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TEACHING LEGAL ENGLISH

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Rezumat: Abilităţile de comunicare orală şi scrisă în limba engleză juridică trebuie să fie dezvoltate printr-un şir de activităţi vizînd atît însuşirea unui vocabular specializat, cît şi dezvoltarea competenţelor de a intervieva, de a negocia, de a scrie şi a redacta un text juridic. Prezentul articol abordează tehnici de însuşire a englezei juridice funcţionale.

Cuvinte-cheie: *engleza juridică, lingvistica forensică (juridică), predarea englezei juridice, principii şi doctrine, terminologie juridică, lexic specializat, educaţie juridică, cerinţele englezei juridice, socializare lingvală, atributele englezei juridice, studiu de caz.*

Abstract: Communicative skills in oral and written legal English should be developed through a range of language activities (e.g. acquiring specialized vocabulary) in combination with key legal skills training including: advocacy, interviewing and advising, negotiation, legal writing and drafting, etc. The present article touches upon several techniques of training the above-mentioned skills, offering a valuable source for academic and professional development.

Keywords: *legal English, forensic linguistics, teaching legal English, principles and doctrines, legal terminology, specialized vocabulary, legal education, legal English needs, language socialization, legal English attributes, case study.*

It is through language that social problems are translated into legal issues.
Elizabeth Merts

The present article is intended for ESP lecturers teaching Legal English, and Moldovan students, graduates of Law Faculties aiming at being employed abroad by Legal advising companies or organisations providing legal services.

Since 1870 Christopher Langdell has been regarded as the author of the conception of viewing the law as a science and he believed that it should be studied as a science. He said „Law consists of certain principles and doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs is what constitutes a true lawyer, and hence to acquire that mastery should be the business of every earnest student of law [Langdell 1871: vi].”

The legal process is fundamentally bound up with the language. The fact that law is based on both written (contract, legislation) and oral elements (argumentation in court) has meant that a variety of scholars have studied language and the law from different perspectives. Many generations of anthropologists and linguists have studied the role of language in human societies, trying to formulate an accurate picture of the complex interactions involved. Garrett, Paul, and Patricia Baquedano-Lopez build on their work in developing a model of how language works in the law school classroom, and in the law more generally [Garrett 2002: 342]. This vision of language meaning – as multiple and overlapping, structured and contingent, shared and individual, presupposed and creative; as emergent from the use of language in context; as culturally forged and shaped in a practice of speaking that is different in different cultures and languages; as central to social institutions like schooling and law – is a vision that lies at the heart of much of the most exciting current work in linguistic anthropology (ibid.: 350).

As we shall see, a key aspect of this focal point in legal education is precisely language itself, and a crucial rupturing occurs around expectations regarding language use. Students entering the legal profession undergo a linguistic rupture, a change in how they view and use language. It is signalled and performed through language, the language of the legal English class. As in other forms of language socialization, new conceptions of morality and personhood are subtly intertwined with this shift to new uses of language [ibid: 351].

Practice demonstrates that nowadays there is an indispensable need for special language training for lawyers. It is a challenge for both language teachers and lawyers, as it is quite difficult to cope with Law and language simultaneously, mainly for young lawyers. Language teachers have to focus not only on general English, they should also incorporate in their lessons specialized vocabulary. An important corollary of this focus on language as the window to legal epistemology is the central role of discourse to law and other socio-cultural processes. In particular, the ideas that people hold about how language works (linguistic ideologies) combine with linguistic structuring to create powerful, often unconscious effects. In recent years, linguistic anthropologists have made much progress in developing more precise analytic tools for tracking those effects [Silverstein 1976: 11-55].

It may be useful here to comment on the term *forensic linguistics.* It has become a useful way to refer to the use of linguistics knowledge in law cases where there are data that serve as evidence. This is a convenient way for lawyers and linguists alike to talk about this area. Although it is reasonably clear what the tools of linguistics are, it is constructive to remember and reflect what they mean when one thinks about forensic linguistics. Any proficient worker has a tool kit from which the correct tools are selected to analyze specific written or spoken texts. The following list describes the basic tool kit needed by a forensic linguist, accompanied here by only the briefest of examples relevant to the context of linguistics and law:

