PSYCHOLOGY AND EDUCATION (2021) 58(2): 350-355
An Interdisciplinary Journal
Article Received: 16th October, 2020; Article Revised: 30th December, 2020; Article Accepted: 08th January, 2021

Functional Varieties of Legal English in Writing Speech

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Abstract

In linguistics there is a special language which is used by a margin of people and requires special understanding and awareness of a particular sphere. One of such specific language usage in is law and legal practices. This language involves accuracy, quite supporting views, persuasiveness and should be clear for the understanding of the clients, ordinary people. This article looks at the language varieties in legal papers.

Key words: law, legal English, special language, academic legal writing, juridical law.

Before depicting and discussing the characteristics of legal language as a special language, one needs to know what a special language is in general, i.e. one has to define the term 'special language'. Alternatively, the term 'language for special purposes' is in frequent use as well.

Characteristic of a special language is its use by experts of a certain field or subject to communicate among each other. Therefore, elements of a group language are inherent, but it can rather be described as a mixture of a group and special language, particularly when the two main features melt together, namely its exclusiveness and its reference to a special subject matter. The focus on the issue is a criterion of delimitation which dominates much more so that the group character becomes only marginal.

Special languages find their origin in the eighteenth century, as they are based on the division of work. Their rapid development depends on the time when specialization in the working world found a climax; this is to regard before the background of the Industrial Revolution. The earliest special languages were only used orally, for the most part by sailors or craftsmen. With the Industrial Revolution in the eighteenth and nineteenth century, however, the development of special languages as we know them today was initiated (above all technical languages and languages in the field of natural science). That means in practical, the more differentiated the working process is and the more complex technologies are, the more special languages are developed and part with the standard language. In this context, it must be mentioned that written language is typical of special scientific languages. It strives for precision and has to free itself from colloquial language, which has the existence of artificial languages consequently. This non-naturalness mainly manifests itself in the use of formulas and a great quantity of termini as defined linguistic signs, since they are key components of logic, medicine or chemistry, amongst others.

Typical of languages for special purposes is that they are nationally understood, there is no dialect existent. For that reason, they can be described as languages with the intention of functional

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elaboration. In the process, which a special language undergoes, the most prestigious variety has to be selected and then codified. We call this progression 'standardization'. (It must be noted here that in the field of law, oral versions used to be the stronger ones before formulating and establishing written laws. In the context of special languages in general, this means that they would not exist without standardization, since a valid language for all those who are involved in this business would not have been determined.)

Communication with non-professionals requires the development of a comprehensible language; sometimes one cannot even recognize the margins to the special language. A problem, which can be observed in every-day life, is "Fachsprachenhaftigkeit"; professionals stick to their technical terminology even in interaction with nonprofessionals as they are rarely trained to verbally leave their special area of focus in order to communicate with the unknowing public outside their field.

Legal English is the type of English as used in legal writing. In general, a legal language is a formalized language based on logic rules which differs from the ordinary natural language in vocabulary, morphology, syntax, and semantics, as well as other linguistic features, [Wydick.R.2005] aimed to achieve consistency, validity, completeness and soundness, while keeping the benefits of a human-like language such as intuitive execution, complete meaning and open upgrade. However, Legal English has been referred to as a "sublanguage", [Tiersma.P. 1999] as legal English differs from ordinary English. A specialized use of certain terms and linguistic patterns governs the teaching of legal language. Thus, "we study legal language as a kind of second language, a specialized use of vocabulary, phrases, and syntax that helps us to communicate more easily with each other".[Ramsfield.J.2005]

Legal language means a language used by the persons connected to the legal profession. The language used by the lawyer, jurist, and the legislative drafts man in their professional capacities. Law being a technical subject speaks through its own register. Legal language has varies like local legal language and English.

As defined by webstar in his lexicon. term is derived from the Latin word 'Lingua' meaning a system of communication between humans through written or vocal symbols .It is a speech peculiar to an ethnic, national or criminal group .It is the articulate or inarticulate expression of thoughts and feelings by living creatures it is the system of sounds and words used by human being to express themselves.

