

Making (comparative) legal linguistics mainstream in legal education

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Licentiate thesis (converted from PhD)
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May/June 2025

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Licentiate Thesis, Faculty of Law, University of Lapland (converted from PhD)

184 pages (including synopsis, references, appendices, articles)

Submitted May/June 2025

Making (comparative) legal linguistics mainstream in legal education: A young discipline needed in legal education and obstacles to achieving it.

Abstract

This synopsis concludes, draws on and updates the author's research over some twenty years in the field of (comparative) legal linguistics, in particular in the context of English as the lawyer's lingua franca. It does so by linking theoretical aspects of legal linguistics (including but distinguished from comparative legal linguistics) to the need for this fledgling discipline to feature in the practical legal education curriculum for lawyers and translators as well as the obstacles to achieving that goal. Overall, the research can be said to lie at the interface between law, language, and learning. This study asserts that (comparative) legal linguistics should be integrated into the legal education curriculum. Starting with a brief summary of the author's dozen papers in the field of legal linguistics published in scientific journals – distinguishing between the six selected for this synopsis and the six that provide background – the study synthesizes the findings with updated research in the context of legal English as the lawyer's lingua franca. Relevant themes examined in this section include: terming the discipline; legal education and training; global English; stakeholders; who legal linguistics is for. Next, the study looks at areas covered by the discipline of legal linguistics such as legal language, legal culture, legal translation, comparative law, and legal history. The conclusion is that concerted institutional support is most likely to generate and maintain the impetus required to ensure that legal linguistics takes its proper place in legal education. The study closes with a look to the future.

Key words: legal education; legal English; legal linguistics; comparative law; comparative legal linguistics

Preface

As a former lawyer holding a diploma in translation from the UK Institute of Linguists and having completed a master's degree in education at the University of Sheffield (2002) and by then (2004) active in teaching specialist English to non-native speakers, I was naturally attracted to the field of law and language in the context of English as the global legal language. At a series of seminars, I met academics in that field, among them Professors Heikki Mattila (University of Lapland) and Pia Letto-Vanamo (University of Helsinki). At one of these seminars,¹ I presented my first paper on law and language, published as a working paper by my employer, Riga Graduate School of Law (RGSL).² Not long afterwards, I set about translating into English the French version of Mattila's ground-breaking book on comparative legal linguistics.³ Shortly thereafter, I was admitted as a doctoral candidate in legal linguistics at the University of Lapland under the aegis of Professor Mattila. Then, RGSL was tasked by the Latvian government with establishing a master's programme for legal linguists in support of EU organizations, (Latvian) state administrative institutions, and others in the private sector. Tasked by RGSL to do so, I coordinated a multidisciplinary team in conceptualising and developing a model for a one-year (three-semester) professional training programme for legal linguists (MA in legal linguistics). Programme aims were: (a) to provide linguistic competence to lawyers daily engaged in drafting, revising, or editing legal acts; (b) to control the legal and linguistic correctness of legal texts translated from other languages; (c) to enhance the professional competence of legal translators by adding theoretical knowledge of the legal landscape. The programme was later converted to a LLM in legal linguistics, with increased focus on the law element. I thus became immersed in the field of (comparative) legal linguistics, which forms the interface between law, language, and learning...

Acknowledgements go to Emeritus Professor Heikki Mattila for support throughout and to Emeritus Professor Pia Letto-Vanamo for help on my way to becoming a practising legal linguist, as well as to staff at the University of Lapland.

This thesis is **dedicated** to Rasma Behmane, my lady love and wife of many years.

Christopher Goddard, Riga, May 2025

¹ Law, Literature, Language, and Culture in the Baltic Sea Region: Common and Distinguishing Features within the framework of the Research Network of Legal Culture and Traditions in the Baltic Sea Area. August 27-29, 2004 Vilnius.

² Goddard, C. 2004. English as an international language of legal communication: inter-cultural aspects. Research Network of Legal Culture and Traditions in the Baltic Sea Area August 27-29, Vilnius. RGSL Working papers No 20.

³ Mattila, H.E.S. (2006): *Comparative Legal Linguistics*. Aldershot, Hampshire & Burlington VT: Ashgate Publishing Limited & Ashgate Publishing Company.

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Goddard, C. 2010 c. Didactic aspects of legal English: dynamics of course preparation. In Gotti, M. & Williams, C. (eds) *ESP Across Cultures Vol. 7, 2010 Special issue: Legal English across cultures*. Bari: Edipuglia, 45-88. 64-105

Goddard, C. 2011. Fishing with new nets in familiar waters: a legal linguistic foray into comparative law, legal culture, and legal ideology. In Salmi-Tolonen et al. (eds.) *Lapland Law Review, 2011, issue 1. Law and Language in Partnership and Conflict*, 122-144. 107-127

Goddard, C. 2013. Learning to fly: the prospects for legal linguistics in the academic curriculum... and beyond. In Williams, C. & Tessuto, G. (eds.) 2013. *Language in the Negotiation of Justice: Contexts, Issues and Applications* (1st edn.), 279-299. Routledge. <https://doi.org/10.4324/9781315591452> 128-146

Goddard, C. 2015. The Pragmatic Dimension of Competence in ESP in Cross-Cultural Legal Contexts. In Williams, C. (ed.) 2015 *ESP Across Cultures, Vol 12* Edipuglia, 67-84. 147-164

Goddard, C. 2022. Legal terminology in English: the challenges of international contexts. In Williams, C. *ESP Across Cultures vol. 18*, 105-124. 165-183

I. Orienting legal linguistics in legal education

1.1. Why the need for legal linguistics in legal education?

Law being one of the areas in which English assumes a high profile as a global common language in inter-cultural contexts, the ability to communicate inter-culturally in the world language of English has therefore become an essential skill. This means that, for learners of (legal) English, intercultural communication skills training forms a vital, integral part of their study, enabling them to communicate more appropriately and effectively with much greater understanding and self-awareness. For this reason, legal linguistics – the purposive scientific study of language in legal contexts – features prominently as a professional requirement, as does comparative legal linguistics, which defines as a special branch of knowledge combining comparative study of law and legal linguistics. While translators and linguists undoubtedly require some knowledge of law in order to work with legal texts, lawyers may easily be assumed to wield linguistic skills that they do not possess. At the international and supranational levels, the chief hurdles for (comparative) legal linguistics to address appear to be conceptual and practical problems including absence of equivalence between legal concepts and terminology in different legal languages as well as asymmetry between different legal languages and systems. In addressing these problems, legal translators and lawyers operating in two or more legal languages can benefit from knowledge of how different societies address social and other institutions and social and other issues through law, language, or other means.

1.2. Structure of text

This synopsis concludes, draws on and updates the author's research over some twenty years in the field of (comparative) legal linguistics, in particular in the context of English as the lawyer's lingua franca.⁴ As the culmination of a series at the interface between law, language, and learning, the study links theoretical aspects of legal linguistics⁵ (including but distinguished from comparative legal linguistics)⁶ to the need for this fledgling discipline⁷ to feature in practical legal education for lawyers and translators.⁸ However, despite much discussion on the importance of legal-linguistic knowledge),

⁴ Over some twenty years the author published a dozen articles, of which the six most recently published in scientific journals were chosen to be included as components of the final thesis.

⁵ Galdia, M. 2009, *Legal Linguistics*. Frankfurt am Main: Peter Lang, at 37 'Legal Linguistics deals with ... language use in law' and at 142 'linguistic operations in law, e.g. creating law with the help of language, legal argumentation, legal interpretation, legal translation, justifying legal decisions, providing legal advice, stating and commenting on the law'.

⁶ Husa (2023 b) asserts: 'Whereas legal linguistics typically focuses on a single legal language, comparative legal linguistics highlights the development, structure and vocabulary of two or more legal languages juxtaposing – in other words, comparing – them.' 'Critical approaches to comparative legal linguistics', in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 52-69 at 65.

⁷ Galdia, M. 2009, *Legal Linguistics*. Frankfurt am Main: Peter Lang, at 35, 65.

⁸ Galdia, M. (2021 a), *Legal Constructs. Reflections on Legal-Linguistic Methodology* Adam Mickiewicz University, Poznan 2021. <https://doi.org/10.48226/978-83-66666-37-5> 'Legal linguistics ... is still a paradigmatically largely undetermined area of knowledge....' at 14.

little evidence exists of its serious practical input in legal education. Indeed, legal linguistics currently occupies a precarious foothold in the academic curriculum. Although the advantages of this interdisciplinary field are clear, so, too are the obstacles, as all interdisciplinary fields face the risk of being overshadowed by older established fields. Moreover, the content – and indeed the definition – of the discipline has yet to be satisfactorily defined.