1. *Phonetics and Phonology*: In many law cases where linguists are called on, skills in phonetics are needed. Trademark cases, where issues of potential consumer confusion abound, easily come to mind. Do the product names Health Selections and Healthy Choice sound enough alike to cause confusion? Is Mead Data Central’s Lexis pronounced the same as Toyota’s Lexus? The linguist should not be asked to speak out about how the public pronounces these (unless research from surveys indicate otherwise), but their job is to point out the sameness or difference in the sounds used, or potentially used, in such names, leaving the ultimate opinion to the judge or jury. Skills in phonetics are a necessity for this.
2. *Morphology*: Knowledge of the meaning units that make up words in any language is central in many types of law cases. It can help identify such things as: dialect differences in speaker identification cases; whether an alleged illegal act was completed or spoken of hypothetically; and distinguishing aspects of differences in trademark names. Even the variations found in meanings conveyed by morphemes have been important in law cases.
3. *Syntax*: The way sentences are constructed plays an essential role in such areas as authorship identification and contract disputes, to mention only two. The grammatical scope of a noun phrase may be the focus of differences between opposing party’s conflicting understandings of a contract. Although authorship identification cases may seem to be about spelling, punctuation, and grammatical errors, it is generally believed that syntactic usage works better to make such identification, because syntax operates at the least conscious level of a writer or speaker.

4. *Semantics:* Meaning is at the core of most civil and criminal cases. The meaning of the prefix, *Mc-*, can be traced from its origins as a patronymic prefix to its current understanding as *inexpensive, convenient, mass produced,* and *widely available*, all produced by McDonald's restaurants. In an insurance contract dispute, the policy's words. „We do not cover property in or on a vehicle that is not attended" opens the door to semantic analysis of *in*, *vehicle*, and *attended.*
5. *Pragmatics:* Intention is at the very centre of many criminal cases. Although linguistics (or any other field for that matter) cannot with certainty identify intentions, linguistic analysis can reveal clues to intentions that are provided by indirectness, politeness strategies, and other pragmatic functions.
6. *Speech Acts:* The speech acts of offering, denying, accepting, apologizing, and many others are frequently significant in criminal cases of bribery and sexual misconduct. They also can play an important role in contract disputes, discrimination, and copyright infringement cases.
7. *Language Variation and Change:* Knowledge of dialectology and sociolinguistics can be extremely important in speaker identification cases, among others. The processes of language change are also central in many trademark and contract dispute cases.
8. *Discourse Analysis*: Much of the evidence in civil and criminal cases involves the use of continuous discourse. In undercover criminal cases, for example, tape-recorded discourse provides virtually all of the evidence. But the discourse structure of contracts and product liability cases can offer every bit as much information as the words used. Careful analysis of topic introduction and recycling, the fronting of main ideas, the use of discourse markers, and other discourse features can be critical.
9. *Lexicography:* Most linguists are not well trained in lexicography, but trademark and contract dispute cases frequently allow dictionary definitions to be used at trial. Acceptable practices of dictionary production are not widely known outside the field of lexicography but are accessible to linguists if they do a bit of digging.
10. *Language Assessment and Testing:* Not all linguists get training in this area. Psycholinguists, especially those who work in language development, or other applied linguists with such training tend to be called on to assess the language ability of suspects accused of crimes. For example, can an accused person sufficiently be able to understand and be understood well enough to be held responsible for the contents of a message? Or does the language evidence accurately reflect the speaker's actual „voice"?

When data situated in real life, such as legal proceedings, are presented for analysis, linguists use those tools to help solve the problem. So first of all, scholars calling themselves forensic linguists need to be professionally trained linguists, preferably with the highest academic degree possible [Shuy 2006: 3-9].

Legal English, though, has conventionally been a particular variety of English. We need to develop an understanding of how language operates in legal and other social settings. After all, it is through language that the law works to shape our lives, and it is through language that people, including professsionals, come to understand the world in particular ways [Mertz 2007: 12].

It is widely accepted that legal reasoning is centred on language and language structure. From John Austin's conceptualization of law as the „command" of a sovereign through Ronald Dworkin's insistence on the centrality of interpretation to law, jurisprudence has grappled with the place of language in legal decision making.

Legal scholars investigating the structure of legal reasoning from a variety of angles seem inevitably to wind up asking questions about legal language or rhetoric and how it works (Elkins 1978: 735–766). Consequently, trying to map the language of a doctrine, Edward Levi showed how phrases such as *imminently dangerous* (imminently dangerous article refers to those articles that in a reasonable man's knowledge are certain to place a life or one's limbs in danger) and *inherently dangerous* (an act or course of behaviour (usually a felony) which, by its very nature is likely to result in death or serious bodily harm to either the person involved in the behaviour, or to someone else) took on a life of their own over time in legal reasoning, going through messy periods of linguistic evolution during which jurists themselves became somewhat unclear about the meaning of the obstreperous legal categories. In his influential study, Levi charted the expansion of the doctrine of *intrinsically dangerous goods*. He considered that *the concept of inherently dangerous goods* has the capacity to suggest by the implication of hypothetical cases which it carries and even by its ability to suggest other categories which sound the same. The phrase *imminent danger*, for example, suggested immediacy, inherence, and eminence (Levi 1949: 9-27).