Legal language comes across and influences different segments of the society. Some of them may be law knowing persons and others may not .The communication between the law- giver and men of law is one say communication. It can be found in the shape of statute. The language of the statute is most technical and legislators have very little to do with it but drafter take care that it is communicative of, the law-givers intention. The communication between the judge and the council is the to-way, as both are well-versed in law. So is the case with formal communication between the two opposed councils while addressing the judge. This short communication involves judgments and briefs. In the third instance there is informal consultation that takes place either between two or more judges, chamber or between two or more council in councils office or bar room or among men of law in jurisprudential decisions. Lastly, there is the consultation between the ordinary citizen and the counsel. The former may be ignorant of law and therefore the job of the latter is more difficult as he has to give legal shape and terminology to the ordinary language of the client.

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The term legalese, on the other hand, is a term associated with a traditional style of legal writing that is part of this specialized discourse of lawyers: communication that "lay readers cannot readily comprehend".[Oates, L. & Enquist, A. 2009] This term describes legal writing which may be cluttered, wordy, indirect, and may include unnecessary technical words or phrases.[Bain Butler.2013] Historically, legalese is language a lawyer might use in drafting a contract or a pleading but would not use in ordinary conversation.[Oates, L. & Enquist, A. 2009] For this reason, the traditional style of legal writing has been labeled reader-unfriendly.[Bain Butler.2013] Proponents of plain language argue that legal "writing style should not vary from task to task or audience to audience...; whatever lawyers write must be Clear, Correct, Concise, and Complete".[Wydick.R.2005] These four Cs describe "characteristics of good legal writing style" in the United States.[Wydick.R.2005]

In many legal settings specialized forms of written communication are required. In many others, writing is the medium in which a lawyer must express their analysis of an issue and seek to persuade others on their clients' behalf. Any legal document must be concise, clear, and conform to the objective standards that have evolved in the legal profession.

There are generally two types of legal writing. The first type requires a balanced analysis of a legal problem or issue. Examples of the first type are inter-office memoranda and letters to clients. To be effective in this form of writing, the lawyer must be sensitive to the needs, level of interest and background of the parties to whom it is addressed. A memorandum to a partner in the same firm that details definitions of basic legal concepts would be inefficient and an annoyance. In contrast, their absence from a letter to a client with no legal background could serve to confuse and complicate a simple situation.

The second type of legal writing is persuasive. Examples of this type are appellate briefs and negotiation letters written on a clients behalf. The lawyer must persuade his or her audience without provoking a hostile response through disrespect or by wasting the recipient's time with unnecessary information. In presenting documents to a court or administrative agency he or she must conform to the required document style.

The drafting of legal documents, such as contracts and wills, is yet another type of legal writing. Guides are available to aid a lawyer in preparing the documents but a unique application of the "form" to the facts of the situation is often required. Poor drafting can lead to unnecessary litigation and otherwise injure the interests of a client.

The legal profession has its own unique system of citation. While it serves to provide the experienced reader with enough information to evaluate and retrieve the cited authorities, it may, at first, seem daunting to the lay reader. Court rules generally specify the citation format required of all memoranda or briefs filed with the court. These rules have not kept up with the changing technology of legal research. Within recent years, online and disk-based law collections have become primary research tools for many lawyers and judges. Because of these changes, there has been growing pressure on those ultimately responsible for citation norms, namely the courts, to establish new rules that no longer presuppose thata publisher's print volume (created over a year after a decision is handed down) is the key reference. Several jurisdictions have responded and many more are sure to follow.

There are different kinds (genres) of legal writing: for example, academic legal writing as in law journals, juridical legal writing as in court judgments, or legislative legal writing as in laws, regulations, contracts, and treaties.[8] Another variety is the language used by lawyers to

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communicate with clients requiring a more "reader-friendly" style of written communication than that used with law professionals.