1.3. Legal linguistics at RGSL.

Preliminary research disclosed no course of study or training⁹ that matched, or even approached, programme scope.¹⁰ The RGSL master's in legal linguistics, established¹¹ as an MA programme in 2007, was later converted¹² to a LLM programme¹³ before closing in 2016. By that time, no progress seemed to have occurred in terms of featuring (comparative) legal linguistics as an element of legal education. Indeed, it appeared then, as now, that the RGSL master's in legal linguistics remained alone *sui generis*. Hence, a series of published research papers by the author on the need for (comparative) legal linguistics to feature in legal education. But little seems to have changed.¹⁴

1.4. Thus, in the light of the context as explained in sections 1.1., 1.2., and 1.3, the natural choice for the research question is: how to establish (comparative) legal linguistics as a staple in the legal education curriculum?

1.5. The state of the art is that, despite much discussion on the importance of legal-linguistic knowledge, little evidence exists of its serious practical input in legal education.¹⁵ Moreover, the content – and indeed the definition – of the discipline has yet to be satisfactorily defined.¹⁶

1.6. The hypothesis of my research – as a mirror of the research question – is that (comparative) legal linguistics should be integrated into the legal education

⁹ See Appendix A: details of research results for comparable courses or programmes 2006.

¹⁰ See Appendix B: RGSL MA in legal linguistics: Scope of curriculum

¹¹ Goddard, C. 2009 a. A Professional Master's Programme in Legal Linguistics: A Model for Translators and Lawyers? In Sočanac et al. (eds.) *Curriculum, Multilingualism and the Law*. Zagreb: Nakladni zavod Globus, 149-174.

¹² Goddard, C. 2018. RGSL: Leading the Way in Legal Linguistics. Riga Graduate School of Law.

¹³ See Appendix C: . RGSL MA in legal linguistics: Scope of curriculum; see also <https://jurtrans.com/ll-m-in-legal-linguistics/> accessed 06 February 2025.

¹⁴ See Appendix D: details of research results for comparable courses or programmes 2025.

¹⁵ Lindroos, E. 'Legal Linguistics in the Nordic Countries Past Developments and Future Directions', in Friedemann Vogel (ed.) *Legal Linguistics Beyond Borders: Language and Law in a World of Media, Globalisation and Social Conflicts. Relaunching the International Language and Law Association (ILLA). Sprache und Medialität des Rechts / Language and Media of Law*, vol. 2 (2019) 123-145. 'the heterogenous field of legal linguistics has yet to fully secure its footing in academia and to realize its full potential in Northern Europe' (at 125).

¹⁶ e.g., Goddard, C. 'Legal terminology in English: the challenges of international contexts', *ESP Across Cultures* vol. 18, 2022: 105-123 at 106, ISSN 1972-8247 - ISBN 979-12-5995-006-2 - DOI http://dx.doi.org/10.4475/0062_6 ; Husa 2023 b Critical approaches to comparative legal linguistics. In Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics 2023* Edward Elgar Publishing, Cheltenham UK and Northampton MA USA, 52-69 at 64.

curriculum.

1.7. Methods, instruments & tools include, firstly (**Section II**), a summary of the author's dozen papers in the field of legal linguistics (six of them double blind peer reviewed) published between 2004 and 2022 (presented in two sections: (a) those for background information only but not selected for this synopsis and (b) those selected in this synopsis), followed by and synthesized with (**Section III**) updated research in the context of legal English as the lawyer's lingua franca. Relevant themes examined in this section include: terming the discipline; legal education and training; global English; stakeholders; who legal linguistics is for. **Section IV** outlines core areas identified as covered by legal linguistics such as legal language; legal culture; legal translation and legal dictionaries; comparative law; legal history. **Section V** looks to the future.

2. Introduction to (comparative) legal linguistics

Legal linguistics – the purposive scientific study of language in legal contexts – features prominently as a professional requirement, as does comparative legal linguistics,¹⁷ which defines as a special branch of knowledge combining comparative study of law and legal linguistics.¹⁸

3. Present status of legal linguistics within the frame of legal education

However, legal linguistics currently occupies a precarious foothold in the academic curriculum.¹⁹ Although the advantages of this field are clear, so, too are the obstacles, as all interdisciplinary fields face the risk of being overshadowed by older established fields.²⁰ As Tuori notes, new branches of law need external support to generate and maintain the impetus required to ensure they take their place in legal education.²¹

¹⁷ Goddard, C. 'A Voice in the Wilderness? Legal Linguistics in Search of a Place in the Curriculum.' 2016: RGSL Research Papers, No 12, at 8ff.

¹⁸ Goddard, C. 'Legal Linguistics as an Academic and Professional Discipline: Identifying Clients, Customers, Stakeholders' in Heine, C. & Engberg, J. (eds.): *Reconceptualizing LSP*. Online proceedings of the XVII European LSP Symposium 2009. Aarhus 2010 – ISBN: 9788778824745, at 6; Husa 2023 b Critical approaches to comparative legal linguistics. In Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics 2023* Edward Elgar Publishing, Cheltenham UK and Northampton MA USA., 52-69.

¹⁹ e.g. Lindroos, E. 'Legal Linguistics in the Nordic Countries Past Developments and Future Directions', in Friedemann Vogel (ed.) *Legal Linguistics Beyond Borders: Language and Law in a World of Media, Globalisation and Social Conflicts. Relaunching the International Language and Law Association (ILLA). Sprache und Medialität des Rechts / Language and Media of Law*, vol. 2 (2019) 123–145. 'Despite the efforts and progress made especially in the last two decades, *legal linguistics is now on shaky ground...* Without a doubt, *legal linguistics as an academic discipline has something to offer to both domains – law and linguistics* – from a narrower national and a broader, international and comparative perspective' [my italics] at 138.

²⁰ Husa 2023 b, Critical approaches to comparative legal linguistics. In Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics 2023* Edward Elgar Publishing, Cheltenham UK and Northampton MA USA, 52-69 at 66.

²¹ Tuori, K. *Ratio and Voluntas: The Tension Between Reason and Will in Law*. Farnham: Ashgate, 2011: 'If new and emerging branches of law, such as medical and bio-law, communications law, information law, and pharmalaw, must jostle for position, recognition, and space in the curriculum...' (2011: 159-160), this suggests an analogy with emerging disciplines such as legal linguistics. Tuori notes (2011: 160): 'In the early phases of the campaign, a central claim would be over a chair at the law faculty and acknowledged status in the legal curriculum. When a chair has been obtained, it is turned into a bridgehead, allowing consolidation of victories achieved and the prospect of new conquests. Again, if proponents of an emerging field of law have their 'external patrons' such as trade unions, non-governmental organisations and employers' organisations for labour law', this, too, may suggest that

II. Summary of the author's research in legal linguistics

A. Research background to the six texts for background information only but not selected for this synopsis

(a) Encounters of the intercultural kind²²

The ability to communicate inter-culturally in the world language of English has become an essential skill. Law is one of the areas in which English assumes a high profile as a global common language in inter-cultural contexts. While the role of language is important in cross-cultural interactions, including in legal contexts, nevertheless linguistic skills alone will not equip students of (legal) English and practitioners for such intercultural encounters. Developing cultural awareness and adaptability is crucial for those who work in a European / global environment. So, for learners of (legal) English, intercultural communication skills training should form an integral part of their study: it should enable them to communicate more appropriately and effectively with much greater understanding and self-awareness. Thus, legal communication skills training should be attempting to close the gap between linguistic and legal skills development on the one hand, and inter-cultural awareness and tolerance on the other.

(b) A theoretical approach to a master's programme in legal linguistics²³

The Riga Graduate School of Law (RGSL) developed an extended one-year study and training professional programme for legal linguists in support of EU organizations, (Latvian) state administrative institutions, and others in the private sector. The aim was to improve translation and drafting skills for government and the European Union (EU). Absence of an identical programme and scarcity of similar programmes was matched by the narrowness of relevant sources in the literature. However, two particularly fruitful sources were found. The first was Susan Šarčević's *New Approach to Legal Translation*. The second source of inspiration was Heikki Mattila's *Comparative Legal Linguistics*. Here, useful hints were to be found *passim*. Apart from these sources, the author relied mainly on grounded theory based on own experience (a background in law, legal translation, and education) and the collective wisdom and experience of individuals from other institutions involved. Two major challenges remained. The first was to attract funding for the programme from commercial and other sources. The second was to market the programme as widely as possible while maintaining cooperation with institutions that were both potential partners and potential competitors.

a similar need applies to emerging disciplines. Legal linguistics as an emerging discipline appears to have no such patronage.