Learning to read written legal texts is one key component of this orienting practice, conveyed in the process of the particular kind of language socialization that we find in legal education. Learning the language of law, then, involves a reorientation not only in how students speak, but also in how they approach written language (Garrett 2002: 357).

In the legal arena we see the primacy of language and linguistic ideology in mediating this double edge. It is in and through the inculcation of approaches to text, reading, and language that the legal version of commodification – of a social structural sleight of hand – takes place. On the one hand, this means that legal language is deeply imbricated with social power in multiple ways. On the other hand, the independent importance of this linguistic level means that the process of legal training, in particular, and of legal translation, in general, cannot be analyzed as a mere reaction of power dynamics. Certainly social power has an impact at the many levels delineated here. But we can also see that there are irreducible and contingent aspects of the interactions, identities, and cultural understandings revealed and forged in the languages of law and of law school classrooms (Garrett 2002: 359-360).

The practice of law is a wide and varied area of employment, ranging from academic studies to lawyers working for law firms. Each country has different education systems, different requirements for certain types of work and different titles for its lawyers. Globalization requires that legal terms, concepts and agreements be understood in Globalization of International Business, Commerce, Trade and Communication English.

The study of law differs from country to country, but most law degree programmes include core [compulsory] subjects which all students must take. Most universities now offer language courses for lawyers, and in some countries these courses are compulsory. Some courses in legal English focus on the study of Anglo-American legal systems and associated terminology. Others offer a more practical introduction to the language skills lawyers will need during their future careers (Krois-Linder 2006: 11).

For students willing to work in the Legal System worldwide, knowledge of foreign languages is essential. When law firms hire new recruits, they generally look at four things:

1. education,
2. personality,
3. work experience, and
4. language ability.

Employers need to know that the legal staff they appoint has an appropriate level of English to be able to communicate with clients and professionals in other countries, and to be able to deal effectively with material written in English. Since English is the language of the international legal community, of business and of international affairs, law firms increasingly expect graduates to have a good command of English.

During the first year of law school, students are supposed to undergo a transformation in thought patterns – a transformation often referred to as *learning to think like a lawyer*. Professors and students accomplish this purported transformation, and professors assess it, through classroom exchanges and examinations, through spoken and written language. English teachers should provide in their class opportunities to build on language skills in a professional context through familiarisation with realistic legal scenarios and materials prepared by qualified lawyers. The exercises done during the lessons should suit to both self-study and group study in a classroom. The students, as a result, would benefit from proactive skills based exercises. These involve the use of realistic legal precedents to develop a working knowledge of legal practice and ability in performing 'real-life' legal tasks and procedures – all in the context of improving the students' ability to use legal English.

English is predominantly the language of international legal practice and its importance to lawyers cannot be over-emphasised. The way in which one uses legal English can therefore be crucial to professional success. Competence is developed throughout all the years of study in a logical sequence of ascending complexity. Exercises must also be cumulative, previous lessons being reinforced and built upon in subsequent exercises while also containing a practice and feedback element.

Teachers are advised to include explanation of basic legal principles in English (such as in relation to the *law of contract* and *tort*) as well as a review of language and grammar – all in the context of 'portable' skills training which will be of value in many academic and professional contexts. Additional sections on journalistic texts and legal research and study guidance further contribute to making this a book of much value to readers wishing to develop their legal English for use in the course of legal study or practice. It offers a stimulating and enjoyable learning resource and can be used by readers with or without any legal training. It will be of most use however to readers with at least an upper intermediate standard in English language.

During each class students should be provided with an introduction to a different legal topic. They are then provided with a range of language exercises relating to the legal topic for that lesson. These exercises must involve legal skills practice and role-play (such as advocacy, interviewing, negotiation and drafting), enabling them to develop their proficiency in legal English. The areas of language and law should then be summarized to consolidate the retention of the material. In this way language teachers

offer the learners stimulating and enjoyable instruction designed to progressively enhance relevant and meaningful Law students' communication skills in oral and written legal English. Such a task-based approach enables the learners to optimise academic and professional effectiveness, offering a valuable source for academic and professional development.