For lawyers operating internationally, communicating with clients and other professionals across cultures requires a need for transnational legal awareness and transcultural linguistic awareness. Whatever the form of legal writing, legal skills and language skills form a vital part of higher education and professional training.

Legal English has particular relevance when applied to legal writing and the drafting of written material, including:

legal documents: contracts, licences, etc.

court pleadings: summonses, briefs, judgments, etc.

laws: Acts of Parliament and subordinate legislation, case reports

legal correspondence

Legal English has traditionally been the preserve of lawyers from English-speaking countries (especially the U.S., the UK, Ireland, Canada, Australia, New Zealand, Kenya, and South Africa) which have shared common law traditions. However, due to the spread of Legal English as the predominant language of international business, as well as its role as a legal language within the European Union, Legal English is now a global phenomenon. It may informally be referred to as lawspeak.

Principles for All Legal Writing

Although different styles and types of legal writing present unique challenges, they all have some things in common. From an academic and disciplinary literacy perspective, they all require strong analytical legal reading and legal writing skills. Besides planning and ordering a legal document logically into sections and subsections, phrasing sentences clearly and choosing words carefully are principles that contribute to the reader-friendly style in legal writing. Whatever the document, a lawyer will be doing these things. Stylistically, this means:

a) "promoting plain legal language, concise sentences, stated positively, focusing on one idea with subject + (active) verb + object where the main idea comes first"; and

b) "avoiding obsolete words and phrases, redundancies, long sentences, subordinate and embedded clauses, nominalizations, passive verb constructions, double negatives, exceptions to exceptions, legal pairs, and/or, shall,etc."

In addition to punctuating carefully, these are basic principles of all legal writing. Advanced principles may include using cohesive devices, using headings with verbs, using technical terms consistently, making the text context independent, citing sources within the text, minimizing the use of footnotes, and using graphics where appropriate.

"Using language precisely, communicating easily with clients, and conveying technical information accurately are career-long activities for lawyers everywhere. Each culture has developed specific definitions of terms and patterns of usage and continues to develop these.... [Bilingualism in legal language) may persuade a decision maker, promote a transaction, or permit a client to escape harm. The secret to fluency begins with research, continues through analytical design, and culminates in appropriate documents."

Academic legal writing

Choosing a Structure

Three types of law-review articles are case comments, case notes, and competition papers.

12 A case comment examines one aspect of the law and traces its development or controversy. A case note evaluates one judicial opinion's reasoning and

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result. It doesn't just summarize a holding. A competition paper is similar to a case note, except that it's shorter, has a short deadline and requires less original research. The standard structure of a law- review article consists of

• An introduction with a scope note, or a precise roadmap of your paper;

A background or overview section;

• A discussion of statutes and court decisions;

• An analysis section;

• A discussion of policy arguments; and

• A conclusion

This structure delays the writer from getting to the point until page 20.13 You can get to your point quicker by making your background or over- view section brief and by adding some analysis and policy information into the body of your argument, The goal is to avoid unnecessary or lengthy diversions. Other scholarly writings include substantive-law articles and how-to guides. A substantive-law article focuses on a law's development and enforcement with emphasis on dividing the discussion into elements of the law and issues in controversy. A how-to guide explains the step-by-step actions that someone would follow to do something. Both are typically designed for a practitioner who needs quick answers with citeable research.

The structure of a substantive-law article consists of

• An introduction;

• The law, including its development and passage;

• A discussion of the issues and elements of that law, discussing primary and secondary authority and questions in dispute;

• A discussion of practical consequences; and

• A conclusion.

The structure of a how-to guide (for appeals, for example) consists of

• An introduction;

• A description of what appeals are;

• A discussion on why you'd want to appeal;

• A discussion on which court to appeal to and its jurisdiction;

• A description of the necessary papers, forms, or fees;

• A discussion of the service of papers to opposing sides;

• A discussion on how to write the brief and argue orally; and

• A conclusion

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