²² 'Goddard, C. English as an international language of legal communication: inter-cultural aspects.' Research Network of Legal Culture and Traditions in the Baltic Sea Area August 27-29, 2004 Vilnius. RGSL Working papers No 20. Copy with author.

²³ Goddard, C., 'A Professional Master's Programme in Legal Linguistics: A Model for Translators and Lawyers?' in Sočanac et al. (eds.) *Curriculum, Multilingualism and the Law*. Zagreb: Nakladni zavod Globus, 2009, 149-174. Copy with author.

(c) Where legal cultures meet²⁴

Increasing supranational legislation and other factors fuel interaction between legal cultures. This leads to greater need both for a new breed of international lawyer and for legal translators. Moreover, the rise of English as the de facto global legal language intensifies the need for translation of legal texts into English and production of legal texts in English. Both involve individuals whose native tongue is other than English (NNS) in an endeavour fraught with traps for the unwary. To illustrate against the relevant theoretical background, legal texts are presented that involve the author as translator into English from French, German, and Russian, and as reviser, editor, and proof-reader of English-language legal text prepared by NNS.

Findings suggest a need to equip practitioners with certain knowledge and skills, implying a corresponding need for education, training, and legal linguistic skills. However, with universities under pressure to focus on ECTS credits in main areas of the curriculum, it may be more realistic to achieve the required input in dedicated interdisciplinary programme modules jointly for legal translators and for lawyers who aim to operate internationally or to translate legal texts. Lawyers, linguists, translators, and judges, whether native or non-native speakers of English, can all contribute to conceptual and terminological development and harmonisation of legal language in the context of legal English as global legal lingua franca.

(d) Legal Linguistics: Identifying Clients, Customers, Stakeholders²⁵

Legal linguistics is a relatively new discipline, of growing significance in the light of internationalization of legal life and the broader context of globalization, where English is the chosen form of communication. Currently, few programmes are available to prepare practitioners, if indeed it is clear who practitioners actually are, or again what the parameters of their profession may be, or where legal linguistics fits within the future education and training needs of law professionals. With the assistance of available literature in the field of legal education, combined with research based on a focus group of professionals involved in the field,²⁶ this paper explores the field of legal linguistics by approaching it from the aspect of the “outsider”. In particular, it asks, analyses, and discusses two problems: ‘Where does legal linguistics fit in the broader context of future legal education needs?’ and ‘Who are its potential beneficiaries?’ The outsiders in this case are stakeholders, in particular the target client of legal linguistics programmes, that is, those who receive the service, and the paying customer, who may not always be the client and, finally, others with an indirect interest in legal linguistics, from individuals through law firms, banks, and others in the private sector, to governments and international or supranational bodies.

Results confirm that legal linguistics is a clear “fit” in the education and training of law professionals in the context of globalization and internationalization with English as the legal lingua franca. Additionally, the research suggests a need to communicate to

²⁴ Goddard, C. ‘Where legal cultures meet: translating confrontation into coexistence’ in *Investigationes Linguisticae* vol XVII 2009 Adam Mickiewicz University, 168-205. Copy with author.

²⁵ Goddard, C. ‘Legal Linguistics as an Academic and Professional Discipline: Identifying Clients, Customers, Stakeholders’ in Heine, C. & Engberg, J. (eds.): *Reconceptualizing LSP. Online proceedings of the XVII European LSP Symposium* 2009. Aarhus 2010 – ISBN: 9788778824745. Copy with author.

²⁶ From the same survey (but different questions) as the previous paper.

potential students and other stakeholders the learning outcomes of a legal linguistics programme. This may partly overcome the difficulty that, while the core elements of legal linguistics are generally agreed, the full referential field is not entirely clear. At the same time, learning outcomes should be included in marketing and promotional literature, in order to demonstrate professional relevance to all stakeholders. Fledgling courses, modules and programmes in this emerging discipline need support and nourishment from the stakeholder environment in which to test their wings.

(e) Legal Linguistics in Search of a Place in the Curriculum²⁷

This paper asserts the need to incorporate the emerging discipline of legal linguistics into the academic curriculum for law professionals as a vital aspect of legal education. The paper begins by setting the context within the broader field of legal education, then explores the literature for clues as to what skills or functions required by law professionals fall within the remit of legal linguistics as an academic discipline. It also touches on challenges in designating the discipline of legal linguistics internationally and in relation to other fields, as well as briefly considering its scope, approaches to methodology, applications and development. The paper goes on to examine didactic approaches to incorporating legal linguistics into the academic curriculum, based on a focus group survey of academics in the field. Analysis suggests that, although the need for legal linguistics in legal education may be clear, this alone is not enough to ensure its integration in the law curriculum: other factors are likely to operate as key.

In order to develop, legal linguistics needs concerted action from those involved. To begin with, this might involve establishing who is (and is not) offering programmes or courses in legal linguistics (or law and language, or under some other banner) and forming some association to garner recognition, sponsors, patronage and support.

(f) RGSL: leading the way in legal linguistics²⁸

If language is the form that law takes, then legal linguistics is the area of study that examines how language is used in legal contexts, in particular, aspects of language use, such as terminology, as well as the main legal-linguistic operations, for example, legal drafting, legal argumentation, legal interpretation, and legal translation. The importance of legal linguistics stems partly from the internationalisation of legal life in the broader context of globalisation, with English as the law's lingua franca, and the implications for the education and training of law professionals.

RGSL is still the only institution in the world known to have offered a full master's programme in legal linguistics. In this respect, RGSL has played a significant role in the development of legal education. However, like all young disciplines, legal linguistics needs a dedicated association and other support in order to promote itself in the curriculum.

²⁷ Goddard, C. 'A Voice in the Wilderness? Legal Linguistics in Search of a Place in the Curriculum.' 2016: RGSL Research Papers, No 12. Copy with author.

²⁸ Goddard, C. 'RGSL: Leading the Way in Legal Linguistics.' Riga Graduate School of Law 2018. *Twenty Years of Innovation: Eyewitness Accounts of Riga Graduate School of Law*, 39-42. Copy with author.

B. The six papers selected for the synopsis

1. Legal linguists: as (in)substantial as ghosts and true love?²⁹

As an emerging discipline, legal linguistics needs to be effectively showcased. Firstly, marketing to potential applicants, employers, and stakeholders must show legal linguistics as having clear practical professional relevance. Secondly, legal linguistics programmes must be appropriately focused to respond to the needs of the discipline and the market. This includes establishing whether the discipline can be linked to the term 'legal linguist' and where and how legal linguistic skills can be applied. This paper included a focus group survey questionnaire to establish whether the discipline of legal linguistics is matched by an eponymous profession with its own skills set. At the national (monolingual) level, legal linguistics can address problems of text organisation and style. At international and supranational levels, the chief hurdles for (comparative) legal linguistics to address appear to be conceptual problems and absence of equivalence or presence of asymmetry between different legal languages and systems.

According to the focus group survey,³⁰ the legal linguist as a professional is seen as possessing specific identifiable skills. Though respondents were far from unanimous, skills included knowledge of domestic law, EU law, comparative law, cultural studies, language for specific purposes, linguistic analysis, legal argumentation, semantics and at least two languages, legal translation/interpreting, legal drafting, an understanding of special features of legal texts, semiotics and discourse analysis. Practical deployment of legal linguistic skills is seen as including legal translator; court interpreter and work in terminology institutes as expert in the field of legal terminology; drafting; research; revising and editing texts; inspecting ways of transposing new concepts from source to target legal systems; teaching.