Teachers also have to instruct language learners how to use English in a commercial law environment. The English classes should focus on a variety of legal topics including contracts, company formation, debtor-creditor relationships, intellectual property rights, etc. Using authentic texts to present and practise legal language, the four key skills of listening, speaking, reading and writing are developed. The need for textbooks that equip students with the language skills needed to cope with legal English has been growing considerably over recent years. In a globalized world, lawyers from different legal cultures and language backgrounds are increasingly likely to use the medium of English to communicate professionally. However, the intrinsic problem of the mismatch between national legal systems, on the one hand, and common and civil law systems on the other, has meant that many excellent legal English textbooks are successful because they serve as introductions to English or American law, rather than because they give students a working knowledge of legal language. Teachers involved in teaching legal English know that the problem is a very real one, which is best expressed in two questions: How can we teach legal language without filling in the background about common law systems? And how can we provide the right amount of background information without turning our course into a course on English or US law, rather than language? English teachers must be very exigent while selecting the manuals to be used in class. Any Legal English textbook should take the best of current language teaching methodology and apply it to legal situations, without ever losing the serious professional focus. It should promote good teaching practice, provide the language, skills and topics lawyers need, be inherently motivating with lots of support material available, etc.

We often realise that our students do not clearly imagine which the responsibilities of a lawyer are and why/ how lawyers use English. The major misconceptions are: lawyers spend a lot of time in court; lawyers can rely on translation and interpreters; legal English is tied to Anglo-American legal systems; lawyers need in-depth knowledge of only their country's legal systems, etc. Future lawyers should be aware that they might be employed by certain international business firms, so lawyers have to be proficient in the English needed to assist them: prepare and analyse documents for business clients; work to avoid disputes (and try to settle out of court when they do occur), etc.

One may ask what Legal English is. First of all *Law is language!* Legal English is different from General English or Business English because of the technical vocabulary and semi-technical vocabulary used in legal documents. Generally, legal English has these common attributes:

1. very long sentences
2. archaic expressions. e.g. The parties *hereto* agree as follow. Using 'imbibe' as an alternative of 'drink', 'inquire' rather than 'ask', 'peruse' instead of 'read'
3. archaic use of the modal „shall". e.g. Tenant *shall* comply with any and all laws, ordinances, rules and orders of any and all governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises.
4. greater tendency to use formulaic expressions. e.g. reversionary bonus (Sánchez Febrero 2003: 23)
5. purely technical terms – are those that are only applicable in the legal sphere but nowhere else e.g. mortgage; lease; hereinafter
6. semi-technical terms – belong to daily lexicon which has gained extra-meanings in the legal context. The terms of this type are polysemic, harder to recognize their exact meaning without resorting to the context in which they come about. E. g. *assignment* (something that has been assigned, such as a mission or task; a position or post to which a person is assigned) and *assignment* (the transfer to another of a right, interest, or title to property, esp personal property; the document effecting such a transfer; the right, interest, or property transferred); *title* (an identifying name given to a book, play, film, musical composition, or other work. A general or descriptive heading, as of a book chapter.) and *title* (In Property Law – a comprehensive term referring to the legal basis of the ownership of property, encompassing real and personal property and intangible and tangible interests therein; also a document serving as evidence of ownership of property, such as the certificate of title to a motor vehicle. In the law of Trademarks – the name of an item that may be used exclusively by an individual for identification purposes to indicate the quality and origin of the item.)
7. frequent use of doublets e.g. terms and conditions; represents and warrants
8. terms of Latin or French origin e.g. *Res judicata = an issue adjucated*
9. lexical repetition or redundancy e.g. **– The Lessee shall pay to the Lessor at the office of the Lessor.**

It is essential to highlight that in Legal English *nuances and shades* of meaning can have huge consequences and language teachers can teach them. In class we must enhance law students' awareness of what lawyers read. As a rule they mostly concentrate on correspondence, memoranda, contracts and contract clauses, statutes and case law or articles from various statutes/codes, law-related articles; regulatory filings; corporate documentation, etc. Teachers should also emphasise that lawyers mostly write letters/ emails, memoranda, contracts & contract Clauses, legal opinions, court filings & legal memoranda (briefs), regulatory filings, corporate documentation, etc. Thus more attention should be paid to the above-mentioned issues. As we must also train law students' listening and speaking skills, they should be aware in what situations lawyers speak and listen: firm meetings, client meetings, seminars and conferences, negotiations, informal settings, phone conversations, judicial proceedings, etc. When speaking in court a good lawyer will try to be very efficient: s/he will make the audience understand why the topic is important to them. S/he will make her/his points **s**hort, **s**imple and **c**lear. (Remember to KISS, i.e. **K**eep **I**t **S**hort and **S**imple) The KISS principle states that simplicity should be a key goal in design, and that unnecessary complexity should be avoided.

