1969, 201), the authors drew valuable conclusions regarding the characteristically lengthy sentences of this type of discourse:

> "It is a characteristic legal habit to conflate, by means of an array of subordinating devices, sections of language which would elsewhere be much more likely to appear as separate sentences. Legal English contains only complete major sentences.… Most of these complete sentences are in the form of statements, with no questions, and only an occasional command. One of the most striking characteristics of written Legal English is that it is highly nominal."

In the literature (Cao, 2007, p. 21; Bhatia, 2013, pp. 102, 103; Gotti, 2012, p. 53; Hiltunen, 2012, pp. 41, 42; Tiersma, 1999, pp. 55-69), a typical characteristic of legal language syntax is its formal and impersonal written style, often accompanied by complexity and length. In statutes, for instance, lengthy and complex sentences are often necessary due to the complexity of legal subjects and the future-oriented nature of legislative texts. The latter extensively use conditions, qualifications, and exceptions as laws must foresee and prevent all their possible future interpretations that the public might want to make use of in their favour.

Bhatia (2013) postulates that these unique linguistic features often hinder comprehension for non-specialists or for translators of legal texts, but for legal professionals, they are not only a habit but a professional brand which has its justification in the idea that presenting all relevant information within one sentence minimizes ambiguity that could arise if the conditions of a rule or provision were distributed across multiple sentences[56].

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[56] Tiersma, 1999, p. 56.

Gustafsson (1975, cited in Tiersma 1999, p. 56), in her analysis of the British Courts Act of 1971, revealed that sentence lengths varied significantly, with the shortest sentence containing 10 words and the longest 179. On average, sentences in the Act were 48 words long. Hiltunen (2001, cited in Tiersma 1999, p. 56) discovered even longer sentences in his analysis of the British Road Traffic Act of 1972. He determined the average sentence length to be 79.25 words, with the shortest sentence having 7 words and the longest an astonishing 740.

The sentences were not only lengthy but highly complex, containing many conjoined and embedded clauses. Gustafsson discovered that sentences in the British Courts Act averaged 2.86 finite clauses per sentence, with relatively few simple sentences. One example reportedly contained nine dependent clauses. In Hiltunen's study, sentences averaged 6.74 clauses, this higher figure being, in Tierma's (1999, p. 56) view, partly due to the inclusion of both finite and non-finite clauses in his count. The following example from the Penal Code of California demonstrates the length and complexity characteristic of legal drafting:

> "Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this State or not, or who receives any valuable consideration upon any agreement to repay any sum, or deliver the same, or any other property, if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn, at any particular time or in any particular order, or who promises, or agrees to pay any sum of money, or to deliver any goods, things in action, or property, or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency dependent on the drawing of any ticket in any lottery, or who publishes any notice or

> proposal of any of the purposes aforesaid, is guilty of a misdemeanour." (Tiersma, 1999, p. 57)

As Tiersma (1999, p. 57) noted, this statute contains a lot of legal jargon and a large amount of information consisting of multiple conditions and exceptions that appear before the main verb (*is*), which only appears towards the end of the sentence, whereas the subject (*every person*) is placed at the very beginning. As it is common in legal writing, a vast amount of information separates the subject (*every person*) from the verb phrase (*is guilty*).

Chrystal and Davy (1969), in their account of sentence grammar in legal language, also pointed out that the complexity of sentences as well as their length can be functionally reduced to a very simple and logical structure: "if X, then Z shall be Y"[57] with many variations whose common ground is the essential character of the *effects* component. The latter is modified by numerous conditions that, in their turn, trigger some linguistic features.

4.1.1. Adverbials

Durant & Leung (2016, p. 55) list the elements that contribute to the lengthy and complex legal sentence and place **adverbials** at the top of the list when it comes to the number of their occurrence in legal texts. Adverbials expressing conditions and concessions may take the form of:

- embedded clauses introduced by *when* or *because*,
- adverbs such as *promptly, necessarily, exceptionally,*
- adverbial phrases like *in a reasonable time period,*

Adverbials can be coordinated by *and* or *or* and, according to Durant & Leung (2016, p. 55), are generally grouped at the beginning of the sentence but may likewise be found in different positions within the sentence.

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[57] Chrystal and Davy, 1969, p. 203.

The functional role of adverbials in legal texts may also be one of "textual-mapping" (Bhatia, 2013, pp. 118). Specifically, legal adverbs such as *hereto, herein, hereof* or *thereto* are used as references to parts of the text itself or rather to individual textual elements to which the reference is made. Legal adverbials starting with *here* refer to the document at hand or to the present moment in the legal proceedings of a trial, to *this* document that is written, read or analysed or to this hearing. The adverbs that start with *there* make reference to a document or part of a document or proceeding that is more distant from the spatial or temporal point of view, i.e. *that* document, *that* hearing. Table 2 below lists the legal adverbials which have been extensively used in textual referencing to this day:

Table 2 – *Legal Adverbs*

Legal adverbs with *here*	Meaning[58]	Legal adverbs with *there*	Meaning[59]
hereafter	- from now on, at some future time: e.g. "The court will hereafter issue a ruling on the gun's admissibility."	**thereafter**	- afterward, later: e.g. "Skurry was thereafter arrested."
hereby	- by this document, by these very words: e.g. "I hereby declare my intention to run for office."	**thereby**	- by that means, in that way: e.g. "Blofeld stepped into the embassy and thereby found protection."

[58] Both the definitions and the examples are from the Black's Law Dictionary, 2019, 11th Edition, Garner B. A. (Ed.), St. Paul, MN: Thomson Reuters

[59] Ibid.

Legal adverbs with *here*	Meaning[58]	Legal adverbs with *there*	Meaning[59]
herein	- in this document, section or paragraph: e.g. "The due-process arguments stated herein should convince the court to reverse the judgement."	**therein**	- in that place or time: e.g. "The Dallas metroplex has a population of about 3 million, and some 20,000 lawyers practice therein." - inside that document: e.g. "Therein lies the problem."
hereinafter	- later in this document: e.g. "The buyer agrees to purchase the property described hereinafter."	**thereinafter**	- later in that speech, document, etc.: e.g. "The book's first reference was innocuous, but the five references thereinafter were libelous per se."
hereof	- relating or belonging to this document: e.g. "The conditions hereof are stated in section 3."	**thereof**	- of that: e.g. "A levy of €500 per annum or part thereof will be paid by the company."
hereon	- on this document, place, on this basis, matter or subject. - immediately after this	**thereon**	- on that or them: e.g. "Michael found the online reports of the cases and relied thereon instead of checking the printed books."

Legal adverbs with *here*	Meaning[58]	Legal adverbs with *there*	Meaning[59]
hereto	- to this document: e.g. "The exhibits are attached hereto."	**thereto**	- to that place, thing, issue, etc.: e.g. "The jury awarded $750,000 in actual damages, and it added thereto another $250,000 in punitive damages."
heretofore	- up to now, before this time: e.g. "A question that has not heretofore been decided."	**theretofore**	- until that time, before that time: e.g. "Theretofore, the highest award in such a case has been $450,000."
hereunder	- later in this document: e.g. "Review the conditions hereunder before signing the consent form." - in accordance with this document: e.g. "Notice hereunder must be provided within 30 days after the loss."	**thereunder**	- under that document, law: e.g. "Section 1988 was the relevant fee statute, and the plaintiffs were undeniably proceeding thereunder."
hereupon	- immediately after this	**thereupon**	- immediately, without delay: e.g. "The writ of execution issued from the court, and the sheriff thereupon sought to find the judgement debtor."

Legal adverbs with *here*	Meaning[58]	Legal adverbs with *there*	Meaning[59]
herewith	- with or in this letter or document: e.g. "Enclosed herewith are three copies."	**therewith**	- with that document or thing: e.g. "May it please the Court to consider the Report and the documents lodged therewith."

Legal adverbs present a particular challenge for Romanian law students studying Legal English as an ESP subject. This difficulty stems in part from their limited exposure to such forms during their previous study of English before entering university. Although Romanian equivalents are provided in class, my experience as a lecturer has shown that only sustained exposure to these adverbials in authentic contexts leads to their successful acquisition and accurate use.

The challenge lies not only in understanding their semantic meaning but also in mastering their syntactic placement within a sentence. Certain legal adverbials may appear either before or after the elements they modify, while others may refer to larger stretches of text or function as discourse markers linking different parts of a legal argument. Consequently, students benefit most from repeated encounters with these forms in context, coupled with activities that require their active use and analysis.

The most effective types of exercises for teaching legal adverbials are cloze exercises, as they require learners to select and insert the appropriate adverbial within a meaningful context. Such activities help students develop both an understanding of the semantic meanings of legal adverbials, and an awareness of their correct syntactic placement in legal discourse.

4.1.2. Anaphoric, Cataphoric and Exophoric Reference

In the longer sentences of general English, the use of the **anaphoric reference**, i.e. a backward reference to earlier discourse referents, especially using pronouns (e.g. *he, she, it, they, etc.)* or any other abbreviated forms, proves useful especially in the avoidance of excessive repetition and enhancement of textual cohesion (cf. Halliday and Hasan, 1976; see also Stoichițoiu-Ichim, 2000, pp. 56-63). In legal English, however, anaphora is typically avoided because, as pointed out by Durant & Leung, "avoiding pronoun coreference conveys a distinct impression by creating a repetitive and mechanical form of cohesion within and between sentences."[60] In fact, the inclination towards repetition stems from the strive for clarity, precision and the avoidance of ambiguity within the legal text at the expense of concision (Tiersma, 1999, p. 71). Below is an illustration of how keen legal drafters are on avoiding anaphoric reference:

> "**The Member Firm** shall notify the <u>Grantor</u> in writing, of any infringement, imitation, passing off or use of the Service Marks or any confusingly similar marks by *any third party* which comes to its attention. **The Member Firm**, as licensee, shall have the right to decide whether or not proceedings shall be brought by **the Member Firm** against any such third parties. In the event that it is decided that action should be taken against *any such third party*, **the Member Firm** may take such action in its own name. If **the Member Firm** chooses not to bring proceedings against *any such third party*, <u>Grantor</u> shall be entitled to bring proceedings in the name of **the Member Firm** and, in such event, **the Member Firm** agrees to cooperate fully with <u>Grantor</u> to whatever extent it is necessary or appropriate to prosecute such action. All legal costs shall be borne by **the Member**

[60] Durant & Leung, 2016, p. 56. Adapted and abridged text.

> **Firm** and any damages awarded shall be equitably apportioned on the basis of damages suffered and costs incurred."[61]

In this example, the instances of lexical repetition through the use of boldface, italics or underlining are emphasized. Especially the phrase "**the Member Firm**" as well as "*any (such) third party*" or <u>Grantor</u> are repeated even though, in some cases, anaphoric references made more sense with regard to text cohesion. This phenomenon corresponds to what Gleason (1965) termed *"excessive redundancy"*, denoting the limited and highly controlled use of cohesive devices in legal English.

However, although avoided and obviously dispreferred, anaphors do exist in legal English. These are typically legal anaphoric references expressed through words such as *said, same,* and *such,* whose functions in a legal context can differ substantially from what they are known to express in general English. We will discuss each one and exemplify their contextual use in legal documents:

1. <u>**Said**</u> is known as the past or past participle of the verb *to say* in general English, but in legal English, it is used as a pronoun or adjective, as illustrated in the following:

> "The Agency shall ensure that the opinion of **the Committee for Medicinal Products** for Veterinary Use is given within 210 days after the receipt of a valid application.
> In the case of a veterinary medicinal product containing or consisting of genetically modified organisms, the opinion of the *said* Committee

[61] Gotti, 2012, p. 55. My emphasis.

> must respect the environmental safety requirements laid down by Directive 2001/18/EC."[62]

In this example, *said* is semantically equivalent to *respective* or *aforementioned* and grammatically fulfills an adjectival function. Together with the article *the,* it can semantically equal the adjectival modifier *that. Said* can also be used to replace the definite article *the* to modify a term which is mentioned more than once in a sentence or paragraph. The example below demonstrates how the term *agreement*, when repeated, is modified by *said*, which fulfils the function of a definite article equivalent to *the*:

> "The respondent and counsel for the Commission having thereafter executed **an agreement** containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of *said* agreement is for settlement purposes only (…)." [63]

2. **Same** is used in general English and quite often in legal English to mean similar, especially when preceded by the definite article (e.g. the same contract). In the register of legal English, the word *same* can be used with or without the definite article *the,* to signify "identical to", thus signalling the repetition of an aforementioned term or idea. It operates pronominally and can

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[62] Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (Text with EEA relevance). Article 31. My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0726&qid=1758131500938. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[63] Federal Trade Commission Decisions, pp. 414, 415. My emphasis. Abridged text. Retrieved from https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-87/ftc_volume_decision_87_january_-_june_1976pages_400-541.pdf Last accessed 18 September 2025.

be placed in subject (a) or direct object (b) positions in the sentence, as exemplified below:

> (a) "The data importer **shall allow for and contribute to audits** by the data exporter of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. *The same* shall apply where the data exporter requests an audit on instructions of the controller. In deciding on an audit, the data exporter may take into account relevant certifications held by the data importer."[64]

> (b) "The Commission having considered **the agreement** and having provisionally accepted *same* (…), the Commission hereby issues its complaint in the form contemplated by said agreement (…)." [65]

As Tiersma (1999, p. 89) rightfully remarked, in cases when *said* or *same* have only one antecedent, such as in the examples above where antecedents are indicated in bold type, the referent is easily detectable in the preceding discourse, but if more than one legal document (contract, affidavit, statement) were mentioned, ambiguity would arise.

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[64] Official Journal of the European Union, COMMISSION IMPLEMENTING DECISION (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council. Module 3, 8.9 (d). My emphasis. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021D0914. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[65] Federal Trade Commission Decisions, p. 415. My emphasis. Abridged text. Retrieved from https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-87/ftc_volume_decision_87_january_-_june_1976pages_400-541.pdf. Last accessed 18 September 2025.

3. **Such** mostly fulfils an adjectival function in general English, a feature which is likewise extensively encountered in legal English. However, the distinction lies not in their grammatical role within the sentence, but in the semantic meaning that it displays in the two registers. In general English, *such* can mean, according to the Merriam Webster online dictionary:

a. "of a kind or character to be indicated or suggested – *A bag such as a doctor carries.*
b. of the character, quality, or extent previously indicated or implied – *In the past few years many such women have shifted to full-time jobs.*
c. of so extreme a degree or quality – *Never heard such nonsense.*
d. of the same class, type, or sort – *Other such clinics throughout the state.*" [66]

The last meaning (d) is the most common for its adjectival function, but the term's adverbial and even pronominal functions will not be dwelt on because they are not of particular interest to this study. Certainly, all the meanings above can be rendered by *such* in legal English as well. However, in the legal register, this term serves a distinctive function and conveys a very specific meaning as exemplified in the following paragraph:

> "The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent **agreement** and placed *such* agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter (…) the Commission hereby issues its

[66] https://www.merriam-webster.com/dictionary/such, last accessed 18 September 2025.

complaint, makes the following jurisdictional findings, and enters the following order (…)."[67]

Tiersma (1999, p. 91) indicated what has also been remarked in the examples provided above, but also in the legal texts in which other instances of the respective terms were present, namely that the specifically legal function of *such* is equivalent to *this* and that *such* "appears undistinguishable from *said* or *aforesaid*"[68]. We fully agree with the author's contention that the (anachronic) use of *said, same* and *such* in their legal language-specific functions does not contribute to the precision or clarity of the legal text. Quite the contrary, *that* would successfully replace *said or such,* and *it* would be a far better variant to *same,* thus sparing the reader from an unnecessary processing effort or even confusion when there are more than two antecedents in the preceding discourse.