2. Didactic aspects of legal English: dynamics of course preparation³¹

The advent of English as the global legal language highlights the need for translation of legal texts into English and production of legal texts in English. These involve non-native users (NNS) of English, who require both legal and linguistic knowledge and skills for task performance. These factors imply a corresponding need for education and training for NNS users of English in legal contexts. In turn, this situation presents significant challenges in terms of legal ESP across cultures, of which teachers need to be aware. The first of these consists of pitfalls involved when English is used in legal contexts far from its common law roots. This translates as a need for transnational legal and linguistic awareness. This in turn means a need for awareness of how to use English in contexts involving interaction between two or more legal systems each with its corresponding legal language and secondly a need for awareness of vital ESP-related theoretical aspects. These include teacher knowledge of the target discourse community, a materials-centred and appropriately sequenced syllabus relevant to real-life tasks, identification of key language-using tasks, concurrence between learners and teachers through language-teaching responses, and cross-cultural awareness on the part of both

²⁹ Goddard, C., 'Legal Linguists: As insubstantial as Ghosts and True Love?' in Giannoni, D. S., & Frade, C. (2010). *Researching language and the law: Textual features and translation issues*. Bern: Peter Lang, 199-212. ('Paper 1')

³⁰ Some questions from the same questionnaire are addressed in Paper 5.

³¹ Goddard, C. 'Didactic aspects of legal English: dynamics of course preparation' in Gotti, M. & Williams, C. (eds.) *ESP Across Cultures* vol. 7, 2010 Special issue: Legal English across cultures. Bari: Edipuglia, 45-88. ('Paper 2')

learners and teachers. An example is given of course outlines and post-course evaluations of two public courses. The conclusion deals with lessons learned and suggestions for research.

3. Legal linguistic aspects of comparative law, legal culture, legal ideology.³²

While comparative law, legal culture, and legal ideology offer potential fruits for the researcher, they appear inadequate as research tools in the shape of concrete elements of research question variables. So this paper, while foraying into these fields, frames its research question as follows: In addressing practical legal linguistic problems such as absence of equivalence between legal concepts and terminology in different legal languages, to what extent can legal translators and lawyers operating in two or more legal languages benefit from knowledge of how different societies address social and other institutions and social and other issues through law, language, or other means?

Both the angle and focus of legal linguistic research might benefit from study of the internal and external influences on legal systems as reconnoitred in this paper. These might be of help in establishing how different societies address social (and other) institutions and social (and other) issues through law, language, or other means, at the same time crucially (for the lawyer and translator) establishing what social (and other) issues in one society are mirrored by non-issues in another. This requires further research in the field of legal sociology, history of law under the umbrella of legal linguistics, as well as economics, politics, and security, and should include other influences such as the mutual influence of EU and Member State national law, human rights law and international law, all for a better understanding of the legal linguistic consequences that lawyers and legal translators require.

4. Prospects for legal linguistics in the curriculum and beyond³³

Legal linguistics as an academic discipline is in its infancy. Moreover, it currently occupies a precarious foothold in the academic curriculum. This paper aims to clarify the focus that legal linguistics courses or programmes require so as to be seen by educational institutions, potential applicants, employers, and stakeholders as having clear practical professional relevance. The context, examined briefly, is linguistic challenges to legal communication against a background of globalization and transnationalisation of the law with English as the de facto global legal language and law professionals operating in two or more legal languages. In addition to contextual references to the literature, a survey questionnaire is addressed to a focus group consisting of academics in the legal linguistics field to establish their views on what they identify as core and peripheral legal linguistic skills and practical applications of legal linguistics. The paper makes a case for including legal linguistics in the academic curriculum and to some extent clarifies the spectrum, content and components of programmes and courses, though further work remains to be done in this respect.

³² Goddard, C. 'Fishing with new nets in familiar waters: a legal linguistic foray into comparative law, legal culture, and legal ideology' in *Lapland Law Review*, 2011, issue 1. Law and Language in Partnership and Conflict, Salmi-Tolonen, T., Tukiainen, I., Foley, R. (eds.), 122-144. ('Paper 3')

³³ Goddard, C. 'Learning to fly: the prospects for legal linguistics in the academic curriculum... and beyond', in Williams et al. (eds) *Language in the Negotiation of Justice: contexts, issues and applications* 2013, Ashgate, 279-299. ('Paper 4')

5. Pragmatic competence in ESP in cross-cultural legal contexts³⁴

Individuals operating in cross-cultural contexts between two or more languages require pragmatic competence in order to ensure understanding of what utterances mean in context. Pragmatic competence involves awareness of what the context consists of, being equipped to study what factors or forces lie behind utterances, highlighting those that can be seen, unearthing and examining those that may remain unseen. For ESP professionals operating between two or more legal languages or systems, this research is one of the tasks of the discipline of legal linguistics. Law has no separate existence of its own: it is not sealed off from the rest of the world and does not operate in isolation from people, events and ideas. These will inevitably be reflected in the framing and content of laws, as well as in the way they are expressed in legal language. This chapter explores the literature with a view to identifying some of the unseen factors and forces that make legal language what it is, with the aim of opening avenues for further comparative legal linguistic research in the field of legal ESP, as well as in legal translation and comparative law.

The conclusion was that further comparative legal linguistic research is needed to examine the following aspects in different communities:

- approaches and attitudes to law (e.g., law as social control);
- the functions of law in the community (e.g., to resolve problems);
- situational/contextual factors (e.g., economic, social, political);
- community values (e.g., morality, privacy);
- social or other issues;
- how the community deals with social or other issues by law or other means along with their influence both on each other and on the language of law.

6. Legal terminology in English: international challenges³⁵

With English dominant in global trade, individuals communicating in legal English as a genre of ESP in cross-border settings require an assortment of skills and competences to ensure they are equipped to meet professional standards. Being equipped requires awareness of legal-linguistic, cross-cultural and comparative legal factors involved in using legal English terminology and underlying concepts in cross-border contexts. It also requires an ability to ensure that meaning and legal effect are mutually comprehensible between the parties and in line with the governing law. This chapter explores a selection of specialist literature in a field where English dominates, by reviewing and analysing five academic texts, synthesizing them by identifying overlapping common themes, potential pitfalls, and solutions for practitioners. The overall aim is to uncover skills needed by lawyers, to open avenues that may lead towards approaches to teaching, learning, and using legal terminology and drafting legal texts in 'cross-system' contexts and further comparative legal linguistic research in the field of legal ESP.

Although this research tends to strengthen the argument that (comparative) legal

³⁴ Goddard, C. 'The Pragmatic Dimension of Competence in ESP in Cross-Cultural Legal Contexts', in Williams, C. (ed.) *ESP Across Cultures*, vol 12 (2015) Edipuglia, 67-84. ('Paper 5')

³⁵ Goddard, C. 'Legal terminology in English: the challenges of international contexts'. *ESP Across Cultures* vol. 18, 2022: 105-123 ISSN 1972-8247 - ISBN 979-12-5995-006-2 - DOI http://dx.doi.org/10.4475/0062_6 ('Paper 6')

linguistics should form an integral part of modern legal education, the precise model of teaching and what methods to apply, and indeed what teachers themselves need to know in order to promote learning, remain to be fully addressed elsewhere. However, it would not be unrealistic to suggest that some key legal-linguistic items – such as use of plain English in legal contexts – could be taught at introductory level and reinforced from time to time throughout legal education and training. In addition, items such as incongruity of concepts and terms between legal systems could be introduced at introductory level and reinforced on courses in specific areas of law.

III. Research update

1. Terming the discipline

Several attempts have been made to ‘brand’ the fledgling discipline of English for Legal Purposes (ELP) since its beginnings, as Campos and Isani explain: ³⁶

‘language of the law’^{37 38}

‘legal language’³⁹

‘language and the law’^{40 41 42}

‘legal discourse’^{43 44 45}

‘legal linguistics’ or ⁴⁶

‘jurilinguistics’^{47 48}

³⁶ ‘Once born, (English for Legal Purposes) was identified by a variety of names: “language of the law” (Mellinkoff, 1963; Bhatia, 1987, 223-224), “legal language” (Tiersma, 1999), “language and [the] law” (Olsen et al, 2009; Hutton, 2009; Solan & Tiersma, 2012), “legal discourse” (Bhatia et al. 2008; Gotti, 2009 55-75; Wagner et al, 2014 27-42), “legal linguistics” or “jurilinguistics” (Mattila, 2006; G  mar and Kasirer, 2008; Cacciaguidi-Fahy, 2008 311-317) or “legilinguistics” (Matulewska, 2013). Alicante Journal of English Studies 28 (2015): 5-12 ‘Aspects of Language and the Law: Exploring Further Avenues’ Campos, M.  . & Isani, S. at 6.

³⁷ Mellinkoff, D. (1963): *The Language of the Law*. Boston & Toronto: Little, Brown and Co.