Teachers should include in their legal English course information about „some of the slightly different practices between the United States and the United Kingdom. In U.S. civil cases, for example, it is common for experts to be deposed before testifying at trial. The deposition, as it occurs in the United States, is relatively unknown in most of the United Kingdom, where instead it is common for the expert's written report or affidavit to be made available to the opposing side well in advance. There is a provision in Scottish law for a procedure called *precognition* whereby a representative for one side may visit witnesses and interview them about what they will say. In the United States, almost invariably experts are hired by lawyers representing the opposing parties in law cases, whereas in many other countries the experts are engaged by the court to provide their knowledge and analysis to the judge. Some U.S. experts would prefer the European system, because it seems to avoid some of the problems related to impressions of bias or advocacy with which U.S. experts are sometimes saddled. Also very rare in the United States is the occasional practice in the United Kingdom when judges request opposing experts to get together and produce an agreed-on statement. The procedures for determining whether an expert is admissible as an expert are also a bit different between the United Kingdom and America. In England and Australia, for example, only the qualification of the expert is assessed. In the United States admissibility depends not only on the expert's qualifications but also on the methods used in the expert's analysis. In the United States, once the case is settled and over, there are no restrictions on using data from a law case in your books or articles (unless the expert has signed a confidentiality agreement with the case attorney that restricts such activity). Otherwise the material is considered to be in the public domain. In the United Kingdom, however, stronger restrictions exist, including the need to get explicit permission in writing if you are to use such materials (Shuy 2006: 131-132).

Another issue to pay attention to is the lexis used in British and American legal English. Rupert Haigh presents the following instances:

British English	American English
Articles of association	*Bylaws*
Called to the bar	*Admitted to the bar*
Company	*Corporation*
Competition Law	*Antitrust Law*
Creditors	*Payables*
Debtors	*Receivables*
Employment Law	*Labor Law*
Theft	*Larceny*

(Haigh, Rupert 2009: 82)

Thus, in order to succeed teachers ought to make their role clear from the start, think about what the students need, prepare thoroughly for each class, be armed, be confident, learn from the students and watch their self-image.

Case studies are particularly good for teaching legal English as they expose learners to a selection of authentic texts with which they must work to produce an end result, for example, successful meeting or negotiation, follow-up letter, memorandum of law etc. Using authentic materials will give students the opportunity to plan their own short case studies for classroom use. They should be encouraged to design and present such materials as an interesting alternative to student presentations. The Internet provides a lot of useful resources for legal practitioners who need to keep up to date with developments in law. Specialists' blogs are one example of continuously updated sources of information, and there are many law-related podcasts that can be downloaded onto an mp3 player and listened to during those spare minutes between appointments. (See www.podcast.net for a comprehensive list of audio and video podcasts)

We must also take into account that the English class is ideal preparation for the new Cambridge International Legal English Certificate (ILEC), because teachers use exam practice tasks, exam tips and a practice ILEC tests supplied by Cambridge ESOL. The International Legal English Certificate (Cambridge ILEC) assesses English language ability at Levels B2 and C1 of the Common European Framework of reference for Languages (CEFR) – an internationally recognised benchmark of language ability. Cambridge ILEC is based on realistic tasks and topics that legal practitioners might expect to encounter in their daily working lives. Working with legal issues demands special skills, knowledge and experience. Moreover it is an area of teaching that can favour the legal-minded teacher. The teacher also needs to be highly flexible as legal English needs vary from client to client and from business to business and each student will have specific demands and needs for their individual desired results. As for the students, they are highly motivated since the course in legal English has clear advantages for them. Legal English classes are vital as English is the lingua franca of the international legal community, and European university law schools often require their students to study at least one course in language for legal purposes and most students choose English. Business people are increasingly required to have a working knowledge of Legal English.

It is advisable that Universities should offer the students the opportunity to enlarge their overall proficiency in Legal English, increasing the number of courses in Legal English offered by language scholars, individual trainers, both during cycle 1, 2 and for continuing education purposes.

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