4. **<u>That + noun</u>** such as the phrase "that lease" may **anaphorically point** to the previously mentioned noun such as in the following example:

> "It shall be competent … for the person in right of the lessor of a **lease** to grant, during the subsistence of *that lease*, a lease of and including his interest in the whole or part of the land subject to the lease first mentioned …"[69]

The phrase *that lease* may be glossed as "the said lease" or "the respective lease", etc., and it points backwards to the antecedent noun **lease**, initially introduced to serve as the original referent for all subsequent anaphoric occurrences and repetitions.

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[67] Federal Trade Commission Decisions, p. 402. My emphasis. Abridged text. Retrieved from https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-87/ftc_volume_decision_87_january_-_june_1976pages_400-541.pdf. Last accessed 18 September 2025.

[68] Tiersma, 1999, p. 91.

[69] Kurzon, 1986, p. 54. My emphasis.

That + noun (phrase) may also convey a **cataphoric reference**, that is, a type of cohesive device in which a pronoun or expression refers forward to a word or phrase appearing later in the text or sentence. The following excerpt from a will, which has already been used as illustration for potential speech acts, is an example of the cataphoric function of *that*:

> "My Executor shall have the following power to apply for the benefit of any infant beneficiary as my Executor thinks fit the whole or any part of the income from *that part of my estate* **to which he is entitled or may in future be entitled**."[70]

In this example, the phrase *that part of my estate* points forward to its very textual clarification through the relative clause **to which he is entitled or may in the future be entitled**. Moreover, **cataphoric reference** may also be conveyed in legal texts by **those + noun** such as in the following illustrative example:

> "(…) on each copy there shall be indicated *those persons* on the register **whom the registration officer has ascertained to be (…) less that eighteen or more than sixty-five years of age.**" [71]

The phrase *those persons* establishes cataphoric cohesion, referring forward to the relative clause that defines the specific individuals intended by the legislator in the legal text.

Exophoric reference is preferred in legal English for reasons of precision, as it allows for the detailed identification of any contextual referent occurring in the sentence[72]. The following example is an instance of

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[70] Kurzon, 1986, p. 39. My emphasis.
[71] Kurzon, 1986, p. 54.
[72] Gotti, 2012, p. 55. My emphasis.

courtroom interaction included in Philips' (1987, quoted in Gotti, 2012, p. 56) corpus of spoken legal discourse:

> "JUDGE: Uh, Richard Reichenstein (4 sec. pause) Is Richard Reichenstein your true name, sir?
> DEFENDANT: Yes, sir. (2 sec. pause)
> JUDGE: Ms. Miller, is your true name Elizabeth Miller?
> DEFENDANT: Yes, it is, your Honor. (2 sec. pause)"[73]

Although unusual for a non-professional, the rigors of legal discourse uttered in the institutional setting of a court of law require such exophoric references in order to leave no doubt in the accurate fulfillment of court procedures. It is further proof of its profound ethnographic character, which requires the analysis of this type of discourse in its context of occurrence, according to the formal demands of the respective discursive context.

4.1.3. The Plain Language Movement

The complexity of legal documents gave rise to a movement which advocated for more accessible drafting which should allow the non-specialist readers of a legal text to quickly and as effortlessly as possible understand its content and act accordingly, namely the Plain Language Movement[74]. Although it started soon after the end of World War II at the initiative of legal professionals (lawyers, judges) and professors of law who wanted to make legal texts more accessible to the general public, the movement became more relevant after 1960 when Canada, the United States, Australia, England and New Zealand (and later on Sweden and Finland), started to apply plain language principles

[73] Philips, 1987, pp. 88-89, quoted in Gotti, 2012, p. 56.
[74] Adler, 2012, pp. 65-83.

of drafting to legislation as well as to administrative, commercial, banking and finance documents.[75] In Adler's words:

> "'Plain Language' means language and design that presents information to its intended readers in a way that allows them, with as little effort as the complexity of the subject permits, to understand the writer's meaning and to use the document."[76]

According to Adler (2012, p. 70), among the nowadays adepts of the Plain Language Movement (*legal plainers,* as the author calls them) there are linguists, writers, editors, legal translators, practising private and government lawyers who write plain and intelligible documents to their clients or to the general public, academics who teach the future legal professionals to communicate as plainly as possible and judges who started a wide campaign for the revision of court rules that should discourage verbose court papers.

Although there have been changes, the progress of the Movement is very slow and often met with opposition by some legal drafters who find it difficult to embrace the new trend for fear of losing the reputed precision and accuracy of legal texts. Adler (2012, pp. 78-82) provides a specific example (Table 3) of a legal text made plain according to the method proposed by the Movement:

[75] Ibid., p. 69.
[76] Adler, 2012, p. 68.

Table 3. *A Legal Text Made Plain*

Original legal text in Adler (2012, pp. 78, 79)	The legal text made plain in Adler (2012, p. 82)
"If the whole or any part of the Rents shall be unpaid for twenty-one days after becoming due (whether formally demanded or not) or if there shall be a breach of any of the Tenant's covenants contained in this Lease the Landlord shall be entitled (in addition to any other right) at any time thereafter to re-enter the Premises or any part of it in the name of the whole and thereupon the Term shall absolutely determine but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant or other term of this lease Provided that if the Tenant shall have served notice in writing on the Landlord at any time with the name and address of the Tenant' Lender on the property the Landlord shall not be entitled to exercise its right of entry herein until at least 21 days notice in writing has been given by the Landlord to the said Lender stating (i) details of unpaid rents and/or;	"(A) The landlord may enter the flat, so ending this lease, if: (1) Any management charges are unpaid more than 21 days after they have become due (even if not formally demanded); or (2) The tenant has broken any other duty under this lease. (B) (1) But if paragraph (B)(2) applies the landlord may not use this power until: (a) It has sent the lender written details of: (1) Any breach under paragraphs (A)(1) and (2); and (2) The landlord's reasonable requirements for correcting any remediable breach; and (b) 21 days have since passed without the breach having been remedied. (2) This paragraph applies to any lender:

Original legal text in Adler (2012, pp. 78, 79)	The legal text made plain in Adler (2012, p. 82)
(ii) the nature of the breach of covenant on the part of the Tenant alleged by the Landlord and; (iii) details of the Landlord's requirements for any such breach to be remedied insofar as the breach is capable of remedy."	(a) For whose debt the flat is security; and (b) Whose name, address and mortgage details the landlord has received."

As the author noted, the number of words is reduced to almost half and supplies missing details and clarifications regarding the meanings of legal terms (e.g. Rents = flat, apartment) from the original text. This example shows how undoubtedly beneficial it would be for this Plain Language Movement to continue its endeavours of making the often impenetrable legal English language more accessible and comprehensible for the benefit of both legal specialists and non-specialist readers who are most often the ones who have to comply with laws and regulations that have to be "translated" to them by their lawyers.

4.2. The Use of Modal Verbs in English Legal Discourse

Not only in general English but also in legal English, modal verbs are extensively used due to their being highly effective in expressing obligation, permission, possibility, strong probability, certainty or prohibition. The frequently used modal verbs in Legal English are *shall, may, must, ought to,* and *have to*, but the most extensively used of all is *shall* in its mandatory sense.

Chrystal and Davy noted that the mandatory meaning of the modal verb *shall* is specific to legal language as its use is invariably that of expressing "an obligatory consequence of a legal decision" (Chrystal and Davy, 1969, p. 206,

207) and not merely that of reference to a future event as in other varieties of English (Zaharia, 2008, p.195).

The use of the modal verb *shall* is a distinctive feature of Legal English which proved to be quite resilient over time despite the numerous attempts to definitively replace it with *must* in all legal texts (Rotaru, 2025, p.50). The archaic *shall* in its mandatory acceptation was targeted by the Plain Language Movement (see 4.1 above) and partly replaced by *must,* which was deemed as more accessible to the non-specialist reader of legal texts, irrespective of their education.

In the following, we will provide examples of *shall* in the context of legal texts in order to single out its possible functions and meanings. One must bear in mind that, from a functional grammar perspective, linguistic items are multifunctional (Halliday, 1994, p.30) and fulfil different roles according to the structural configuration in which they are integrated. There are undoubtedly instances of *shall* as a marker of future tense in legal English as well, but given the fact that we are dealing with a functional element, we have to examine its roles in the context of its occurrence in (legal) discourse. After conducting this contextual, pragmatic-functional analysis of *shall*, the other above mentioned modal verbs will be equally subjected to a similar scrutiny.

4.2.1. Shall

According to Quirk and Greenbaum (1973, p. 54) *shall* is a modal auxiliary which, apart from being an element of a grammatical structure that refers to a future event when forming the future simple, can also express:

1) Willingness on the part of the speaker in 2nd and 3rd person in a restricted use for which the authors provide the following examples:

e.g. "He *shall* get his money. You *shall* do exactly as you wish."

2) Intention on the part of the speaker in 1st person singular and plural:

e.g. "I *shan't* be long. We *shall* overcome."

3) It is the third meaning that *shall* is able to convey that is of particular interest for the present study, as it is specific to Legal English. Specifically, Quirk and Greenbaum (1973, p. 54) noted that the modal auxiliary can function as a linguistic component within a legal or quasi-legal injunction. The authors provide the following example of *shall* in this type of context:

e.g. "The vendor shall maintain the equipment in good repair".

With this classification serving as a point of departure, we shall conduct a pragmatic-functional analysis of *shall* in some written legal texts with the aim of establishing the functions that this modal verb can fulfil in context. To this end, we will focus our analysis on the European legislation in English, particularly on European Directives, Treaties, Decisions and/or Regulations available in their original form provided by the official website Eur-lex, the online portal of the Official Journal of the European Union, (https://eur-lex.europa.eu). The use of these materials complies with copyright recommendations in accordance with the Creative Commons Attribution 4.0 International License (CC BY 40). Therefore, to conform to the requirements of copyright legislation, the source of each legal document will be provided in a footnote along with the link to the Creative Commons Attribution 4.0 International License (CC BY 40) as required by international copyright standards.

In the following EU Decision *shall* is as extensively employed as in any legal text, in its mandatory function as follows:

1. "When placing their products on the market, manufacturers *shall* ensure that they have been designed and manufactured in accordance with the

requirements set out in … [reference to the relevant part of the legislation].”

2. “Manufacturers *shall* draw up the required technical documentation and carry out the conformity assessment procedure applicable or have it carried out. Where compliance of a product with the applicable requirements has been demonstrated by that procedure, manufacturers *shall* draw up an EC declaration of conformity and affix the conformity marking. (…)”
3. “Manufacturers *shall* ensure that procedures are in place for series production to remain in conformity. Changes in product design or characteristics and changes in the harmonised standards or in technical specifications by reference to which conformity of a product is declared *shall* be adequately taken into account.”[77]

In this legal text, *shall* fulfils the function of imposing an obligation or duty incumbent upon either a party (in this case the manufacturer) or upon all concerned parties such as in the last sentence of paragraph 3 of the article rendered above. *Shall*, in this particular context of our example, is part of a legal injunction issued by the legislator, in accordance with Quirk and Greenbaum’s framework (1973, p. 54).

In a pragmatically oriented analysis, the speech act of ordering is chiefly expressed by *shall* which indicates that the speaker, i.e. the legislature in statutes, for example, is not the subject of the verb (Leech, 1971, p. 80). The speaker commits himself to, or guarantees, the execution of the proposed

[77] DECISION No 768/2008/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, *Article R2*. Adapted and abriged text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008D0768

action by virtue of possessing the authority to issue such orders (Kurzon, 1986, p. 21) as illustrated by the following example:

e.g. "The Advisory Committee *shall* transmit to the Secretary of State a copy of every report which is made by them under this section to a person other than the Secretary of State."[78]

As Kurzon (1986, p. 21) explains, the speaker in this example is the legislature, which instructs the Advisory Committee to transmit a copy of every report that had been provided to other parties, to the Secretary of State. The use of *shall* indicates the mandatory nature of the order and underscores that the Committee has no discretion in deciding whether to fulfil this obligation or in determining the conditions of its execution.

The European Commission's *English Style Guide* (2016, 2025, p. 59) noted that the discursive function of *shall* in this type of context is that of issuing a "positive imperative" provision when the modal verb is used in the affirmative, and a "negative imperative" prohibition when it is used in the negative, such as in the following example:

e.g. "A countervailing duty investigation *shall not* hinder the procedures of customs clearance."[79]

Within a pragmatic framework of analysis, in statutory legislation as in all legal texts, *shall not* is the only modal verb that expresses the illocutionary force of prohibition (Kurzon, 1986, p. 23). The modal verb *shall* can also be used to

[78] In Kurzon, 1986, p. 21. Original emphasis.

[79] REGULATION (EU) 2016/1037 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 on protection against subsidised imports from countries not members of the European Union, *Article 10*. Adapted and annotated text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1037&qid=1753037308022. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

convey a future action, and an example in this respect is provided by Rotaru (2025, p.50) when the author illustrates *shall*'s expression of "futurity", as termed by the author:

e.g. "This agreement *shall* terminate on the sale of the factory."

In the European Commission's *English Style Guide* (2016, 2025, p. 61), it is indicated that not only when a provision refers to the future but also when it depends on a future event, *shall* is used in the respective discursive context as exemplified in the Guide:

e.g. "This agreement shall not enter into force until it has been ratified by at least six of the parties."

In these examples, we are undoubtedly dealing with a future reference expressed via the modal verb *shall* as no obligation is issued, only a future stage is indicated through its use in context. This function can only be identified in the context of the modal verb's occurrence and in accordance with its pragmatic meaning in the analysed context.

There are restrictions prescribed by the same European Commission's *English Style Guide* (2016, 2025, p. 60) regarding the use of *shall* in European legal texts, specifically in non-enacting terms such as recitals or annexes or in subordinate clauses in enacting terms. The same prescriptions apply to indirect quotations or paraphrases of provisions. The Guide proposes more appropriate alternatives, such as *must, has/have to, is/are required to*, and provides some examples of such legal texts in which the replacing expressions have been used:

e.g. "The requirement may be waived if the agent **has to** register with the national certifying authority … [recital]

Any items that do not meet these standards **must** be destroyed. [annex]
Applicants who **are required to** register under paragraph 1 shall do so within 10 days. [subordinate clause in an article]
Article 114(5) clearly states that a Member State **must** notify the Commission if it deems it necessary to introduce national provisions … [indirect quotation/paraphrase]"

(taken from the European Commission's *English Style Guide*, 2016, 2025, p. 60)

According to the Guide, *shall* is to be replaced by a simple imperative when giving instructions or issuing commands:

e.g. "Place a sample in a round-bottomed flask…"
(taken from the European Commission's *English Style Guide*, 2016, 2025, p. 61)

Tiersma (1999, p.105) drew attention to the fact that *shall* is not limited to issuing commands, but it can also be used in declarations:

e.g. "This act *shall* be known as The Penal Code of California …"
(original emphasis, Tiersma 1999, p.105)

To that, the authors added another frequent use of *shall* in expressing the terms of a contract, specifically setting forth the promises that the contracting parties make to each other in the signed agreement:

e.g. "The Publisher *shall* pay the Author … an advance … which *shall* be a charge against all sums accruing to the Author under this Agreement." (original emphasis, Tiersma 1999, p.105)

We agree with Tiersma's (1999, p. 106) contention that the function of the modal auxiliary *shall* is fully dependent on the type of document, text or context in which it occurs, but it most frequently indicates that the ensuing verb and phrase convey something that is enacted, promised, ordered, and so on. Every legal document the author adds contains at least one performative which is either express or implied and which "indicates the overall force of the document."[80] Any enactment or promise is conveyed by *shall* which unequivocally shows that something is meant to be legally binding. Frederick Bowers (cited in Tiersma, 1999, 106) wittily noted that *shall* is so pervasive in legal English because it is "used as a kind of totem, to conjure up some flavour of the law." [81]

4.2.2. May

The use of *may* in Legal English does not display significant differences as compared to general English. According to Quirk and Greenbaum (1973, p. 53), the modal auxiliary *may* expresses permission, being synonymous with *be allowed to*, or it can equally convey factual possibility in other discursive contexts. The authors emphasize the fact that *may not* is less preferred than *must not* (or *mustn't*) to express prohibition.