³⁸ Bhatia, V. K. (1987): ‘Language of the law’. *Language Teaching*. 20: 227-234.

³⁹ Tiersma, P. M. 1999. *Legal Language*. Chicago & London: The University of Chicago Press.

⁴⁰ Olsen, F., Lorz, A. & Stein, D. (eds.) (2009): *Translation Issues in Language And Law*. Basingstoke: Palgrave Macmillan.

⁴¹ Hutton, C. (2009): *Language, Meaning and the Law*. Edinburgh: Edinburgh University Press.

⁴² Solan, L. & Tiersma, P. (eds.) (2012): *The Oxford Handbook of Language and Law*. Oxford: Oxford University Press.

⁴³ Bhatia, V. K., Candlin, C. N. & Engberg, J. (eds.) (2008): *Legal Discourse across Cultures and Systems*. Hong Kong: Hong Kong University Press.

⁴⁴ Gotti, M. (2009): ‘Globalizing trends in legal discourse’. In Olsen et al. (eds.), 55-75.

⁴⁵ Wagner, A., Kui Sin, K. & Cheng, L. (2014): ‘Cultural Transfer and Conceptualization in Legal Discourse’. In Cheng, L., Kui Sin, K. & Wagner, A. (eds.) *The Ashgate Handbook of Legal Translation*. Farnham: Ashgate, 27-42

⁴⁶ Mattila, H.E.S. (2006): *Comparative Legal Linguistics*. Aldershot, Hampshire & Burlington VT: Ashgate Publishing Limited & Ashgate Publishing Company.

⁴⁷ G  mar, J.-C & Kasirer, N. (eds.) (2008) : *Jurilinguistique: entre langues et droits/Jurilinguistics: Between Law and Language*. Editions Th  mis/Editons juridiques Bruyland, Montr  al/Bruxelles.

⁴⁸ Cacciaguidi-Fahy, S. (2008): ‘Quelques r  flexions sur la linguistique juridique ou la jurilinguistique’. *International Journal for the Semiotics of Law* 21: 311-317.

The second edition (2013) of Mattila's seminal work *Comparative Legal Linguistics* (2006)⁵⁰ follows the terminology used in the first edition throughout: 'legal linguistics'. In 2013, both Salmi-Tolonen⁵¹ and Engberg⁵² use the same term. In 2021, Galdia affirms 'legal linguistics appears as an area of knowledge that scrutinizes legal-linguistic operations in order to understand law',⁵³ while elsewhere in 2021 he again asserts 'legal linguistics due to specific conditions in which the interest in ... legal-linguistic matters emerged was not a mechanical application of linguistic knowledge upon law but an attempt to create a new area of knowledge that would clarify problems discovered by inquisitive jurists and linguists.'⁵⁴ Again in 2021, Mattila declares that '[l]egal linguistics is a discipline halfway between legal science and linguistics...',⁵⁵ while Husa pertinently observes: '... the notion of comparative legal linguistics... has gained a firm foothold due to Heikki Mattila's trailblazing magisterial volume on the subject'.⁵⁶

However, in the same year, Wagner and Matulewska introduce a subtle change: 'Legal linguistics or jurilinguistics as it has been called recently, is a relatively new field of research'⁵⁷ though later they declare 'the present Special Issue focuses on the interdisciplinary nature of legal linguistics and its various sub-fields'.⁵⁸

A new proposition is put forward in 2021 by Monzó-Nebot and Moreno-Rivero:

jurilinguistics (...) differs from "legal linguistics" or legilinguistics in that it encompasses an indefinite

⁴⁹ Matulewska, A. (2013): *Legilinguistic Translatology: A Parametric Approach to Legal Translation*. Bern: Peter Lang.

⁵⁰ Mattila, H. E.S. (2006): *Comparative Legal Linguistics*. Aldershot, Hampshire & Burlington VT: Ashgate Publishing Limited & Ashgate Publishing Company. Second edition 2013 DOI <https://doi.org/10.4324/9781315573106>

⁵¹ Salmi-Tolonen, T. 'Legal linguistics as a line of study and an academic discipline' in Tessuto, G. (2013). *Language in the Negotiation of Justice: Contexts, Issues and Applications* (C. Williams, Ed.) (1st ed.). Routledge. <https://doi.org/10.4324/9781315591452>

⁵² Engberg, J. 'Legal linguistics as a mutual arena for cooperation: Recent developments in the field of applied linguistics and law', in *AILA Review*, volume 26, issue 1, Jan 2013, 24 – 41 DOI: <https://doi.org/10.1075/aila.26.03eng>

⁵³ Galdia, M. 'Legal Constructs: Reflections on Legal-Linguistic Methodology', *Legilinguistic studies* 12 Studies in Legal Language and Communication DOI 10.48226/978-83-66666-37-5 Faculty of Modern Languages and Literature Adam Mickiewicz University, Poznań 2021 at 25 (2021 a).

⁵⁴ Galdia, M. (2021 b), 'Conceptual Origins of Legal Linguistics' *Comparative Legilinguistics* 18-56 vol. 47/2021 DOI: <http://dx.doi.org/10.2478/cl-2021-0011> at 23.

⁵⁵ Mattila, H.E.S. 'Comparative Legal Linguistics', in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds.) (2023) 363–371 at 363 DOI: <https://doi.org/10.4337/9781839105609.linguistics>.

⁵⁶ Husa, J. 2023 b. Critical approaches to comparative legal linguistics. In Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics* 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA. 52-69, 52.

⁵⁷ Wagner, A. & Matulewska, A. 'Law and Legal Linguistics in a Constant State of Transition' in *Comparative Legilinguistics* 8-16. vol. 47/2021 DOI: <http://dx.doi.org/10.2478/cl-2021-0010> Preface, 8.

⁵⁸ Wagner, A. & Matulewska, A. 'Law and Legal Linguistics in a Constant State of Transition' in *Comparative Legilinguistics* 8-16. vol. 47/2021 DOI: <http://dx.doi.org/10.2478/cl-2021-0010> at 15.

number of disciplines purposefully united to create knowledge on or to otherwise participate in the life of legal discourse (most particularly languages and texts), without limiting itself to any one setting (as opposed to, e.g., forensic linguistics).⁵⁹

As we shall see, this view differs from others more in line with Campos and Isani cited above, as well as others cited below, who see legal linguistics and jurilinguistics as but one and the same discipline, a view with which this author would concur.

In 2022, Galdia, reviewing Mattila's seminal work, refers only to 'legal linguistics'⁶⁰ and later the same year he does so again in *Foundations of Pragmatic Legal Linguistics*.⁶¹ So it is astonishing that the editors of the *Elgar Research Handbook on Jurilinguistics* and some of its authors have abruptly abandoned their previous use of 'legal linguistics' and, without explaining this volte-face, are now heralding their own branding of 'jurilinguistics' as the preferred English-language term for the discipline. For example, Wagner & Matulewska in their chapter⁶² refer *passim* to 'jurilinguistics'. Even more astonishingly, Mattila – the author of *Comparative Legal Linguistics* – notes in the foreword:

'... the Elgar Research Handbook on Jurilinguistics... will help to establish the term jurilinguistics in the English-speaking word (sic), where the term is in limited use today. "Language and law" is a clear and adequate appellation for the discipline we are discussing, but "jurilinguistics" is briefer and particularly forceful.'⁶³

In the same volume, Galdia notes: '...jurilinguistics, also called legal linguistics,'⁶⁴ though rightly adding that '[s]ome of the approaches differ only in labelling, for instance "legal linguistics", "jurilinguistics" or "legilinguistics"'.⁶⁵

In stark contrast, Bryan Garner's dictionary bluntly describes the terms 'jural' and 'juristic' in the sense of 'legal/of or relating to law' as a 'needless variant of simpler terms such as "legal"' and 'ordinarily confined to contexts involving legal theory' and 'a fuzzy equivalent of "legal", while 'juridical' is described as 'a puffed-up equivalent of

⁵⁹ Monzó-Nebot, E. & Moreno-Rivero, J. 'Jurilinguistics: Ways Forward Beyond Law, Translation, and Discourse.' *Int J Semiot Law* (2020) 33: 253-262 <https://doi.org/10.1007/s11196-020-09721-w> at 254.