The following examples illustrate the use of *may* to express permission and possibility in a statute[82] (1), and in a European Directive[83], examples (2) and (3):

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[80] Tiersma, 1999, p. 106

[81] Quoted in Tiersma, 1999, p. 106

[82] In Kurzon, 1986, p. 20.

[83] DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceedings, *Annex 1*. Adapted and abriged text. Retrieved from https://eur-lex.europa.eu/eli/dir/2012/13/oj. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

(1) "A direction under subsection (2) of section of section 9 of this Act *may* specify the qualifications required to be had by persons carrying out any modifications or alterations … to which the direction relates." (permission)
(2) "If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter **may** help you to talk to your lawyer and must keep the content of that communication confidential." (permission or possibility)
(3) "When you are arrested or detained, you should tell the police if you want someone to be informed of your detention, for example a family member or your employer. In certain cases the right to inform another person of your detention **may** be temporarily restricted." (possibility)

If we subject the first example (i.e. permission) to a pragmatic analysis, *may* is definitely employed to convey the illocutionary force of permission. As noted by Twaddell (1965, cited in Kurzon, 1986, p. 20) and Long (1961, cited in Kurzon, 1986, p. 20), this form of permission originates from an authority, typically the speaker, who performs the speech act. However, the subject of the verb does not explicitly indicate this performer, which makes *may* an implicit performative verb (Kurzon, 1986, p. 20). Furthermore, the speaker possesses sufficient authority to ensure that the granted permission implies an immediate effect or "a guarantee of instant execution" (Leech 1971, p. 68).

Hence, in the instance illustrated in example (1) the speaker, who represents the authoritative body, namely the legislature, grants permission to the body responsible for issuing directives to determine specific qualifications. The speaker does not directly command the body to act but rather allows it the discretion to do so.

In example (2) (i.e. with *may* expressing both permission and possibility), the speaker or the performer of the speech act is the European legislator.

Through this directive, the legislator formally guarantees the right to an interpreter while simultaneously granting discretion concerning the specific contexts in which interpreters may provide assistance to the party.

In the examples (1) and (2) *may* conveys more than permission or possibility: according to legal linguists (Kurzon, 1986, p. 22; Craies, 1971, pp. 229, 230), while saliently indicating permission or possibility, *may* carries a directory force similar to the force of ordering. It suggests that the speaker possesses sufficient authority to empower a body to perform an action as a matter of requirement.

In the case of the modal auxiliary *may*, the European Commission's *English Style Guide* (2016, 2025, p. 61) advises against the use of *may not* for prohibition in non-enacting terms because it can be wrongly understood as a negative possibility; therefore, the authors recommend *must not* as a viable alternative.

4.2.3. Must, Ought to and Have to

In the referential grammar (Quirk and Greenbaum,1973, p. 56) *must* conveys obligation or compulsion in the present tense and it can also express logical necessity in the affirmative. This is valid for general English, but in Legal English it is only the former meaning that is chiefly encountered. In the present-day context, *must* is preferred to *shall* (used to express obligation) as it is considered less pretentious and more intelligible for non-specialists. The following example is illustrative of the predominant meaning of obligation:

e.g. "In accordance with the principle of proportionality as set out in Article 5 of the Treaty on European Union, the recourse to a Regulation listing the third countries whose nationals **must** be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement is both a necessary and an appropriate means of ensuring that the common policy on visas operates efficiently."[84]

For expressing obligation, the use of *have to* is equally frequent to that of *must* with the same meaning. However, albeit *ought to* conveys obligation, logical necessity, and expectation (Quirk and Greenbaum,1973, p. 57) similarly to the modal verbs *must* and *have to*, there are essential differences in the meanings that the three modal verbs denote in context. Expressly, as the above cited authors emphasize, *ought to* is less categorical than *must* and *have to* and therefore very uncommon in legal texts. Here is an example of *ought to* expressing obligation:

e.g. "In the event that one of the parties is a legal person, that party should be able to propose a natural person or natural persons who **ought to** form part of that circle of persons so as to ensure proper representation of that legal person, subject to appropriate judicial control to prevent the objective of the restriction of access to evidence and hearings from being undermined."[85]

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[84] REGULATION (EU) 2018/1806 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. My emphasis. Retrieved from: https://eur-lex.europa.eu/eli/reg/2018/1806/oj. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[85] DIRECTIVE (EU) 2016/943 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure. Paragraph 25 of the Preamble. My emphasis. Retrieved from https://eur-lex.europa.eu/eli/dir/2016/943/oj/eng. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

4.3. Nominalization

A genre-specific feature of Legal English is nominalization, a syntactic technique which, according to Tiersma (1999, p. 77), is aimed at "de-emphasizing or obscuring the identity of the actor."[86] Nominalization consists in turning verbs into nouns (Tiersma, 1999, p.77-79; Zaharia, 2010, p. 539), which may lead to an intentionally diffuse expression or to the indeterminate character of legal language as referenced in the preceding sections[87].

Nominalization, according to Quirk et al. (1985, p. 1288), refers to a noun phrase that systematically corresponds to a clause structure, typically involving a head noun that is morphologically related to a verb (e.g. *the acquittal* of the defendant) or to an adjective (e.g. *the honesty* of the testimony). Below is an example from the Constitution of Romania, Article 30, section (7):

> (7) "Any *defamation* of the country and the nation, any *instigation* to a war of aggression, to national, racial, class or religious hatred, any *incitement* to *discrimination*, territorial separatism, or public violence, as well as any obscene conduct contrary to morality **shall be prohibited** by law."[88]

In this text in which verbs are quite clearly avoided by the legal drafter, we emphasized the nominalizations and highlighted the only main verb in bold. In most legislative texts, the intentionally diffuse expression referred to above is only intended, such as in our example above, to address as many audiences as possible. Specifically, when reading the text above, potential perpetrators might refrain from committing the acts mentioned in the constitutional

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[86] Tiersma, 1999, p. 77.
[87] See section 3.5.
[88] The Constitution of Romania, Article 30, section (7). Retrieved from https://www.presidency.ro/en/the-constitution-of-romania, last accessed 20 September 2025.

provision or be aware of the consequences should they decide to still carry them out, law enforcement agencies are given grounds to prosecute the perpetrators, and courts are provided with the supporting legal arguments for their decisions. Certainly, the lack of verbs may create confusion for the lay reader, but what matters eventually is the effectiveness of the legal text and its capacity to fulfil the intended social and judicial functions.

Most commonly, in verb-to-noun derivational patterns characteristic of legal English, the conversion is accomplished by adding suffixes such as *-ion, -acy, -age -ment, -ance, -al* and *-ing.*[89] Some examples of verbs with their corresponding nominalizations are provided in Table 4 below:

Table 4. *Nominalizations*

Verb	**Nominalization**
agree	agree**ment**
assign	assign**ment**
enforce	enforce**ment**
judge	judge**ment**
perform	perform**ance**
comply	compli**ance**
terminate	terminat**ion**
permit	permiss**ion**
act	act**ing**
file	fil**ing**
protect	protect**ing**
approve	approv**al**
acquit	acquitt**al**
dismiss	dismiss**al**

[89] For a comprehensive list of affixes used in noun-forming in legal English (not necessarily in verb-noun conversions) see also Vîlceanu (2014, p.131)

Tiersma (1999, p.77) pointed out that nominalized verbs allow the writer or speaker to omit reference to the actor, such as in the following illustrative example given by the author:

> "Rather than having to admit that *the defendant injured the girl at 5.30 P.M.,* the defendant's attorney can write that *the girl's injury happened at 5.30 P.M.* In fact, the lawyer can depersonalise the incident even more by leaving out mention of the girl entirely: *the injury happened at 5.30 P.M.* There are, of course, further illustrations of strategic imprecision." (original emphasis, Tiersma, 1999, p. 77)

The process of nominalization splits the meaning of a strong verb between a copular verb and a noun phrase, thus reducing the number of strong verbs in a legal text (Gotti, 2005, p. 78 cited in Zaharia, 2010, p. 539). Zaharia (2010, p.539) indicates that nominalizations are generally longer than their corresponding base verbs and can occasionally hinder readability and text comprehension. The author further states that while they contribute to the objectivity of the legal text and allow for generality and abstraction, they can also result in unnecessary wordiness. This is often due to their syntactic complexity, as they require articles. Zaharia (2010, p.539) layed emphasis on the fact that extended nominal constructions encapsulate a significant amount of information in a lexical unit which enhances clarity and precision. Below is an example of an extended nominal construction (linking verb + article + noun) from a standard publishing agreement:

> e.g. " If there is an *infringement* of any rights granted to the Publisher (…)" [90]

[90] Tiersma, 1999, p.78. Adapted and abridged text, original emphasis.

By using the nominalization *infringement*, the drafter, who cannot list every individual or group who might violate the publisher's rights in the future, is trying to cover all possibilities of any kind of actor, person or corporation, who might infringe upon the stipulated rights. This writing strategy of using nominalizations is also used in laws where all possible situations have to be stated as broadly and as comprehensively as possible. The following example of a law that defines a number of acts as trespass resorts to nominalized verbs, namely gerunds:

> e.g. "*Cutting down, destroying or injuring* any kind of wood …/*Carrying away* any kind of wood or timber… /*Digging, taking or carrying away* … any soil…/ *Building* fires upon any lands owned by another… [91]

According to Tiersma (1999, pp. 78-79), lawyers avoid nominalizations when there is a need for precision but resort to them when they want to downplay the contribution or even obscure the identity of the actor or when there is a need for an expressed provision to apply as broadly as possible.

Bhatia (2013, p.107) notes that legislative texts have a poignantly nominal character and can display various degrees of nominalization as exemplified in the following two sentences taken from legislative acts:

1. "The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [92]

[91] Tiersma, 1999, p.78. Adapted text, original emphasis.
[92] Ch.25and78: Nuclear Safeguards and Electricity (Finance Act) 1978

2 No will shall be revoked by any presumption of an intention on the ground of an altercation in circumstances. (Section 14 of the Wills Act, Republic of Singapore)"[93]

The author provides the two examples above to demonstrate that legal drafters can opt for a greater (in the first sentence) or a lesser (the second sentence) degree of nominalization. There is a more marked presence of verbal forms in the first sentence, while they are nearly absent in the second.

Durant & Leung (2016, p. 57) draw attention to the fact that the highly nominal Legal English displays a very interesting feature, namely the scarcity of noun premodification by adjectives, which is contrasted to the numerous cases of very detailed postmodification of nouns by either adjectives, phrases or even clauses.

Conversely, verbal groups used in legal drafting display the following characteristics:

- Frequent negation (their meaning is frequently prohibitive)
- A high proportion of non-finite forms, such as the past participle
- A high frequency of finite forms that abide by the pattern: modal auxiliary + BE + past participle.[94]

In the following section, we will address one of the most frequently employed verbal structures in Legal English when tactical imprecision is aimed in discourse. Its function extends well beyond syntax, reaching into pragmatics, discourse analysis, and sociolinguistics.

[93] Bhatia, 2013, p.107.
[94] Adapted from Durant & Leung, 2016, p. 57.

4.4. The Passive Voice in Legal English

The use of the passive voice in legal English is strategic and context-specific as passive constructions are preponderantly utilized to create some sort of strategic or functional imprecision[95]. Deliberate imprecision, according to Tiersma (1999, pp.74-76), applies when defence attorneys discursively obscure the pivotal role of their clients in the commission of a crime by removing the reference to their client from subject position of an active sentence to the omittable *by* phrase (by the suspect) at the end of a passive sentence as in the example below:

e.g. "The man injured the girl. ⇒ The girl was injured by the man."[96]

The first sentence of the example above is active, which entails that its grammatical subject, i.e. *the man*, is also the doer of the action expressed by the verb, and this is made even more salient by the positioning of the subject at the beginning of the sentence before the verb. By turning this sentence into passive, the grammatical subject that is now placed before the verb is obviously not the doer of the action but the one upon whom the action is inflicted. This is the first layer of ambiguity. The second layer that further downplays the active role of the culprit is his placement at the end of the sentence, not only after the verb but also in a *by* structure that can be easily omitted from the sentence, especially when the utterer does not have a particular interest in naming the party who is responsible for the action expressed by the verb. Apart from the strategic use of the passive voice in legal discourse, there are also, as Tiersma (1999, p.76) pointed out, passive constructions that are used for legitimate reasons, such as to convey a sense of objectivity and authority in

[95] Tiersma, 1999, pp. 74-77.

[96] Adapted from Tiersma, 1999, p.75.

laws or court orders, which should thus be conferred “the greatest possible rhetorical force.”[97] In the author’s words:

> “For legislators to state *we shall punish those who skateboard on sidewalks* seems too personal, perhaps even vindictive. A passive sounds more authoritative: *Those who skateboard on sidewalks shall be punished*. The same holds true for court orders. To appear as authoritative as possible (and to avoid the first person), judges typically start an order not with *I order …* but with *It is ordered, adjudged and decreed …*”[98]

If the passive voice is preferred in court decisions or laws, it is, however, very scarce in contracts where the responsibilities incumbent on each party must be specifically assigned. The use of the active voice coupled with the modal *shall* to express binding obligation, is thus favoured over the passive voice.

4.5. Binomial and Multinomial Expressions

In order to make the legal document as precise and comprehensive as possible, binomial and multinomial expressions are extensively used in all legislative texts. The aforementioned linguistic devices were defined (Bhatia, 2013, pp. 107-108, Tiersma, 1999) as a sequence of more than two semantically related words or phrases pertaining to the same grammatical category, linked by the conjunctions *or* or *and*. Linguists also referred to it as *recursion* (Tiersma, 1999, p. 62), which factually means that a speaker or writer “can create an infinitely long sentence by continually adding further information, rather than ending the sentence with a period.”[99]

[97] Tiersma, 1999, p. 76. Original emphasis.
[98] Ibid. Adapted text.
[99] Tiersma, 1999, p. 62. Adapted and abridged text.

We believe, however, that this linguistic instrument has a more practical function than mere linguistic ambition and prowess on the part of legal drafters. As mentioned before, legal language must possess the means to verbally express as exhaustively as humanly possible some potentially litigation-prone situations. This linguistic tool has proved its effectiveness in ensuring that all cases, possibilities, probabilities, and foreseeable exceptions are accounted for and provisioned in the legal text, thus making it more legally accurate and cautious, a strive that takes precedence over any accusations of redundancy brought against the legal text and implicitly against its legal drafters or utterers.

Not only in Legal English but also in Standard English can binomials and multinomials be found. Binomials consist of two (almost) synonymous words of the same class, whereas multinomials are formed of more than two words or phrases from the same class that are linked by the conjunctions *and*, *or,* and are similar in meaning. Precisely for the latter reason, the literature (Alcazar and Hughes, cited in Rotaru 2025, pp. 76-77; Bhatia, 2013; Mattila, 2006, pp. 233-234; Rotaru, 2025; Wydick and Sloan, cited in Rotaru 2025, pp. 76-77, etc.) termed these structures as “coupled synonyms”, “binary expressions”, “doublets” or, in the case of multinomials, terms such as “triplets” or “triple repetition” have been used.

Mattila (2006, p. 233) explained that, beyond reasons of legal caution, there are also historical motivations for the persistence of such binomial and multinomial expressions. The author noted that during the Latin and French periods, English absorbed a substantial number of lexical items, which led to the emergence of a tremendous number of words with the same (or very similar) meaning from Latin-French as well as from the Anglo-Saxon language variant. These synonyms were frequently paired (i.e. linked by *and* or *or* within the same expression) to ensure comprehensibility across the multilingual English society of the time. The objective was to guarantee that legal phrases would be understood by all relevant audiences, regardless of their linguistic background.

The most famous examples of legal binomials and multinomials given in the literature are: *alter or change; null and void; confessed and acknowledged; give, devise and bequeath*. Tables 5 and 6 below provide some extended lists of binomials and multinomials that can be encountered in Legal English texts. For their contextualized understanding, we gave one example for each expression as they appear in contracts, statutes, regulations, norms, laws, and notarial documents:

Table 5. *Binomial expressions*

Binomials used in Legal English	**Examples**
Act or omission	Negligence may arise from an *act or omission* that falls below the standard of care.
Advice and consent	The President shall have Power, by and with the *Advice and Consent* of the Senate, to make Treaties, provided two thirds of the Senators present concur. (U.S. Constitution of 1789)
Affirm or set aside	The reviewing court may *affirm or set aside* any administrative order that is found to be contrary to law.
Alter or change	The lessee shall not *alter or change* the structure of the premises without the prior written approval of the lessor.
Assault and battery	The defendant is hereby charged with the offense of *assault and battery*, having unlawfully threatened and inflicted bodily harm upon the complainant.
By or on behalf of	This Agreement is executed *by or on behalf of* an interested party.

Binomials used in Legal English	**Examples**
Confessed and acknowledged	The parties hereto have *confessed and acknowledged* this agreement as their voluntary act.
Consists of or includes	The Services may comprise any task which *consists of or includes* maintenance, repair or inspection of equipment.
Directly or indirectly	The Employee shall not, *directly or indirectly*, engage in any competing business during the term of employment.
Due and payable	The unpaid balance shall be *due and payable* on or before the deadline stated herein.
Expressed or implied	The obligations of the parties, whether *expressed or implied*, shall be binding and enforceable.
(To) have and (to) hold	The Tenant hereby takes the premises, *to have and to hold* for the term of years herein specified.
Heirs and successors	To (Name) and his *heirs and successors*, to have and to hold forever.
In whole or in part	No person shall reproduce this work, *in whole or in part*, without the prior written consent of the author.
Legal and valid	This Agreement constitutes a *legal and valid* obligation of the parties, enforceable in accordance with its terms.
Null and void	The deed executed under fraud is hereby declared *null and void*.
Perform and discharge	The Contractor shall *perform and discharge* all obligations required under this Agreement.

Binomials used in Legal English	Examples
Power and authority	Each party represents and warrants that is has the full *power and authority* to enter into and perform this Agreement.
Sale or transfer	The Tenant shall not make any *sale or transfer* of its interest in the premises without the Landlord's approval.
Signed and delivered	Executed as a Deed and duly *signed and delivered* by the parties.
Sole and exclusive	The Licensee shall have the *sole and exclusive* right to manufacture and distribute the Product in the Territory.
Terms and conditions	The sale shall be subject to the *terms and conditions* hereunder.
True and correct	I declare under penalty of perjury that the foregoing is *true and correct* to the best of my knowledge.
Under or in accordance with	The employee shall perform his duties *under or in accordance with* the instruction of his supervisor.
Unless and until	A person shall not be deemed guilty *unless and until* proven so by due process of law.
Ways and means	Parliament shall determine the *ways and means* of raising revenue for public expenditure.
Wholly and exclusively	The Trustees shall apply the trust fund *wholly and exclusively* for charitable purposes.
Will and testament	The court admitted the decedent's last *will and testament* to probate.

Table 6. *Multinomial expressions*

Multinomials used in Legal English	**Examples**
Advice, opinion and direction	The officers of the Company shall act in accordance with the *advice, opinion and direction* of the Board of Directors.
Alien, transfer or convey	No corporation shall *alien, transfer or convey* real property except in accordance with this act.
Bear, sustain or suffer	The Insurer agrees to reimburse the Insured for any loss or damage that the Insurer may *bear, sustain or suffer* by reason of fire, theft or accident
Business, enterprise or undertaking	No person shall carry on any *business, enterprise or undertaking* involving hazardous materials without a licence.
Cancel, annul and set aside	The appellate court hereby *cancels, annuls and sets aside* the decree of the trial court.
Changes, variations and modifications	No *changes, variations or modifications* to this Agreement shall be binding unless made in writing and signed by both parties.
Documents, instruments or writings	This Agreement, together with all other *documents, instruments or writings* executed in connection herewith, constitutes the entire agreement between the parties.
Give, devise and bequeath	I hereby *give, devise and bequeath* all the rest, residue and remainer of my estate to my nephew, Jim.
Grant, bargain and sell	The said party does hereby *grant, bargain and sell* unto the said party the parcel and land.

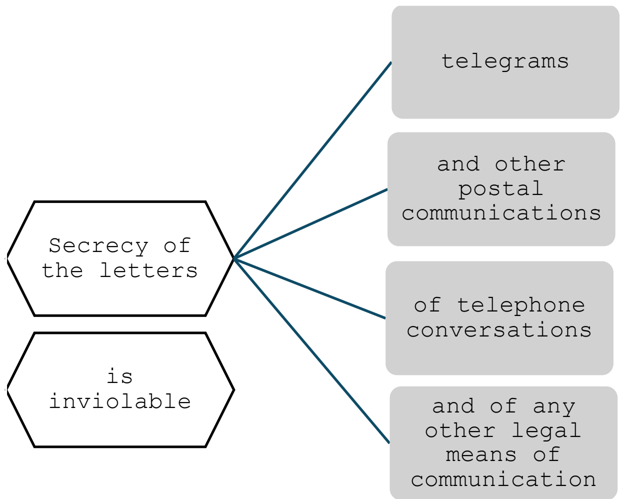
Multinomials used in Legal English	**Examples**
Null, void and of no effect	Any marriage entered into while either party is lawfully married to another shall be *null, void and of no effect.*
Obey, observe and comply with	The Employee shall *obey, observe and comply with* all lawful instructions of the Employer and with all workplace regulations.
Order, adjudge and decree	It is therefore *ordered, adjudged and decreed* that the Plaintiff recover damages.
Signed, sealed and delivered	A deed takes effect only when it has been *signed, sealed and delivered*.
Way, shape or form	Harassment will not be tolerated in any *way, shape or form.*

Through binomials and multinomials, legal drafters aim to address any foreseeable exceptions that parties to a certain legal act or process may invoke in their favour. As previously stated, even if the provisions of a legal text clearly apply to a company, a group or a person, the targeted audience will invariably try to demonstrate the contrary by claiming that even the slightest specificity of their situation renders the respective legal text inapplicable to them. Binomials and multinomials attempt to cover all these specificities and even go as far as to envisage everything that could be ruled as an exception by a court of law. Also, through more complex binomials and multinomials, all the possibly applicable punishments or penalties are enumerated in order for the accused to be made aware of the sentences they are liable to.

The legal drafters' use of binomial and multinomial expressions generates verbosity and ambiguity, thus raising difficulties in their comprehension, especially for non-specialist readers and, in the case of more complex legal texts, even for legal professionals. The comprehension of the meaning of such a text must be done by finding the backbone of the sentence which ensures the general understanding of the legal text and somehow isolate it from all the exemptions, derogations, limitations, and exclusions listed through these syntactic devices.

In stating that binomial and multinomial expressions make the text both precise and all-inclusive, Bhatia (2013, pp. 107-109) proposed a very efficient model of isolating the core of the legal text from the previously mentioned expressions. Bhatia advocated for a skeletal reading of the legal text by separating the backbone from the embedded qualifications, which are often (but not always) introduced by the conjunctions *and/or*. Below is a skeletal reading of a short and very simple text taken from the Constitution of Romania:

> "Secrecy of the letters, telegrams and other postal communications, of telephone conversations, and of any other legal means of communication is inviolable."[100]



[100] The Constitution of Romania, Article 28. Retrieved from https://www.presidency.ro/en/the-constitution-of-romania, last accessed 20 September 2025.

The backbone of this article is placed vertically on the left-hand side of the chart, in the hexagonal boxes to be read from top to bottom, thus resulting in: *Secrecy of the letters is inviolable*. This is the core of the message to which all the possible situations that may occur have to be attached through binomial and multinomial expressions. On the right-hand side, there are the multinomial structures:

a. *letters, telegrams, and other postal communications* – this is a multinomial structure or a triplet whose first element we believe should be left in the core structure for its proper understanding.
b. *of telephone conversations, and of any other legal means of communication* – this is a complex binomial consisting of two phrases connected with *and.*

Alongside Bhatia's model, which entails the isolation of the core, we propose the integration into our deconstructive analysis of a complementary method of textual schematization put forward by Drieger (1982, cited in Gotti, 2012, pp. 59, 60) and widely applied to legal drafting in order to render the resulting legal texts more comprehensible. Driedger advocated for a division of a legal text schematically into ordered sections and subsections by means of indentation and itemized sequencing because "[It] provides a visual aid to comprehension by breaking up solid blocks of type; it delivers the sentence in packages, so to speak, making it easier for the mind to grasp the whole. It does visually what the reader would do mentally without it. "[101] Below we provide an example of a legal text written by the legal drafters according to Driedger's textual schematization model, which is generally applied to common law texts:

[101] Driedger (1982, p. 78), quoted in Gotti (2012, p. 60)

"(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; *or* the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this state; *or*

(ii) the party making the application was not given proper notice of the appointment of an arbitrator *or* of the arbitral proceedings *or* was otherwise unable to present his case; *or*

(iii) the award deals with a dispute not contemplated by *or* not falling within the terms of the submission to arbitration, *or* contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; *or*

(iv) the composition of the arbitral tribunal *or* the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, *or*, failing such agreement, was not in accordance with this Law; *or*

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

> (ii) the award is in conflict with the public policy of this State." (…)[102]

Driedger's textual schematization model also consists of isolating the core or backbone of the legal text into main sections whose subsections are their alternative or complementary options, but it does so without completely isolating all the binomial and multinomial expressions – their marking by *or* is indicated in the text above – from the main text as Bhatia's skeletal reading does. We believe, despite the notable differences between the two approaches, that Driedger's perspective is beneficial for the particularly complex text which will be subjected to analysis below, due to the prescribed schematical breakdown into logical sections and subsections, which make the textual relations and connections clearer to the reader.

To apply the two models, let us consider the following legal text from the Georgia Code § 16-10-20 (2020) on False Statements and Writings, Concealment of Facts, and Fraudulent Documents in Matters Within Jurisdiction of State or Political Subdivisions:

> "A person who knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes a false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than $1,000.00 or by imprisonment for not less than one nor more than five years, or both."[103]

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[102] The UNCITRAL Model Law on International Commercial Arbitration. United Nations, 1994, p. 13, 14, Chapter VII. RECOURSE AGAINST AWARDS, Article 34, Adapted and abridged text. My emphasis. Retrieved from https://uncitral.un.org/sites/ uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf, last accessed 10 Sep. 2025.

[103] GA Code § 16-10-20 (2024) retrieved from https://law.justia.com/codes/georgia/title-16/chapter-10/article-2/section-16-10-20/ (last accessed 27 August 2025)

This fragment may prove to be quite difficult to understand, given the numerous possibilities covered with the help of subordinate and superordinate binomial and multinomial structures. What one has to do for the proper understanding of this fragment is to first identify the operative core and separate it from the modifiers and alternatives expressed through first-order or second-order binomials and multinomials, which are often marked by the presence of *and* or by the alternative conjunction *or*. There are also cases when the elements of these structures are only separated by commas.

1. A person who knowingly

a. and willfully

2. falsifies,

a. conceals,

b. or covers up

i. by any *trick*

ii. scheme,

iii. or device

3. a material fact;

4. ***makes a false*****,**

a. fictitious,

b. or fraudulent

i. ***statement***

(a) or representation;

5. ***or makes***

a. or uses

i. any false writing

(a) or document,

6. ***knowing the same to contain any false*****,**

a. fictitious,

b. or fraudulent

i. ***statement***

(a) or entry

7. in any matter within the jurisdiction

a. of any department

b. or agency of state government

c. or of the government of any county, city,

d. or other political subdivision

8. of this state shall, upon conviction thereof,

9. be punished

a. by a fine of not more than $1,000.00

b. or by imprisonment for not less than one nor more than five years,

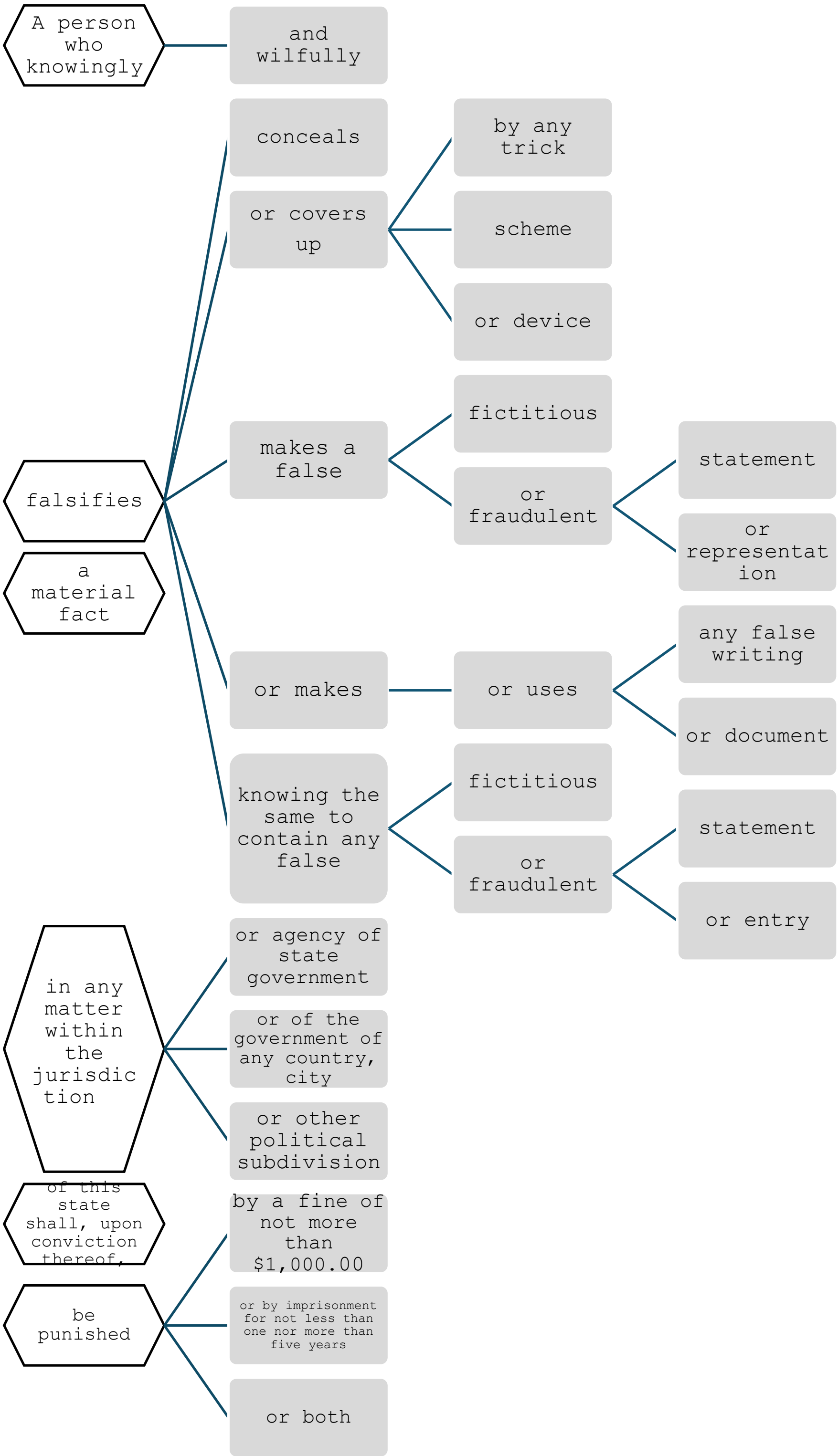
c. or both.