⁶⁰ Galdia, M. (2022 a). 'Constant dripping wears away a stone. How Heikki E. S. Mattila established comparative legal linguistics', March 2022. *Comparative Legilinguistics* 49:33-58. DOI: 10.14746/cl.2022.49.3

⁶¹ Galdia, M. (2022 b). 'Foundations of Pragmatic Legal Linguistics' in *Comparative Legilinguistics* vol. 2022/51 DOI: <http://dx.doi.org/10.14746/cl.51.2022.11> The journal's website declares: 'We are pathfinders in mapping the contours of legal linguistics and legal translation...' <https://pressto.amu.edu.pl/index.php/cl>

⁶² 'Prospects and retrospects of jurilinguistics' Wagner, A. & Matulewska, A. in Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics* 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 1-34.

⁶³ Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics*, 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA, xxii.

⁶⁴ Galdia, M. 'Researching the language of law', in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34', at 17.

⁶⁵ Galdia, M. 'Researching the language of law', in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34', at 25.

“legal””.⁶⁶ The same would of course apply to the prefix ‘juri’.

In the light of Garner’s authoritative view, ‘jurilinguistics’ as its promoters’ choice was clearly a misnomer. In addition, their competence to term this fledgling field in their own language hardly extends to doing so in English. In short, they cannot be said to have done the discipline of legal linguistics a service in its quest for a place in the legal education curriculum. In line with Garner’s view, the term ‘jurilinguistics’ feels contrived, sits ill in English, offends against plain English and in short is no more than a high-sounding and esoteric academic alternative to the plain language no-nonsense ‘legal linguistics.’ It is not easy to see such an unexplained volte-face by several well-known academics all in the same volume as coincidental, though ‘collusive’ might be going too far.

To add spice to the pot, confusion arises as to the English phonetic pronunciation of the initial ‘j’ in ‘jurilinguistics’ – is it:

- dʒ as in ‘judge’, ‘jury’?
- j as in ‘yes’, ‘yesterday’?
- ʒ as in ‘vision’?

Supporters of ‘jurilinguistics’ are silent on this` point.

At the same time, however, Galdia rightly affirms⁶⁷ that naming the discipline is a problem because ‘...foreign authors use ‘legal linguistics’⁶⁸ whereas in the English-speaking academic world, ‘law and language’ or ‘language and law’ seem to dominate...’⁶⁹ but adds: ‘[i]t might be... premature and counterproductive to insist today upon a strict definition of jurilinguistics/legal linguistics or even a uniform or precise name for this domain of studies.’⁷⁰ In much the same vein, Husa opines: ‘It is not quite evident what notion one should use about comparative legal linguistics as English terms seem to be derived, more or less, from other languages.’⁷¹ In the same volume, Gémard brands the discipline as ‘jurilinguistics’, though even in his own translation citing Gérard Cornu’s work *Linguistique juridique*, he notes: ‘Legal linguistics is, essentially, the study

⁶⁶ Garner, B. *A Dictionary of Modern Legal Usage* [2nd edn 1995 OUP] 486-487.

⁶⁷ Galdia, M. ‘Researching the language of law’ in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34’, at 23-24.

⁶⁸ Galdia, M. ‘Researching the language of law’ in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34’, at 24 (footnote omitted)

⁶⁹ Galdia, M. ‘Researching the language of law’ in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34, at 24 (footnote omitted)

⁷⁰ Galdia, M. ‘Researching the language of law’ in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34, at 27.

⁷¹ Husa, J. 2023 b. ‘Critical approaches to comparative legal linguistics’ in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA, 52-69 at 52.

of the language of law.⁷² Moreover, G  mar – when defining research methods – offers ‘juri-’ as the prefix for law/legal in English, thereby falling foul of Garner’s precept.⁷³

Husa avers: ‘Like applied linguistics in general, comparative legal linguistics is not easy to define in terms that would be accepted by all. Broadly speaking, it is possible on these grounds to argue that the main function of comparative legal linguistics is to mediate between linguistics and comparative legal studies.’⁷⁴ He asserts: ‘It should be clarified and stressed that legal linguistics is here understood as a form of applied linguistics and could alternatively be termed ‘linguistics and law’’, though he adds that he would choose ‘legal linguistics’.⁷⁵

Significantly, the International Language and Law Association (ILLA) website refers *passim* to the discipline as ‘legal linguistics’ even covering examples of sub-disciplines under the umbrella of legal linguistics, while practitioners are called ‘legal linguists’.⁷⁶ In the book to mark the relaunch of ILLA, six out of seven chapters in the section ‘Legal Linguistics Around the World’ use the term ‘legal linguistics’.⁷⁷

At the end of the day, if ‘legal linguistics’ fails to appeal as an umbrella term, then at least ‘law and language’ would be infinitely preferable to the wholly unconvincing ‘jurilinguistics’. Hopefully, at some stage a generally acceptable term in English can be found. Perhaps ILLA will address or coordinate this issue?

2. Legal education and training

The aims of legal education are twofold: academic and professional, with the balance

⁷² Cornu, G. ‘Linguistique juridique’, in *Dictionnaire de la culture juridique* Alland, D. & Rials, S. (eds.) Paris : Presses universitaires de France, 2003), 952.36

⁷³ G  mar, J.-C. ‘Contributions of jurilinguists to law and its language: a threefold research strategy’ in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34 35-51 at 38.

⁷⁴ Husa, J. 2023 b. ‘Critical approaches to comparative legal linguistics’ in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34 52-69 at 53.

⁷⁵ Husa, J. 2023 b. ‘Critical approaches to comparative legal linguistics’ in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34 52-69 at 53 (footnote omitted)

⁷⁶ International Language and Law Association, e.g., <https://illa.online/index.php/about> Screen shot 10 February 2025 with author.

⁷⁷ Solan, L. Legal Linguistics in the US. Looking Back, Looking Ahead (19-38)

Gatitu, K. Legal Linguistics in Africa. (39-58)

Pontrandolfo, G. Legal Linguistics in Italy (59-80)

Pontrandolfo, G.. Legal Linguistics in Spain (81-99)

Vogel, F. Legal Linguistics in Germany. History, Working Groups, Concepts (99-122)

Lindroos, E. Legal Linguistics in the Nordic Countries. (123-146)

Takhtarova, S. & Sabirova, D. Russian Juridical Linguistics. (147 ff)

In *Language and Law in a World of Media, Globalisation and Social Conflicts: Relaunching the International Language and Law Association (ILLA)* Edited by Friedemann Vogel
<https://doi.org/10.3790/978-3-428-55423-2> Generated at 213.45.153.90 on 2019-07-22, 14:18:15
UTC OPEN ACCESS

between the two varying according to jurisdictions and legal education itself being seen as a 'lifelong learning' event.⁷⁸ Cownie clarifies that 'if we narrow down the type of legal education that we wish to compare, restricting ourselves, for example, to 'academic law degrees', very wide variations exist between different countries in a broad range of matters relating to legal education.'⁷⁹ However, she tellingly adds that 'training is not regarded by the academy as the sort of intellectual pursuit that qualifies a discipline to become part of the university'.⁸⁰ Legal linguistics comprises elements of both academic study and training for practice.

To paraphrase Thornton's view: Expansion of job opportunities for lawyers is driven by the global economy's need for the 'new knowledge' workers that lawyers epitomise,⁸¹ priority is given to areas of law deemed to promote business;⁸² university admissions always put pressure on course content since qualifying depends on obtaining formal confirmation as to a command of theory;⁸³ academia is now more about drills and qualifications than a place to grow,⁸⁴ so, naturally students are only interested in what the university administration requires for a pass: a grasp of doctrine and statutory law.⁸⁵

However, as Siegel rightly affirms: 'law is practice and theory, it is doing and thinking, and there has been persistent disagreement as to which aspect of law should predominate in education of lawyers.... The debate over the skills and values required to be an effective lawyer is as old as the profession itself.'⁸⁶

⁷⁸ Economides, K., 2015. 'Legal Education'. In: Wright, J. D. (editor-in-chief), *International Encyclopedia of the Social & Behavioral Sciences*, 2nd edition, vol 13, Oxford: Elsevier. 734–739 at 735-736.

⁷⁹ Cownie, F. 'Comparative Legal Education', in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds) (2023) 350-357 DOI: <https://doi.org/10.4337/9781839105609.comparative.legal.educationeven> at 351.

⁸⁰ Cownie, F. 'Comparative Legal Education', in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C & Narciso, M. (eds) (2023) 350-357 DOI: <https://doi.org/10.4337/9781839105609.comparative.legal.educationeven> at 373.