In the diagram above, the structural backbone of the legal text is formed of the sentences or phrases in non-italicized bold (1, 2, 3, 7, 8, 9). The entries designated by letters (a, b, etc.) indicate additional envisaged scenarios that are added to the primary structure in bold, thereby forming binomial or multinomial expressions. Hence, the core structural framework of the text is: **A person who knowingly falsifies a material fact in any matter within the jurisdiction of this state shall, upon conviction thereof, be punished.**

Entry 2 features a multinomial, or a triplet (*falsifies, conceals or covers up*) whose qualification (*by any trick, scheme or device*) is itself a multinomial expression, or a triplet, hence the different marking of the sub-entries. Entries 4, 5 and 6 also include embedded subordinate binomials marked by (a).

The entries in italicized bold do not pertain, we believe, to the backbone of the legal text as they are themselves part of the complex subordinate multinomial structure: […] *makes a false (...) statement (...) or makes (...) any false writing (...) knowing the same to contain any false (...) statement* […].

A linear and vertical reading of our text on which we apply only Bhatia's (2013, pp. 107-109) deconstructive model rendered in a hierarchical flowchart, would have the following disposition:


A person who knowingly
and wilfully
conceals
or covers up
by any trick
scheme
or device
falsifies
a material fact
makes a false
fictitious
or fraudulent
statement
or representation
or makes
or uses
any false writing
or document
knowing the same to contain any false
fictitious
or fraudulent
statement
or entry
in any matter within the jurisdiction
or agency of state government
or of the government of any country, city
or other political subdivision
of this state shall, upon conviction thereof,
be punished
by a fine of not more than $1,000.00
or by imprisonment for not less than one nor more than five years
or both

In this flowchart, the hexagon-shaped white text boxes contain, if read from top to bottom, i.e. vertically, the core message of the legal text whose binomials and multinomials, in rectangular grey text boxes, have been spread into the lateral branches according to their text relations, dependence, and rank. This diagrammatic rendering of the text is, in our opinion, more difficult to understand than when the same text was schematized and broken down into sections and subsections according to the combined approaches (Driedger's and Bhatia's).

This is an example of a complex legal text with obviously numerous ramifications, but in order to clearly see how binomials and multinomials work in a legal text, we will consider a textbook referential and more straightforward example provided by Bhatia (2013, p. 107, 108):

> " **Where in any trial of offence punishable under section 161** or section 165 of the Indian Penal Code or of an offence referred to in clause (b) of subsection (1) or section 5 of this Act punishable under subsection (2) thereof **it is proved that an accused person has accepted** or obtained, or has agreed to accept or attempted to obtain, **for himself** or for any other person, **any gratification (other than legal remuneration)** or any valuable thing for any person, **it shall be presumed unless the contrary is proved that he accepted** or obtained, or agreed to accept or attempted to obtain **that gratification** or that valuable thing, as the case may be, **as a motive** or reward such as is mentioned in the said section 161, as the case may be, **without consideration** or for a consideration of which he knows to be inadequate."[104]

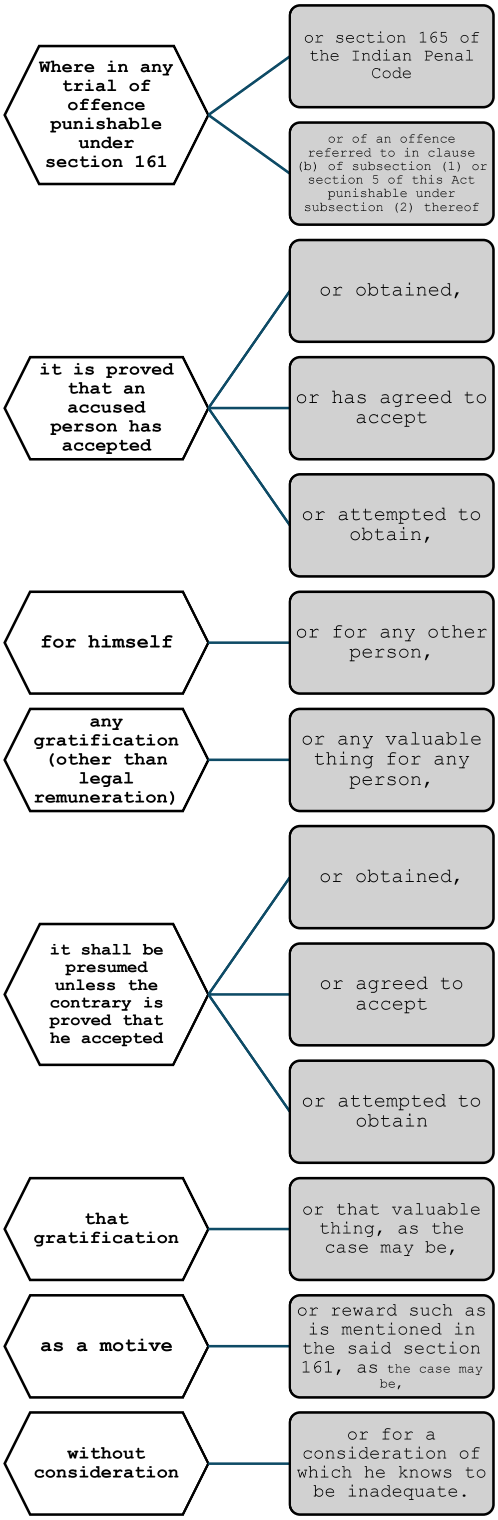
[104] Prevention of Corruption Act, 1947, India (in Bhatia, 2013, p. 107, my emphasis, adapted and abridged text)

This backbone or the core structure of this legal text is typographically marked in bold in the text for ease of identification. Thus, the structural framework to which further qualifications are added is:

> **Where in any trial of offence punishable under section 161 it is proved that an accused person has accepted for himself any gratification (other than legal remuneration) it shall be presumed unless the contrary is proved that he accepted that gratification as a motive without consideration.**

In the thorough understanding of a complex legal text, learners of Legal English as ESP may benefit from being instructed to perform this type of textual breakdown and backbone isolation, disentangling the text from its binomials and multinomials. On more than one occasion, my students have been puzzled by the complex embedding of such structures, which has at times obscured the core message of the text. As non-native speakers of English, the difficulty of properly comprehending a legal text of the level of complexity exemplified in the analyses above is exponentially increased.

For a clearer, linear reading of this text, consider the following hierarchical flowchart, which has been adapted from Bhatia (2013, p.108). Our flowchart adopts the same graphical structure as the preceding one, namely the hexagon-shaped white text boxes on the right-hand side of the page, read from top to bottom, are the backbone of the text, whereas the rectangular grey text boxes contain the additional qualifications inserted by means of binomial and multinomial expressions:


Where in any trial of offence punishable under section 161
or section 165 of the Indian Penal Code
or of an offence referred to in clause (b) of subsection (1) or section 5 of this Act punishable under subsection (2) thereof
it is proved that an accused person has accepted
or obtained,
or has agreed to accept
or attempted to obtain,
for himself
or for any other person,
any gratification (other than legal remuneration)
or any valuable thing for any person,
it shall be presumed unless the contrary is proved that he accepted
or obtained,
or agreed to accept
or attempted to obtain
that gratification
or that valuable thing, as the case may be,
as a motive
or reward such as is mentioned in the said section 161, as the case may be,
without consideration
or for a consideration of which he knows to be inadequate.

The examples of binomials and multinomials given in Tables 5 and 6 are only the most widely known and the shortest, but, as clearly exemplified in this fragment, the two types of expressions may not only be longer and far more complex, but they may also be accompanied by their own embedded binomials and multinomials. When dealing with such complex chains of legal provisions with their envisaged possibilities to be legally addressed, one needs to use such a structural reading of the respective legal text to fully grasp its core meaning.

Rotaru (2025, p.79), who also used Vijay Bhatia's model of legal text analysis, termed the "graphical approach" to a legal text "text visualisation by text verticalization" which, in my view, is a very accurate description of the analysis. In Rotaru's view, the legal text that contains binomials and multinomials is written vertically; therefore, its deconstruction must involve a verticalization of the backbone so that its "branches" become more visible and identifiable as additional information.

4.6. Syntactic Discontinuities in Legal English

Due to its propensity for precision and all-inclusiveness, legal language exhibits syntactic discontinuities, especially when additional information or qualifications must be inserted where contextually appropriate in the legal text without necessarily preserving the main structure of the sentence.

When referring to legal texts, we not only refer to the written but also to the spoken legal text or discourse, which preserves the same features and shares the orientation towards precision and the strive to be as all-encompassing as possible, especially when pleading in court, thus making sure that the argument is irrefutable and is less likely to contain exploitable weaknesses or unaddressed problems. As Cozma (2017, p. 28) phrased it:

> "The presence of the syntactic discontinuities in legal documents of any kind is a consequence of an important structural characteristic of these texts, namely the presence of the qualificational insertions. As Bhatia explains (1993, p. 34), qualifications, equally rendered as subordinate clauses and as clause constituents, interact with the main provisionary clause at various points in its structure, with a view to covering all the possible circumstances that are relevant to its application. Even if the inserted qualifications are meant to make the legal provision precise and all-inclusive, the fact that they frequently interrupt the main provisionary clause may cause difficulties of processing, especially in the case of the non-specialist readers."

The author (Cozma, 2017, pp. 28-30) devises a classification of syntactic discontinuities that she groups into three main categories, namely discontinuities occurring at the level of the verbal phrase, at the noun phrase level, and discontinuities arising at the clause level, each category having several subcategories. To this complex classification, Rotaru (2025, pp. 89-96) added further main categories and subcategories of syntactic discontinuities found in her corpus or European and British legislation. In what follows, we will present and illustrate with relevant examples from legislative texts a comprehensive classification of syntactic discontinuities, which includes the findings of both authors. The words, phrases, or sentences written in *italics* in all the examples hereinafter provided are the inserted qualifications that trigger the discontinuities in the main structure, whereas the ones written in **bold** are the actual main structures that are subjected to discontinuity:

1. DISCONTINUITIES AT THE LEVEL OF THE VERBAL PHRASE

The subcategories identified by Cozma (2017, pp. 28, 29) are listed from a. through c., whereas the additional category of discontinuities discovered by Rotaru (2025, p. 90, 92) is mentioned at point d.:

a. Discontinuity between a modal auxiliary and its main verb by the intercalation of prepositional phrases (i.) functioning as adverbials, simple or compound adverbials (ii., iv.), elliptical sentences (iii.) or by the insertion of longer structures, in or case of a conditional clause (v) such as in the examples below:

i. "When placing products on the Community market, economic operators **shall**, *in relation to their respective roles in the supply chain*, **be responsible** for the compliance of their products with all applicable legislation."[105]

ii. "Where Community harmonisation legislation sets out essential requirements, it shall provide for recourse to be had to harmonised standards, adopted in accordance with Directive 98/34/EC, (…) which **shall**, *alone or in conjunction with other harmonised standards*, **provide for** the presumption of conformity with those requirements (…)"[106]

[105] Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (Text with EEA relevance) My emphasis. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008D0768&qid= 1756573638970. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[106] Idem, adapted and abridged text.

iii. "Work equipment parts at high or very low temperature **must**, *where appropriate*, **be protected** to avoid the risk of workers coming into contact or coming too close."[107]

iv. "In order to ensure that the European Parliament and the Economic and Financial Committee are able to follow the implementation of this Decision, the Commission **should** *regularly* **inform** them of developments relating to the Union's macro-financial assistance and provide them with relevant documents."[108]

v. "(…) the Member State in whose territory the project is intended to be carried out **shall**, *if it has not already done so*, **send** to the affected Member State the information required (…)."[109]

b. Discontinuities between the passive auxiliary and the Past Participle of the main verb by the insertion of adverbs:

i. "For the purpose of implementing the performance scheme established under this Regulation, account shall be taken of the fact that en route air navigation services, terminal air navigation services, and network

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[107] Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (Codified version) (Text with EEA relevance). My emphasis. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0104 Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[108] Decision No 778/2013/EU of the European Parliament and of the Council of 12 August 2013 providing further macro-financial assistance to Georgia My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013D0778&qid=1756575291702. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[109] DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011on the assessment of the effects of certain public and private projects on the environment (codification). My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/eli/dir/2011/92/oj/eng. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

functions have different characteristics and **shall** *therefore* **be treated** accordingly, including, if necessary, for performance-measuring purposes."[110]

ii. "Whereas the Agreement on trade in textile products (…) **has been** *automatically* **extended** for successive periods of one year and will be applicable in 1998."[111]

c. Discontinuities between subject complement and the copula verb by the insertion of adverbs (i.) or of more lengthy structures such as a conditional clause, as exemplified in fragment (ii.).

i. "It **is** *therefore* **necessary** that financial responsibility be allocated, as a matter of Union law, between the Union itself and the Member State responsible for the treatment afforded on the basis of criteria established by this Regulation. (…) It **is** *also* **appropriate** that the Commission is provided with adequate opportunity to identify any point of law or any other element of Union interest raised by the dispute."[112]

ii. "The Head of Criminal Justice **is** –

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[110] Regulation (EU) 2024/2803 of the European Parliament and of the Council of 23 October 2024 on the implementation of the Single European Sky (recast) (Text with EEA relevance). My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R2803&qid=1756580107897. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[111] Commission Regulation (EC) No 339/98 of 11 February 1998 amending Annexes I, II, III, V, VI, VII, VIII and IX of Council Regulation (EEC) No 3030/93 on common rules for imports of certain textile products from third countries). My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31998R0339&qid=1756580564003. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[112] Regulation (EU) No 912/2014 of the European Parliament and of the Council of 23 July 2014 establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party. My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0912&qid=1756581900249. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

(a) The Lord Chief Justice or

(b)*if the Lord Chief Justice appoints another person,* **that person**."[113]

d. Discontinuity between a passive verbal structure and its agent complement. This category has been added by Rotaru (2025, p. 92) who pointed out that the discontinuity may be created by a short structure (i.) or a longer stretch of text, some even consisting of finite or non-finite clauses (ii.) or a single word (iii.) inserted between the passive and its complement. In the following, we will provide examples of each situation below:

i. "(…) **it is financed**, *for the most part*, **by the State authorities** (…)"[114]

"The information and consultation provisions laid down in this Directive **must be implemented** *in the case of an undertaking or a group's controlling undertaking which has its central management outside the territory of the Member States* **by its representative agent**, to be designated if necessary (…)"[115]

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[113] Quoted in Rotaru, 2025, p. 92, My emphasis. Adapted and abridged text.