⁸¹ Thornton, M. 'The Law School, the Market and the New Knowledge Economy' - Part I/II, *German Law Journal*, volume 10, issue 6-7: Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education, July 2009, 641-668 at 645-646 DOI: <https://doi.org/10.1017/S2071832200001280>

⁸² Thornton, M. 'The Law School, the Market and the New Knowledge Economy' - Part I/II, *German Law Journal*, volume 10, issue 6-7: Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education, July 2009, 641-668 at 646 DOI: <https://doi.org/10.1017/S2071832200001280>

⁸³ Thornton, M. 'The Law School, the Market and the New Knowledge Economy' - Part I/II, *German Law Journal*, volume 10, issue 6-7: Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education, July 2009, 641-668 at 648 DOI: <https://doi.org/10.1017/S2071832200001280>

⁸⁴ Thornton, M. 'The Law School, the Market and the New Knowledge Economy' - Part I/II, *German Law Journal*, volume 10, issue 6-7: Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education, July 2009, 641-668 at 659 DOI: <https://doi.org/10.1017/S2071832200001280>

⁸⁵ Thornton, M. 'The Law School, the Market and the New Knowledge Economy' - Part I/II, *German Law Journal*, volume 10, issue 6-7: Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education, July 2009, 641-668 at 661 DOI: <https://doi.org/10.1017/S2071832200001280>

⁸⁶ Siegel, D. M., 'The Ambivalent Role of Experiential Learning in American Legal Education and the Problem of Legal Culture' (July 1, 2009). 10 *German Law Journal* 119 (No. 6, 2009), Available at SSRN: <https://ssrn.com/abstract=2591663> at 119.

On a didactic note:

- '[i]t is almost a given that ESP teaching may be (or indeed, should be) content-based (following Hutchinson/Waters 1987 and Brinton et al. 1989)';⁸⁷
- at the ILLA conference in 2023, this author presented the view that only six presentations out of some eighty in total were of practical use for teaching courses in (comparative) legal linguistics;⁸⁸
- an intercultural (legal) communication skills component would form an essential element of legal training.

The conclusions in my earlier papers are that legal linguistics is a clear "fit" in the education and training of law professionals in the context of globalization and internationalization with English as the legal lingua franca,⁸⁹ but that although the need for legal linguistics in legal education may be clear, this alone is not enough to ensure its integration in the law curriculum: other factors are likely to operate as key.⁹⁰ As we have seen,⁹¹ student interest is limited to university requirements for a pass: a grasp of doctrine and statutory law. Nevertheless, some key legal-linguistic items – such as use of plain English in legal contexts and incongruity of concepts and terms between legal systems in specific areas of law – could be taught at introductory level and reinforced from time to time throughout legal education and training.⁹² Further items are elicited from and highlighted at the end of section IV A below. Undoubtedly, though, current negative attitudes need shaping in order for legal linguistics to become a staple of the curriculum.

⁸⁷ Campos, M.A. 2010. 'Going beyond the obvious in English for Legal Purposes: a few remarks on International Legal English as a Lingua Franca in Europe', 175-194 at 177 in Linde, A; Crespo, R. (eds.), *Professional English in the European Context: The EHEA Challenge*. Bern: Peter Lang.

⁸⁸ These were:

- Termness of terms: EU multilingual legal terminology
- The autonomous interpretation of concepts of EU law and their implementation. A comparative legal-linguistic perspective
- Evaluative language of the Court of Justice of the European Union
- Legal English as a Lingua Franca? Approaching non- Romance-speaking learners
- The many faces of metaphorical imagery in legal language
- Hans Kelsen's theory of legal concepts

⁸⁹ Goddard, C. 'A Voice in the Wilderness? Legal Linguistics in Search of a Place in the Curriculum.' 2016: RGSL Research Papers, No 12.

⁹⁰ Goddard, C. 'Legal Linguistics as an Academic and Professional Discipline: Identifying Clients, Customers, Stakeholders' in Heine, C & Engberg, J. (eds.): *Reconceptualizing LSP*. Online proceedings of the XVII European LSP Symposium 2009. Aarhus 2010 – ISBN: 9788778824745

⁹¹ Thornton, M. 'The Law School, the Market and the New Knowledge Economy' - Part I/II, *German Law Journal*, volume 10, issue 6-7: Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education, July 2009, 641-668 at 661 DOI: <https://doi.org/10.1017/S2071832200001280> (n 81)

⁹² Goddard, C. 'Legal terminology in English: the challenges of international contexts'. *ESP Across Cultures* vol. 18, 2021: 105-123 ISSN 1972-8247 - ISBN 979-12-5995-006-2 - DOI http://dx.doi.org/10.4475/0062_6

3. Stakeholders

Hunter-Taylor rightly asserts '[t]he stakeholders in professional legal education are: the legal profession as employers of practitioners; admitting bodies; the community; practitioners; courts and tribunals; educational and training institutions; students; teachers and trainers; and clients',⁹³ corroborated by Mytton and Meladze, who affirm '[s]takeholders include the regulatory bodies regarding general standards and quality, the professional bodies, legal educators, law practitioners, employers and students.'⁹⁴ These views are in line with this author's own findings, which include governments, international and supranational bodies.⁹⁵ Here we could add professional associations, such as ILLA. Clearly, stakeholders would be a prime target in promoting and marketing legal linguistics. As we have seen,⁹⁶ 'training is not regarded by the academy as the sort of intellectual pursuit that qualifies a discipline to become part of the university', surely an important matter to address in dealings with stakeholders, along with student focus on black-letter law, as also noted.⁹⁷

4. Global English

The theme of English as a global lingua franca, in particular amongst lawyers, has already been explored in earlier papers. However, some updates will not go amiss, starting with those that, if uncritical, at least provide a context.

According to Pozzo: Britain's former status as the hub of an empire led to the common law system and its legal language spreading worldwide, so that today we have to deal with, on the one hand, the existence of various forms of 'world Englishes', and on the other English in its role of a lingua franca'.⁹⁸

Anesa affirms that, as the language of international legal communication, 'English is not only strengthening its role but is ever more often used globally by non-native legal professionals'⁹⁹ Sosoni and Biel highlight that many documents exist only in English as the main procedural language, which has overtaken French as such. In terms of

⁹³ Hunter-Taylor, S. 'Professional Legal Education: Pedagogical And Strategic Issues' in *University of Technology, Sydney, Law Review* <http://www.austlii.edu.au/au/journals/UTSLRev/2001/6.html>

⁹⁴ 'Legal education in transition: A study from Georgia' Mytton, E., Bournemouth University / Meladze, G., Liberty Institute, Tbilisi, Georgia <http://webjcli.ncl.ac.uk/2006/issue3/mytton-meladze3.html>

⁹⁵ Goddard, C. 'Legal Linguistics as an Academic and Professional Discipline: Identifying Clients, Customers, Stakeholders' in Heine, Carmen / Engberg, Jan (eds): *Reconceptualizing LSP*. Online proceedings of the XVII European LSP Symposium 2009. Aarhus 2010 – ISBN: 9788778824745

⁹⁶ Cownie, F. 'Comparative Legal Education', in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds.) (2023) 350-357 DOI: <https://doi.org/10.4337/9781839105609.comparative.legal.education> even at 373. (n 79)

⁹⁷ Thornton, M. 'The Law School, the Market and the New Knowledge Economy' - Part I/II, *German Law Journal*, volume 10, issue 6-7: Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education, July 2009, 641-668 at 661 DOI: <https://doi.org/10.1017/S2071832200001280> (n 81); Goddard, C. 'A Voice in the Wilderness? Legal Linguistics in Search of a Place in the Curriculum.' 2016: RGSL Research Papers, No 12. (n89).

⁹⁸ Pozzo B. 'Comparative law and language' in Bussani M., Mattei U., (eds.) *The Cambridge Companion to Comparative Law*. Cambridge Companions to Law. Cambridge University Press; 2012: 88-114 at 94.