[114] Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC (Text with EEA relevance). My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2557&qid=1756646986101. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[115] Directive 2009and38andEC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast) (Text with EEA relevance). My emphasis. Adapted and abridged text. Retrieved from https:andandeur-lex.europa.euandlegal-contentandENandTXTand?uri=CELEX%3A32009L0038&qid=1756655293529. Data used under the Creative Commons Attribution 4.0 International License: https:andandcreativecommons.organdlicensesandbyand4.0and

ii. "(…) an incident would have significant disruptive effects, **as determined** *in accordance with Article 7(1), on the provision* **by the entity of one or more essential services** (…)"[116]

iii. "The consultation of the VIS pursuant to paragraphs 1 and 2 of this Article **shall be carried out** *only* **by the designated national authorities** referred to in Article 21(6) of Regulation (EC) No 343/2003."[117]

2. Discontinuities at the Level of the Noun Phrase

The second main category of discontinuities that Cozma (2017, p. 29) discovered, namely the discontinuities caused by the insertion of qualifications at the level of the noun phrase are, according to the author, less frequent than discontinuities at the verb phrase level.

a. Cozma (2017, p.29) identified cases of attributes being separated from their head nouns, as in the example provided by the author, in which we will keep the notations explained above with the sections in bold representing the main structure and with the section in italics, which is the discontinuing qualification:

i. "**the delegation**, *to an executive agency*, **of tasks**".[118]

In the example above, the discontinuity is fairly short, but it can also be a significantly long qualification or explanation which raises difficulties in the reading and comprehension of the text, especially by non-professional readers/hearers of legal texts, such as in the following example:

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[116] Ibid. Footnote 113.

[117] Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation). My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/eli/reg/2008/767/oj/eng. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[118] Example provided in Cozma, 2017, p. 29, my emphasis.

ii. “Where a potential buyer makes a request to a responsible person for a copy of the home information pack or of a document (or part of a document) which is or ought to be included in that pack, it is the **duty** *of the responsible person* **to comply with** that request during the permitted period.”[119]

According to Rotaru (2025, pp. 93, 94), the noun phrases that generally give rise to discontinuities are the ones whose head noun is “right”, “obligation”, “undertaking”, “duty” whose attribute is expressed by a long infinitive.

b. In addition to Mihaela Cozma’s category presented at point a., Rotaru (2025, p. 94) identifies yet another type of discontinuity at the level of the noun phrase, namely the discontinuity between an adjective and its determined noun. The following example is illustrative of the way the additional qualification discontinues the noun phrase by being appositively interposed:

i. “The WTO and **other**, *including regional or bilateral*, **dispute settlement mechanisms** aim at finding a positive solution to any disputes arising between the Union and the other party or parties to those agreements.”[120]

3. DISCONTINUITIES AT THE LEVEL OF THE CLAUSE

Cozma (2017, p. 29) signals the existence of discontinuities in the form of qualification inserted between the subject and its predicate (i., ii.) as well as between objects and their head verbs (iii., iv.), the discontinuities consisting of more or less complex phrases. The examples below have been provided by the author, but we will keep the same marking with the bolded font for the main structure and its discontinuity rendered in italics:

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[119] Example provided in Rotaru, 2025, p. 93, my emphasis.

[120] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the exercise of the Union's rights for the application and enforcement of international trade rules. My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52012PC0773. Data used under the Creative Commons Attribution 4.0 International License: https://creative commons.org/licenses/by/4.0/

i. "**An arbitral award,** *irrespective of the country in which it was made,* **shall be recognized as binding (…)**"[121]
ii. "the following **information**, *if applicable*, **shall be supplied** in triplicate"[122]
iii. "**offering**, *where necessary*, **mediation**"[123]
iv. "Mauritius **may accept**, *upon request by EUNAVFOR*, **the transfer** of persons"[124]

4. DISCONTINUITIES AT THE LEVEL OF BINOMIAL AND MULTINOMIAL EXPRESSIONS

This category of discontinuities was signalled by Rotaru (2025, p. 95) and it implies the insertion of a discontinuing qualification within a binomial or multinomial. Below are some of the author's examples of such instances:

i. "[…] the trader shall provide the consumer with the following information: […] **the duration of the contract**, *where applicable*, **or**, *if the contract is of indeterminate duration or is to be extended automatically*, **the condition for the termination of the contract**."[125]
ii. "The consistency [of honey] can be **fluid, viscous, or** *partly to entirely* **crystallised.**"[126]

In the fragments cited above, the italicized sentences or phrases have been inserted into the binomial (i.) and the multinomial (ii.) expressions as qualifiers of one of the constituent elements of the core structure. In the first example (i.) it is the phrase **the duration of the contract** which prompts further

[121] The UNCITRAL Model Law on International Commercial Arbitration. United Nations, 1994, p. 13, 14, Chapter VII. RECOURSE AGAINST AWARDS, Article 35, Adapted and abridged text. My emphasis. Retrieved from https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/06-54671_ebook.pdf, last accessed 11 Sep. 2025.
[122] Example provided by Cozma, 2017, p.29, adapted text, my emphasis.
[123] Ibid.
[124] Ibid.
[125] Example given by Rotaru, 2025, p. 95, adapted text.
[126] Ibid.

specification, whereas in the second example (ii.), it is the final term, i.e. **crystallized**, that requires additional clarification.

5. Discontinuities at the Level of Complex Prepositional Phrases

The last category of discontinuities discovered by Rotaru (2025, p. 95) features discontinued complex prepositional phrases. We will exemplify such instances with the following excepts from European legislative texts:

i. "A system vendor shall load and process data provided by participating carriers with equal care and timeliness, **subject** *only* **to** the constraints of the loading method selected by individual participating carriers."[127]

ii. "[…] Member States shall take measures in order that, **in accordance**, *where appropriate,* **with** the permit […]"[128]

Following the same pattern of notations, the phrases in bold are the main structures that are interrupted by the words or phrases in italics. The latter are aimed at clarifying the main phrases and thus, make the legal text more precise.

While discontinuities are employed in order to enhance precision, sentences in which the linear progression of information is repeatedly disrupted tend to be more difficult to process than those in which such interruptions are avoided through the use of alternative syntactic solutions (Hiltunen 2012, pp. 42, 47).

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[127] Regulation (EC) No 80/2009 of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89 (Text with EEA relevance). My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R0080&qid=1756737424742. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

[128] Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste. My emphasis. Adapted and abridged text. Retrieved from https://eur-lex.europa.eu/eli/dir/1999/31/oj/eng. Data used under the Creative Commons Attribution 4.0 International License: https://creativecommons.org/licenses/by/4.0/

4.7. Subordinate Clauses of Legal English

From a referential grammar perspective (Quirk et al., 1985, pp. 987- 991), sentences can be classified into four main structural types:

a. **simple sentences** which only contain one main or principal clause;
b. **compound sentences** composed of two or more coordinate main clauses;
c. **complex sentences** consisting of a main clause accompanied by one or more subordinate clauses;
d. **complex-compound sentences** which consist of at least two coordinate main clauses along with one or more subordinate clauses.

As discussed above (See 4.1.), complex sentences are predominant in legal English. In the studies on legal syntax conducted by Gustafsson (1975) and Hiltunen (2001) (cited in Hiltunen 2012, 43-47), there is evidence of the fact that hypotaxis (subordination) is responsible for the characteristic complexity of the legal sentence.

The results of the two studies revealed that relative clauses account for almost half of all subordinate clauses, while adverbial clauses for about a third. Another significant group is reported to consist of clauses introduced by the conjunction *that*. In point of their functional roles, relative clauses define or qualify a specific element of the main clause, being essential to the latter's meaning. Adverbial clauses, however, perform a wide range of functions such as expressing purposes, reasons, conditions, concessions, and consequences.

In his study of legal language, Hiltunen (2012, pp. 44-45) devises a classification of the positioning of subordinate clauses within the legal sentence. Hence, the author notes that subordinate clauses may be placed initially, in a medial (or nested) position or in a final position. According to the author, there is a certain positioning pattern of subordinate sentences which is characteristic of the very types of subordinate clauses. In the author's words:

> “(…) adverbial *if*-clauses specifying conditions and relative *where*-clauses describing cases (…) tend to be placed at the beginning of the sentence. Overall, the right-branching arrangement is, however, the most common. It is also likely to cause fewer processing problems for the reader than the other positions. On the other hand, sequences of right-branching clauses may also become rather complicated and difficult to understand, depending on how the clauses are arranged. (…) Nested (or “center-embedded” subordinate clauses are generally regarded as syntactically and perceptually problematic. Sentences involving only one clause in medial position do not usually give rise to any difficulties, but if multiple embeddings occur in this position they may put an extra strain on the processing capacity of the reader (…).” [129]

In the following we will present Hiltunen’s (2012, pp. 44) classification in terms of subordinate sentence positioning relative to the main clause, as well as examples that illustrate the author’s observations above for each category. The main clause is in italics:

1. Sentence-initial position or left-branching

“Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely:

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

[129] Hiltunen, 2012, p. 45. Adapted and abridged text.

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference. (*Freedom of Information Act*, 2000 c, 36 (11)(1))." [130]

In this legal text, we are dealing with a *where* relative clause that exhaustively lists the various communication preferences that an applicant may raise. The main clause in italics is the authority's commitment to comply with the demands so far as reasonably possible.

2. Sentence-medial position or nested

"*In the case of any matter* which is not one of the reserved matters within the meaning of the Scotland Act 1998 or in respect of which functions are, by virtue of section 63 of that Act, exercisable by the Scottish Ministers instead of by or concurrently with a Minister of the Crown, *this section and section 8 shall apply to Scotland subject to the following modifications – (Electronic Communications Act* 2000 c.7 (9)(7))" [131]

The fragment above features a main clause rendered in italics which is discontinued by multiple embeddings, thus rendering the processing of the text more strenuous. Apart from the medially-placed or nested non-defining clause, the reader's comprehension is even more challenging because of the binomials meant to comprehensively list all possibilities (e.g. *within the meaning of* the Scotland Act 1998 *or in respect of*; *instead of by or concurrently with*).

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[130] In Hiltunen, 2012, p. 44. Original emphasis.

[131] Ibid.

3. Sentence-final position or right-branching

"*Subsection (1) shall not prohibit the imposition by an order under section 8 of –*

(a) *a requirement to deposit a key for electronic data with the intended recipient of electronic communications comprising data; or*

(b) *a requirement for arrangements to be made, in cases* where a key for data is not deposited with another person, which otherwise secures that the loss of a key, or its becoming unusable, does not have the effect that the information contained in a record kept in pursuance of any provision made by or under any enactment or subordinate legislation becomes inaccessible or incapable of being put into intelligible form. *(Electronic Communications Act* 2000 c.7 (14)(4))" [132]

In this text, the main clause in italics is followed by two relative clauses introduced by either **where** ("where a key for data is not deposited with another person") or **which** ("which otherwise secures") and then by two other subordinate clauses introduced by the conjunction **that** ("that the loss of a key, or its becoming unusable, does not have the effect"; "that the information contained in a record (…)"). The mental processing of this text is made especially difficult on account of the *binomial* ("the loss of a key, or its becoming unusable"; "becomes inaccessible or incapable of being put into intelligible form") or *multinomial structures* ("any provision made by or under any enactment or subordinate legislation") that add to comprehension challenges of embedded subordinates.

[132] In Hiltunen, 2012, p. 44. Original emphasis.

As stated by Hiltunen (2012, p. 48), in order to reduce the possibility of ambiguity, punctuation is typically restricted to the bare minimum, which suggests that the text is composed and structured primarily from the writer's perspective rather than the reader's angle. While from the writer's standpoint the text may appear well-constructed, from the reader's point of view it may prove less effective, particularly if the reader is not a legal professional.

4.8. The Subjunctive

The use of the subjunctive, particularly of the *formulaic subjunctive*, is listed among the particularities of legal English. This type of subjunctive employs a verb in its form and conveys the meaning of *let* or *may,* being therefore considered formal and archaic (Tiersma, 1999, p. 93). In legal discourse, the formulaic subjunctive remains prevalent, especially in conventional expressions such as *know all men by these presents,* which basically means "take note of"[133].

More frequently, it is encountered in the passive voice in phrases such as *be it known* or *be it remembered* (Tiersma, 1999, p. 93). Below is an illustration of the formulaic subjunctive in the passive as it appears in the British enactment clauses which traditionally opens all statutes:

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[133] According to its entry in the Black's Law Dictionary, 2019, 11th Edition, p. 1042, the term *know all men by these presents* is "an archaic form of address – a loan translation of the Latin *noverint universi per praesentes* – [which] was traditionally used to begin certain legal documents such as bonds and powers of attorney, but in modern drafting style the phrase is generally considered deadwood." (Abridged text, original emphasis).

> “*Be it enacted* by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (…)”[134]

The formulaic subjunctive cannot be claimed to have a real functional or semantic role in the legal text. Rather, it is a structure with an overall effect of grandeur and solemnity, which is expected to humble the hearer/reader into submission and abidance by the legal norms. Legal language is characterized by its conservatism, and the continued persistence of such structures, despite their limited precision, serves as evidence of this tendency.

[134] My emphasis. Retrieved from: https://erskinemay.parliament.uk/section/4978/enacting-formula. Last accessed 20 September 2025. In the original version there was the phrase “by the Queen’s most Excellent Majesty” as it remained unchanged from the reign of late Queen Elizabeth II. We adapted this text to represent the present time, corresponding to the reign of His Majesty King Charles III.

Chapter 5 - The Lexicon of the English Legal Language

This chapter will mostly rely on the seminal contributions of two leading legal linguists whose theoretical accounts of legal language attained canonical status and continue to represent a central point of reference for all scholarly research in the field. David Mellinkoff (1963) was the first to undertake a comprehensive analysis of legal language, approaching it from historical, formal, and functional angles. Building upon Mellinkoff's foundational work, Tiersma (1999) elaborated a more recent account of legal language, aligning the analysis more directly with the contemporary practices of legal English and adding pragmatic, sociolinguistic, and discourse analytical dimensions to its analysis.

While by no means exhaustive, this chapter will delineate the principal characteristics of the legal lexicon, with particular emphasis on those features that account for its distinctiveness. Although some of these features have been briefly introduced in the preceding chapters, they will now be examined within the specific categories to which they belong.

5.1. Formal and Ritualistic

Legal language is, as the two authors described it (Mellinkoff, 1963, pp. 19, 20; Tiersma, 1999, pp. 100, 101), ceremonially formal, archaic, ritualistic, solemn, mystical, and sacerdotal. The observance of the law and its enforcement through the language of the law are accomplished in the same manner in which religious books and rituals (and implicitly their equally formal, archaic, ritualistic, solemn, mystical, and sacerdotal language) sustain the faith in religious settings.

As Tiersma (1999, p. 100) noted, within the courtroom, formulaic expressions and ritualized language remind participants and observers that the proceedings are extremely significant. As linguist Robin Lakoff (cited in Tiersma, 1999, p.100) observes, the formality of courtroom discourse reinforces its adversarial nature. Ritualistic speech also functions to confer structure to the trial, marking both its beginning and its end. For example, the bailiff's traditional proclamation *Oyez, oyez, oyez* or *Hear ye, hear ye, hear ye* signals the opening of the session and is followed by an instruction for all to rise.

Similarly, the ceremonial administration of oaths to witnesses and jurors, along with their placement in particularly designated boxes separating them from the external world, enhances the impression of a distinct, almost otherworldly, space which is destined for those who have been, alongside the officers of the court, entrusted with administering justice or at least contributing to this process to a significant extent. Lakoff argues that such practices should not be dismissed, since the preservation of ceremony and formality sustains the perception of the courtroom as a "hallowed" institution. In the following, Tiersma (1999, p.101) provides an accurate rendering of the parallels between trial proceedings and a religious service:

> "The ritualistic language and ceremonies of the courtroom have much in common with a religious service, and serve much the same purpose. The rituals and archaic language indicate that this is a special occasion, quite different from ordinary discourse. The formal and unusual clothing of the main participants – the vestments of the priests, or the robes and wigs of the judges – reinforce the impression that this is a solemn occasion and add an aura of authority to the proceedings. The separation from everyday life is also stressed by the behavior of observers, who are expected to show the proper respect by remaining silent under most

circumstances, and by wearing appropriate attire. Indeed, in a court-house this respect can be enforced by the judge's contempt power."[135]

Mellinkoff (1963, pp. 19, 20) and Tiersma (1999, pp. 87, 88) enumerate the formal expressions (Table 7) that continue to be employed in contemporary legal proceedings, which illustrate the law's reliance on tradition and ritualized language through which authority is reinforced.

Table 7. *Formal and Ritualistic Expressions*

Formal and Ritualistic Expressions[136]
In pleadings: • "Comes now plaintiff" • "Wherefore, the defendant prays that plaintiff take nothing for such other and further relief as to the court may seem meet and just"
In judgements: • "Now Therefore, It Is Ordered, Adjudged, and Decreed"
In court: • "Oyez, oyez, oyez" • "Hear ye, hear ye, hear ye" • "Your Honor" • "May it please the court" • "Plaintiff rests"
In contracts and insurance: • "Time is of the essence" • "From the beginning of the world" • "Be it remembered"

[135] In Tiersma, 1999, p.101.
[136] From Mellinkoff, 1963, pp. 19, 20 and Tiersma, 1999, pp. 87, 88.

• "Know all men by these presents" • "This policy witnesses that …"
In affidavits: • "Being first duly sworn" • "Further deponent saith not" • "Before me, a notary public" • "Further affiant sayeth not"
In oaths: • "I do solemnly swear (or affirm) that I will faithfully execute the Office of …" • "The truth, the whole truth, and nothing but the truth, so help you God."

5.2. The Doubling of Words – Synonyms

Mellinkoff (1963, pp. 121-122) identifies for the first time a distinctive characteristic of the legal vocabulary, namely the recurrent use of binomials and multinomial expressions (See also 4.5.) composed of two or more synonyms or near synonyms. The constituent elements of these expressions are of (Old) English origin or represent a combination of English, Latin, and (Old) French, the latter reflecting the historical status of French as the official language of the law. According to Vîlceanu (2014, pp. 2, 3), the languages that led to the formation of English in general and of legal English in particular were predominantly Latin and French, as evidenced by the adoption of the very word *law* and other Norse-derived items in English by around 900 AD, during the period when Scandinavian settlers established the region known as the Danelaw in eastern Britain.

The list[137] below presents a selection of bilingual synonyms forming legal doublets or triplets, together with an indication of the etymological origins of their constituent terms in parentheses:

- "acknowledge and confess" (Old English; Old French)
- "act and deed" (French or Latin; Old English)
- "breaking and entering" (Old English; French)
- "deem and consider" (Old English; French)
- "final and conclusive" (French; Latin)
- "fit and proper" (Old English; French)
- "free and clear" (Old English; Old French)
- "give, devise and bequeath" (Old English; Old French; Old English)
- "good and chattels" (Old English; Old French)
- "had and received" (Old English; French)
- "in lieu, in place, instead, and in substitution of" (French; French; Old English; Old French or late Latin)
- "keep and maintain" (Old English; French)
- "maintenance and upkeep" (French; English)
- "made and provided" (Old English; Latin)
- "mind and memory" (Old English; Old French)
- "new and novel" (Old English; Old French)
- "pardon and forgive" (French; Old English)
- "right, title and interest" (Old English; Old English; French)
- "save and except" (French; Latin)
- "shun and avoid" (Old English; French)
- "will and testament" (Old English; Latin)

[137] Source: Melinkoff, 1963, pp. 121, 122.

In Table 8[138] below, there are some binomials and multinomials consisting of either Old English paired synonyms or coupled French synonyms:

Table 8. *Binomials and Multinomials with Old English or French Synonyms*

Old English paired synonyms	French synonyms
"by and with"	"aid and abet"
"each and all"	"authorize and empower"
"each and every"	"cease and desist"
"from and after"	"fraud and deceit"
"have and hold"	"metes and bounds"
"heed and care"	"pains and penalties"
"hold and keep"	"rest, residue, and remainder"
"let or hindrance"	"remise, release, and quitclaim"

According to Tiersma (1999, p. 113), the redundant synonymous phrases could only serve the function of addressing all possible situations that may emerge in the course of the trial and, when they serve no definite function, they are used idiomatically and emphatically. For example, expressions such as *null and void, any and all, each and every,* or the formulaic oath "*I swear to tell the truth, the whole truth, and nothing but the truth"* fall into the category of idiomatic expressions which could be replaced by simpler alternatives were it not for the solemnity and tradition that legal language is expected to maintain.

5.3. Legal Meanings of Common Words

A central principle of functional approaches to language is that linguistic items are inherently multifunctional (Halliday, 1994, p. 30): grammatically,

[138] Examples provided in Mellinkoff, 1963, p. 122.

pragmatically, and semantically, they are capable of fulfilling a wide range of roles depending on the context in which they occur.

As Mellinkoff (1963, p. 11) and Tiersma (1999, pp. 111, 112) observed, legal English often employs words whose meanings diverge significantly from their usage in ordinary speech and can easily generate confusion. Tiersma (1999, pp. 111) termed them *legal homonyms* and regarded them as particularly confusing for non-specialists. The following Table illustrates (though without claiming to be exhaustive) a selection of such terms and their specific meanings[139] within legal discourse. Although these terms may carry multiple meanings within legal discourse, only the sense that most markedly diverges from ordinary usage is presented here in Table 9:

Table 9. *Legal Homonyms*

action – "legal proceeding"	motion – "a written or oral application to a court"
alien – "to transfer or convey property"	party – "person contracting or litigating"
assigns – assignees	plead – "to file pleadings"
brief – "a type of legal document or the case file"	prayer – "a request addressed to the court at the end of a pleading"
consideration – "something bargained for and received by a promisor from a promise"	presents – "the legal instrument under consideration"
counterpart – "one of two or more copies or duplicates of a legal instrument"	said – "mentioned before"
covenant – "sealed contract"	save – except

[139] Examples from Mellinkoff, 1963, p. 12, and Tiersma, 1999, pp.111, 112, and definitions from the Black's Law Dictionary, 2019, 11th Edition

demise – "to lease"	serve – "to make legal delivery of a notice or process"
executed – "signed and delivered"	strike – "to delete something from a record"
instrument – "legal document"	tenement – "land held by freehold"
letters – "document authorizing one to act"	virtue – "force or authority (e.g. *by virtue of*)"
master – employer	without prejudice – "without loss of any rights"

Tiersma (1999, p. 112) provides an involuntarily humorous illustration of the extent to which legal homonyms can engender confusion among those without professional training:

> "Q: Mrs. Jones, is your appearance this morning pursuant to a deposition notice which I sent your attorney?
> A: No, this is how I dress when I go to work."

The individual giving testimony was clearly unfamiliar with the legal definition of "appearance," that is, the act of coming before the court as a party or interested person. This lack of awareness resulted in an incongruous response that alluded to her clothing rather than the intended legal concept.

5.4. The Use of Latin Words

Mellinkoff (1963, pp. 13, 14) noted that a number of Latin terms have, over time, become naturalized into the English language. Expressions such as *affidavit*, *alias*, *alibi*, *bona fide*, *proviso*, and *quorum* are now routinely employed as English words as they have been integrated into the English legal lexicon. Judicial practice itself acknowledges this usage in certain instances, as seen with *habeas corpus*, *prima facie*, and *versus* (ibid.).

While a considerable portion of legal vocabulary derived from Latin is no longer in active circulation, the question remains whether such legal Latin terms should be entirely rejected, fully assimilated into English or just used when appropriate. Nevertheless, Latin terminology persists within contemporary legal language, thus showing that Latin continues to leave its mark on the vocabulary of law. Table 10 below presents more examples of frequently used legal Latin terms[140]:

Table 10. *Legal Latin Terms*

ab initio	ex post facto	mens rea
corpus delicti	in personam	mutatis mutandis
et al.	in rem	nolo contendere
ex contractu	malum in se	nulla bona
ex parte	malum prohibitum	pari passu

5.5. Jargon and Terms of Art

Mellinkoff (1963, pp. 16-19) and Tiersma (1999, p.106-108) critically examine the nature of legal English, emphasizing its overlap with what is often referred to as *argot* or *jargon*. Legal English, historically influenced by French Law and other traditions, has been criticized for its opacity and exclusivity. Mellinkoff (1963, pp. 16-19) argues that such opacity manifested through *argot* was deliberately maintained so that parties should need the help of lawyers as translators of the obscure language. Tiersma (1999, p. 107), nevertheless, suggested that incomprehensibility is rather an incidental byproduct of linguistic evolution than a conscious strategy.

[140] In Mellinkoff, 1963, p. 14.

However, Mellinkoff (1963, pp. 17–18) referred to *argot* as what we would today call *jargon* (i.e. the specialized language employed by members of a profession to communicate within their community) and acknowledged that the two terms are at times used interchangeably.

A key distinction made by the authors is between *technical terms* (or *terms of art*) and *jargon*. Although the two terms are closely related, technical terms tend to have relatively more precise meanings within legal discourse, whereas jargon encompasses a broader range of terms.

Jargon, therefore, includes both precise and less precise terminology, profession-specific expressions. In legal practice, jargon includes a wide array of terms, such as *arguendo*, *black-letter law*, *boilerplate*, *chilling effect*, *conclusory*, *hypothetical*, *instant case*, and *judge-shopping* (Tiersma, 1999, p. 107). These expressions serve practical purposes, often condensing complex ideas into shorthand that is useful for legal professionals.

Tiersma (1999, p. 107) further notes the usefulness of jargon in legal communication. To illustrate this idea, the author gives examples of terms like *conclusory,* which is a "reference to an allegation or statement that suggests a particular conclusion without expressly justifying the result"[141], and *judge-shopping,* which encapsulates the legal strategy of filing a suit with a judge that may return a more favourable verdict or simply be more "sympathetic to your case."[142] Such terms are considered indispensable within the legal profession due to their efficiency and communicative precision.

An additional and particularly interesting type of legal jargon, Tiersma (1999, p. 107) stated, arises from case law. In this particular case, doctrines or rules are referred to by the names of the cases that established them, such as an *Allen charge*, a *Miranda warning*, a *Terry stop*, or a *Totten trust*. This

[141] Tiersma, 1999, p. 107.
[142] Ibid.

practice highlights the adaptability and creativity of the legal lexicon in generating functionally innovative vocabulary in order to render communication both more efficient and economical. Such usage demonstrates the profession's capacity to generate new linguistic tools as needs arise, reinforcing in-group communication as well as professional identity.

Both Mellinkoff (1963, pp. 17–18) and Tiersma (1999, p. 107) observe that *technical terms*, or *terms of art*, exhibit a higher degree of precision than jargon, and this constitutes the essential difference between the two. Examples provided by the two authors include: *cy pres*, *felony, plaintiff, habeas corpus, novation, tort, lessee, injunction, bail,* etc. To explain each of these terms as well as others pertaining to this category, would require explanations consisting of lengthy phrases, sentences, or even paragraphs. For example, here is the shortest explanation that law dictionaries provide for the first term, *cy pres*:

> "The equitable doctrine under which a court reforms a written instrument with a gift to charity as closely to the donor's intention as possible, so that the gift does not fail.
> Courts use *cy pres* esp. in construing charitable gifts when the donor's original charitable purpose cannot be fulfilled. It is also used to distribute unclaimed portions of a class-action judgment or settlement funds to a charity that will advance the interests of the class. More recently, courts have used cy pres to distribute class-action-settlement funds not amenable to individual claims or to a meaningful pro rata distribution to a nonprofit charitable organization whose work indirectly benefits the class members and advances the public interest.(…)"[143]

[143] *Cy pres* entry in the Black's Law Dictionary, 2019, 11th Edition, p. 487. Adapted and abridged text.

The use of jargon in oral communication among legal professionals is meant to reduce the processing effort on the part of the hearer through a condensed manner of communicating complex information. Within the framework of Relevance Theory, utterances are regarded as triggers of inferential processes when speakers guide hearers toward interpretations that minimize cognitive effort. This reduction in processing effort is governed by the principle of "constraints on relevance" (Sperber and Wilson, 1986), which requires speakers to simplify the inferential process for other participants in the conversation.

Relevance Theory is further examined with reference to *contextual effect* and *processing effort* (Blakemore, 2003, p. 105; Cummings, 2010, p. 396; Sperber and Wilson, 1986). It begins with the assumption that any communicated information interacts with its context in such a way as to generate sufficient contextual effects. A second assumption, as articulated by Sperber and Wilson, is that no unnecessary processing effort should be required to recover these contextual effects. Together, these assumptions establish the principle of *optimal relevance* (Sperber and Wilson cited in Blakemore, 2003), which entails that communication should generate "clear and predictable expectations of relevance"[144] that assist the hearer in interpreting the speaker's intended meaning as mentally comfortable as possible.

5.6. Linguistic Innovation in Present-Day Legal English

Not only jargon but also the linguistic innovations occurring in legal English are aimed at minimizing both speaker and hearer effort in discursive interactions among peers by synthetically conveying complex information. Recent lexical innovations in legal English are chiefly triggered by the

[144] Cummings, 2010, p. 396.

development or even emergence of several branches of law, such as securities law or the law of contracts, torts, and damages (Tiersma, 1999, pp. 97, 98).

The coining of new terms resulted in terms such as *antitrust, blue sky law, poison pill, predatory pricing, cramdown hedonic damages, sexual harassment* or *wrongful birth*.[145] Moreover, as Tierma (1999, p. 98) noted, "Lawyers now *Shepardize* cases and make sure the police have properly *Mirandized* their clients."[146] This statement illustrates how the newly added lexical items tend to vary across the grammatical category spectrum. For instance, according to the 11th edition of Black's Law dictionary (2019), *to shepardize* is a verb which has been nominalized into either *shepardization* or *shepardizing* (in present-day law dictionaries, they are no longer capitalized). Actually, the verb originates from a proper noun, namely, Shepard's Citations, which designates the printed or computerized version of *Shepard's Citators* featuring case law. Therefore, when a lawyer shepardizes a case, s/he uses Shepard's Citations to access the legal precedents that can be invoked in their ongoing case.

The *Miranda* rule[147] led to the development of the verb *to Mirandize*, which, in the 11th edition of *Black's Law Dictionary*, continues to be capitalized. The term is classified as a slang verb and is defined as: " To read or recite (to an arrestee) rights under the *Miranda* rule."[148]

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[145] Tiersma, 1999, p. 98.

[146] Tiersma, 1999, p. 98. Original emphasis.

[147] *Miranda* rule. (1966) The doctrine that a criminal suspect in police custody must be informed of certain constitutional rights before being interrogated. ● The suspect must be advised of the right to remain silent, the right to have an attorney present during questioning, and the right to have an attorney appointed if the suspect cannot afford one. If the suspect is not advised of these rights or does not validly waive them, any evidence obtained during the interrogation cannot be used against the suspect at trial (except for impeachment purposes). *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602 (1966). Definitions retrieved from the Black's Law Dictionary, 2019, 11th Edition, p. 1194.

[148] Black's Law Dictionary, 2019, 11th Edition, p. 1194.

e.g. “The suspect was arrested, Mirandized, and interrogated.”[149]

According to Tiersma (1999, p. 98), linguistic innovation arises primarily when there is a lack of terminology or when the expression of a legal idea or concept would otherwise be excessively lengthy. Nevertheless, older legal terms persist within the legal lexicon so long as the concepts they denote continue to be relevant.

[149] Black’s Law Dictionary, 2019, 11th Edition, p. 1194.

Chapter 6 - Forensic Linguistics

This chapter explores the contribution of forensic linguistics to the administration of justice, highlighting the ways in which linguistic analysis supports legal practitioners and the judiciary in determining the merits of a case. It further delineates the principal methods and analytical instruments used by forensic linguists, the contexts of their application, and the methodological and ethical challenges that such analyses entail.

We fully agree with the contention that a forensic linguistic analysis does not substantially differ from a linguistic analysis of any other text and that the term *forensic* only indicates that the linguistic analysis is performed in a legal context (Shuy, 1993, p. 27; Coulthard and Johnson, 2007, pp. 14-15).

> "I do not call myself a forensic linguist. I neither object to the use of the term nor particularly care whether or not I am called one. The fact is, I consider myself a linguist who, in this instance, happens to be carrying out his analysis on data that grows out of a court case. I see no reason to add the word forensic, which is a description of the data and the area in which a language problem resides."[150]

Like any linguistic examination of spoken or written discourse, forensic linguistics draws upon the analytical frameworks of phonetics and phonology, morphology, syntax, semantics, pragmatics, semiotics, discourse analysis, psycholinguistics, ethnography and corpus-based investigations in order to construct a comprehensive account of the text subjected to (legal) scrutiny. The relevance of these linguistic domains has been addressed throughout this study in their direct connection to legal English.

[150] Shuy, 1993, p. 200.

Even though the analysis itself may not differ in its methods and results, we contend, however, that forensic linguistics represents the only form of linguistic analysis whose results and observations - when admitted as evidence - possess the potential to alter reality through a judicial verdict based upon them. In this sense, a forensic linguist's conclusions may directly affect a person's legal status, determine ownership of (intellectual) property, or result in the awarding of damages in a civil tort action, among other legal outcomes.

The applications of forensic linguistics range from *copyright and trademark dispute settlements* (Shuy, 2002a, 2012; Butters, 2012, 2021; Hotta and Fujita, 2012; Coulthard and Johnson, 2007; etc.), to *authorship identification and plagiarism* (Chaski, 2012; Coulthard and Johnson, 2007; Grant, 2021; Kredens and Coulthard, 2012; Sousa-Silva, 2021; Wools, 2012, 2021; etc.), *speaker identification* (Patrick, 2012; Jessen, 2021; Yarmey, 2012; Foulkes and French, 2012; Coulthard and Johnson, 2007; etc), the analysis of the *discourse of vulnerable witnesses* (Coulthard and Johnson, 2007; Aldridge-Waddon, 2021; Ehrlich, 2021; etc.), *the language of law enforcement actors and police interviews* (Ainsworth, 2021; Tracy and Agne, 2002; Rock, 2021; Johnson, 2002; Haworth, 2021; Russel, 2002; Berk-Selingson, 2002; Gaines and Lowrey-Kinberg, 2021; etc.) as well as newly developed directions of forensic linguistic research into *trolling or crisis negotiation*.

An example of the work conducted by the forensic linguist as expert (witness) is provided by Shuy's (2002a, pp. 95-109; 2012, pp. 458-460) report of his famous 1987 legal case in which McDonald's sued Quality Inns International over the proposed hotel brand name "McSleep Inns." McDonald's argued that it had exclusive rights to the "Mc-" prefix as part of its branding, claiming it was a protected proprietary element rather than a generic morpheme.

To evaluate whether "Mc-" was perceived as unique to McDonald's or had become a general linguistic prefix, Shuy, as forensic linguist working on the case, collected data using a LexisandNexis search and national news clippings. The results showed extensive media use of "Mc-" combined with generic words unrelated to McDonald's, such as *McArt, McBook, McCinema, McFashion, McFood, McJobs* and many others. These uses consistently conveyed meanings such as "basic, convenient, inexpensive, and standardized"[151].

Even McDonald's own marketing practices, Shuy noted, contributed to this generic meaning. Advertising campaigns featuring Ronald McDonald encouraged children to apply "Mc-" to everyday words (*McFries, McShakes, McBest*), inadvertently spreading the morpheme's broader usage. The widespread media adoption of this pattern reinforced the shift away from exclusive association with McDonald's.

Quality Inns argued that McDonald's had effectively caused "Mc-" to become generic in American English. However, despite linguistic testimony and marketing survey findings aligning "Mc-" with qualities like *fast, consistent, cheap,* and *uniform*, the judge ruled in favour of McDonald's. He cited the secondary meaning doctrine, noting McDonald's fame and advertising investments, and expressed concern that "McSleep Inn" could mislead consumers into assuming the hotels were owned or endorsed by McDonald's.

As a result, Quality Inns abandoned the prefix and renamed the chain *Sleep Inns*. Ironically, as Shuy (2012, p. 460) pointed out, the hotels ultimately came to be associated with the same qualities, i.e. basic, inexpensive convenience, that "Mc-" had come to represent.

The forensic linguist's endeavour does not solely entail research on cases but also, at times, reporting their findings in open court in the form of expert testimony. As one of the most prominent and reputed forensic linguistics experts who has often been cited as witness in court, Shuy (2002b, pp. 3-18)

[151] Shuy, 2012, p. 460.

discusses the role of linguists in criminal cases and the complex decision-making involved in whether they should testify as expert witnesses.

The author, drawing on personal experience with 500 cases over 30 years, explains that attorneys typically reach out to linguists either when they have never used linguistic evidence before, when their case is at serious risk or when they recognize the value linguistics can provide. Despite this demand, the author has testified in only a small percentage of cases. Judges, Shuy notes, sometimes reject linguistic testimony, and attorneys frequently decide not to use the analysis at trial when it does not support their defence strategy, when new evidence shifts the case, or when resources or legal priorities change. In many situations, the linguist's findings suggest that the best course is to accept a plea deal, and the author stresses the importance of being honest about whether linguistic analysis can meaningfully help a client.

The author describes three possible roles for a linguist in a criminal case: declining involvement, testifying at trial or providing consultation only. There are strong reasons to refuse to testify, including ethical concerns and the risk of losing objectivity in cases that involve strong emotional or moral reactions. Another common reason for declining is that linguistic evidence simply cannot support the outcome the attorney desires, and the linguist must avoid making claims about guilt or innocence, which fall outside the scope of linguistic expertise. Testifying can also be stressful and time-consuming, especially under aggressive cross-examination and, in this sense, the author shares examples from early career experiences in which testifying before a jury was emotionally intense and logistically demanding.

Even when linguistic analysis is valuable, Shuy emphasizes that the expert witness's role is not to provide defence *per se* to the defendant but to evaluate and explain language evidence truthfully. The expert may uncover both helpful and harmful linguistic facts, and attorneys may choose to use or withhold testimony accordingly. In many cases, the most beneficial use of linguistic expertise occurs outside the courtroom. Acting as a consultant allows the linguist to guide attorneys' understanding of crucial evidence, shape legal arguments, and sometimes influence plea negotiations without entering the public, adversarial environment of trial. Several examples are given in which consultation alone helped achieve positive legal outcomes without requiring testimony.

Shuy (2002b, p.18) concluded that, while there are occasions when testifying is appropriate and necessary, consulting is often the most productive and comfortable role for linguists in criminal cases. It enables attorneys to present the strongest case for their client while avoiding the risks and challenges associated with expert witnesses undergoing cross-examination. For linguists, serving as a consultant provides an opportunity to contribute meaningfully to the legal process without the strain of appearing on the witness stand.

Coulthard and Johnson (2007, p. 144) analyse the role of forensic phonetics in the criminal justice system. Forensic phoneticians are specialists who analyse speech as a form of evidence. Their responsibilities can include producing accurate transcriptions of spoken recordings, identifying aspects of a speaker's social or regional background, and evaluating whether the same individual is speaking across multiple recordings. They also assist in the design and interpretation of voice lineups, which enable victims or witnesses to give opinions on whether a suspect's voice matches that of the offender.

The authors further explain that many legal cases involve the use of transcriptions from recorded speech. These recordings may capture conversations related to criminal activity or instances of crimes being committed, such as threats, obscene calls or negotiations involving illegal transactions. Despite the importance of accuracy, most submitted transcriptions are not created by trained phoneticians. Forensic experts are typically consulted only when there is disagreement about specific words or sounds.

Transcription errors do not always arise from difficulty in interpreting speech; sometimes transcribers record what they expect to hear instead of what is actually said. A case handled by Coulthard (2007, p. 144) in his role as a forensic linguistics expert revealed that a single misheard and unclear word in a covertly obtained recording later acquired considerable legal significance. This example highlights the critical importance of expert linguistic analysis in securing the dependability of speech evidence within judicial proceedings.

With reference to the work of text analysts, i.e. graphologists and handwriting analysts, Coulthard and Johnson (2007, pp. 156-157) outline the distinctions between the two professional groups involved in handwriting assessment. Although commonly grouped together, the authors note that these professions differ greatly in focus and scientific legitimacy. Graphologists claim to infer character traits and employment suitability from handwriting; however, due to the lack of reproducible methods, the evidence for their claim remains somewhat insufficient.

In contrast, handwriting analysts are presented by Coulthard and Johnson (2007, pp. 156-157) as having stronger scientific foundations. Their work is grounded in the analysis of *graphemes*, i.e. the distinct graphic forms of letters, and the variation within these forms produced by individual writers. Very similarly to speech variation among speakers, handwriting displays both *individual consistency* and *intra-writer variation*. Analysts start from the assumption that although some overlaps may occur between different writers, the collective set of handwriting features for a particular writer is unique, making authorship analysis legitimate.

Coulthard and Johnson further noted that handwriting analysis focuses to a large extent on *disputed signatures*. While signatures are often brief, thus rendering them challenging to analyse, they typically display idiosyncratic forms that help in authorship identification. The latter uses features such as proportions of uppercase and lowercase letters, overwriting tendencies, line quality and pen control. Genuine signatures tend to demonstrate smooth, controlled pen movement, whereas imitated signatures show either excessive deterioration or conspicuously practiced line quality. Deviations from natural graphic shapes often betray forgery attempts.

Handwriting experts often rely heavily on their own experience when making decisions about whether writing is genuine or forged. While these experts are highly trained, their judgments are not based on a fully developed scientific system that can be easily measured or replicated. As Davis (1986, cited in Coulthard and Johnson, 2007, p. 157) points out, much of their knowledge cannot be clearly defined or written down, which means that different experts may sometimes reach different conclusions. Because of this subjectivity, handwriting evidence is accepted in British courts, but it is not always considered reliable in the United States.

Coulthard and Johnson (2007, p. 157) indicate that one area of document analysis that avoids this problem is ESDA, which stands for *Electro-Static Document Analysis* (or *Electro-Static Detection Apparatus*). This technique is seen as much more dependable because the results can be replicated and verified. ESDA was invented accidentally in 1978 when researchers were trying to improve a machine for fingerprint detection on paper. Although they failed in their initial endeavour, they discovered instead that the device could reveal the indentations left behind when someone writes on a sheet of paper that lies over other pages.

This discovery was extremely useful for forensic linguistic work in general. It meant that investigators could recover hidden writing, even from sheets that no longer exist, simply by analysing the pressure marks left on the document below. Because ESDA provides clear and objective physical evidence, it is often used to support and strengthen claims made by handwriting experts in cases involving disputed authorship.

Forensic linguistics and its applications have been addressed only briefly in this chapter, which merely scratches the surface of the field and lays the groundwork for more extensive future research into this highly complex area of inquiry.

Presenting forensic linguistics to law school students who study Legal English in an ESP framework would be highly beneficial because it connects legal theory with real-world language use in legal contexts. Forensic linguistics would manage to equip students with the tools to analyse language as evidence, enhancing their ability to interpret legal texts, contracts, witness statements, confessions and courtroom discourse with greater precision. This is particularly valuable for ESP Legal English learners, as it deepens their understanding of how subtle linguistic features, such as ambiguity, pragmatic meaning, discourse structure and authorship, can have significant legal consequences. Exposure to forensic linguistics also strengthens critical thinking and analytical skills, helping future legal professionals become more effective in drafting legal documents, questioning witnesses as well as in evaluating linguistic evidence in multilingual, cross-cultural or settings or in contexts which require a higher degree of sensitivity.

Moreover, introducing forensic linguistics as early as the second year of law school can help future legal professionals overcome the hesitation that they may otherwise feel about consulting linguistic experts. By understanding the scope, methods and limitations of forensic linguistics, law students become more aware of when and how forensic linguists can provide reliable expert insight, particularly in cases involving disputed meanings, authorship or the clarity of legal and police language. This familiarity results in trust and willingness to conduct interdisciplinary work, encouraging future lawyers, judges, and prosecutors to view forensic linguists not as marginal specialists but as valuable partners. As a result, they are more likely to accept or even seek expert consultation, thus improving the quality of legal argumentation, reducing misinterpretation of linguistic evidence and ultimately contributing to fair legal outcomes.

Chapter 7 – Concluding Remarks

This research has demonstrated that legal language represents much more than a technical instrument used in enforcing the law. It is a multidimensional phenomenon situated at the intersection of linguistics, power and social order. Beginning with preliminary considerations on methodology and the context of teaching Legal English, this study established a foundation for understanding the specific needs and challenges encountered in the Romanian academic environment, especially within the broader domain of English for Specific Purposes.

The exploration of legal language as a form of institutional discourse revealed its significant role in reinforcing legal authority and shaping power relations. Legal language both reflects and constructs social realities, a point which was further reinforced by the interdisciplinary analyses presented throughout the work. The performative nature of legal discourse, grounded in speech act theory, highlights that legal utterances not only describe actions but they frequently *are* actions.

Adding to this perspective, discussions on genre theory, register, and intertextuality emphasized the structured and, at the same time, dynamic character of legal communication, as well as its dependence on context, convention, and institutional interactional settings.

Moreover, the analysis of the functional grammar coordinates of legal English showed how sentence complexity, nominalization, modality, and syntactic discontinuities contribute to precision but also to (intended) opacity and even tactical imprecision. The detailed analysis of the legal lexicon, which is characterized by ritualistic forms, doublets, Latin borrowings as well as by linguistic innovation, illustrated that legal English is a *living* language which accommodates the changes that present-day legal professionals bring to it. The tension between tradition and modernity triggers reform movements such as

Plain Language initiatives, which seek to balance general accessibility of the legal text with the need for legal precision and conciseness.

Finally, the integration of forensic linguistics broadened the scope of the research by demonstrating the practical implications of linguistic expertise within the legal system through the significant contribution of forensic linguistics specialists in the administration of justice. It emphasized that language in legal contexts is not simply a vehicle of communication but often evidence itself which requires the expert analysis of forensic specialists in order to have a real impact on the legal trajectory of a case.

Together, these findings emphasize the idea that legal language is a highly specialized communicative form whose complexities trigger real social and institutional consequences. Understanding how legal language functions from a structural, pragmatic and social point of view has become essential not only for legal professionals and linguists but also for all members of society who must understand the rules of their social and legal environment in order to abide by its requirements and uphold them for the benefit of future generations. This research outlines various disciplinary insights and reaffirms the need for continuous reflection on the precise manner in which the law speaks and what its language permits, restricts and accomplishes.

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