⁹⁹ Anesa, P., 'Towards a Conceptualization of Legal English as a Lingua Franca?' Online Published: October 13, 2019 doi:10.5539/ijel.v9n6p14 URL: <https://doi.org/10.5539/ijel.v9n6> 14-21 at 14

legislation, English has also taken over as the main language of drafting, of legislative proposals and of working parties. In short, English is now the EU lingua franca.¹⁰⁰ For his part, Campos asserts that while EU documents do not set a particular language for communication, English has nevertheless played that role, especially where legal content is involved.¹⁰¹ Kocbek avers that English is today largely chosen by and for those involved in international business communication as their common language,¹⁰² which is driven by economic power, hand in hand with development and growth of new technologies and use of English by many important international organisations as their main working language, adding that non-native speakers use English today as a common language in communication amongst themselves.¹⁰³ Orts places English as the uncontested common language of communication among professionals. At the same time, some of these and others voice a more nuanced, cautionary note: Campos highlights a 'problem with most materials and courses in legal English' namely legal English being manifestly the tool for international legal communication because English is the lingua franca for international communication, cautioning against uncritical acceptance of UK or US legal terms...¹⁰⁴ adding that 'if legal English is to be used as a lingua franca, a conscious effort must be made to eliminate some of the culturally distinct elements which are contained in some of its genres'.¹⁰⁵

Kjaer states that 'the dominant English language is a weak, hybrid English that does not belong to anybody, least of all the English.'¹⁰⁶ Kocbek perceptively declares that, as the most widely used common language globally, English must adapt 'by adopting terms and concepts from other cultures and, within the EU, take into consideration the existing discrepancies between the continental and the Anglo-American legal systems.'¹⁰⁷ Orts avers that, while international use of English allows negotiation of specific common goals in order for companies and institutions to extend globally and internationally, nevertheless 'despite its role as a lingua franca, English is culturally marked and needs to be adapted by the actors in the communication process in the transnational context.'¹⁰⁸

¹⁰⁰ Sosoni, V. & Biel, Ł., 'EU Legal Culture and Translation' in *International Journal of Language & Law* vol. 7 (2018) 2-3 DOI: 10.14762/jll.2018.001

¹⁰¹ Campos, M.A. 2010. 'Going beyond the obvious in English for Legal Purposes: a few remarks on International Legal English as a Lingua Franca in Europe', 175-194 at 176 in Linde, A, Crespo, R. (eds.), *Professional English in the European Context: The EHEA Challenge*. Bern: Peter Lang.

¹⁰² Kocbek, A. 'Language and Culture in International Legal Communication' in *Managing Global Transitions* 4 (3) 2006: 231-247 at 237.

¹⁰³ Kocbek, A. 'Language and Culture in International Legal Communication' in *Managing Global Transitions* 4 (3) 2006: 231-247 at 238.

¹⁰⁴ Campos, M.A. 2010. 'Going beyond the obvious in English for Legal Purposes: a few remarks on International Legal English as a Lingua Franca in Europe', 175-194 at 176 in Linde, A; Crespo, R. (eds.), *Professional English in the European Context: The EHEA Challenge*. Bern: Peter Lang.

¹⁰⁵ Campos, M.A. 2010. "Going beyond the obvious in English for Legal Purposes: a few remarks on International Legal English as a Lingua Franca in Europe", 175-194 at 177 in Linde, A; Crespo, R. (eds.), *Professional English in the European Context: The EHEA Challenge*. Bern: Peter Lang.

¹⁰⁶ Giannoni, D. S. & Frade, C. (eds.) *Researching Language and the Law – Textual Features and Translation Issues. [Linguistic Insights. Studies in Language and Communication, Volume 121]* Bern [et al.], Peter Lang 2010. ISBN: 978-3-03-430443-6. Review by Kjaer, A. L.

¹⁰⁷ Kocbek, A. 'Language and Culture in International Legal Communication' *Managing Global Transitions* 4 (3) 2006: 231-247 at 231.

¹⁰⁸ Orts, M.Á. Legal English and Legal Spanish: The Role of Culture and Knowledge in the Creation and Interpretation of Legal Texts. *ESP Today* Vol. 3(1)(2015): 25-43 at 28.

Perhaps the most telling caveat comes from Pozzo, who stresses that EU English is not that of the common law but a new, evolved English, with introduction of neologisms in order to translate civil law concepts.¹⁰⁹ Indeed, she asks whether English is the right choice for achieving a standard European legal terminology,¹¹⁰ stressing that while English is the most widely spoken language it is also the least suitable for translating civil law concepts, adding that the future prospect is of a continental legal English which differs greatly from British legal English, involving a new task: to translate from EU English to British English.¹¹¹

Any course in (comparative) legal linguistics would need to emphasise these views.

5. Who is it for?

Although Galdia asserts that ‘Legal translation... is one of the very few areas of jurilinguistic studies, next to legislative drafting and certain forensic-linguistic tasks, where a practical profession can be exercised by a person who studies the subject systematically’,¹¹² in reality a far wider area of practice suggests itself, based on this author’s own experience over some twenty years in both teaching and practising legal linguistics:¹¹³

- native/non-native speaker lawyers practising in English internationally;
- legal translators and interpreters;
- work in terminology institutes in the field of legal terminology;
- drafting (producing) legal texts in English by non-native speakers, e.g.:
 - documents (contracts, legal opinions, newsletters, commentaries)
 - book projects and articles
 - reports (e.g. due diligence, IPO prospectus, EBRD, Commission)
 - other (e.g., public information, website marketing, law reports)
- revising, proofreading and editing texts;
- research;
- transposing new concepts from source to target legal systems;
- teaching, e.g., legal writing, contract drafting.¹¹⁴

These practical applications of legal linguistics would be a vital component in marketing and promotion.

¹⁰⁹ Pozzo, B. Comparative law and language. In: Bussani M, Mattei U, (eds.) *The Cambridge Companion to Comparative Law*. Cambridge Companions to Law. Cambridge University Press; 2012:88-114 at 109.

¹¹⁰ Pozzo, B. Comparative law and language. In: Bussani M, Mattei U, (eds.) *The Cambridge Companion to Comparative Law*. Cambridge Companions to Law. Cambridge University Press; 2012:88-114 at 110.

¹¹¹ Pozzo, B. Comparative law and language. In: Bussani M, Mattei U, (eds.) *The Cambridge Companion to Comparative Law*. Cambridge Companions to Law. Cambridge University Press; 2012:88-114 at 110-111.

¹¹² Galdia, M. ‘Researching the language of law’, in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34’, 17-34, 30.

¹¹³ Documentary evidence on file with author.

¹¹⁴ e.g., courses at RGSL & ULapland: materials on file with author.

IV. Areas Covered

A. Views from some of the leaders in the field

Galdia, though speaking of 'this loosely defined and weakly institutionalized area of knowledge',¹¹⁵ does include '...legal argumentation, legal interpretation, and (because of its practical importance) also legal translation',¹¹⁶ adding that '[l]egal linguistics appears today as (the) Poznań school of legilinguistics, M.T. Liziowska's communicational theory of law, Heikki E.S. Mattila's comparative legal linguistics, or [his own] pragmatic legal linguistics.'¹¹⁷ Moreover, he asserts that: 'Gérard Cornu's *Linguistique juridique* supports the view that legal linguistics is a subject of study and teaching and not a collection of issues for ... occasional, interdisciplinary dialogue between jurists and linguists',¹¹⁸ that '[t]he legal-linguistic method is neither legal nor linguistic, it is legal-linguistic... the legal-linguistic method is a tool that tolerates diversity of views about the researched subject matter... due to the elasticity of the legal-linguistic method'¹¹⁹ and '[t]he most important practical question in this area of legal-linguistic methodology is what is the legal linguist actually expected to do, especially what he or she is expected to research.'¹²⁰

Gémar, like Galdia, hints at different research perspectives, such as history of law, sociology of law, philosophy of law, legal anthropology, economic analysis of law.¹²¹

Husa presents 'a picture of the main scholarly ingredients and contemporary state of

¹¹⁵ Galdia, M. 'Researching the language of law', in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34, 17-34, 17.

¹¹⁶ Galdia, M. 'Legal Constructs: Reflections on Legal-Linguistic Methodology', *Legilinguistic studies* 12 Studies in Legal Language and Communication studies DOI 10.48226/978-83-66666-37-5 Faculty of Modern Languages and Literature Adam Mickiewicz University, Poznań 2021, 25.

¹¹⁷ Galdia, M. 'Legal Constructs: Reflections on Legal-Linguistic Methodology', *Legilinguistic studies* 12 Studies in Legal Language and Communication studies DOI 10.48226/978-83-66666-37-5 Faculty of Modern Languages and Literature Adam Mickiewicz University, Poznań 2021, 33.

¹¹⁸ Galdia, M. 'Legal Constructs: Reflections on Legal-Linguistic Methodology', *Legilinguistic studies* 12 Studies in Legal Language and Communication studies DOI 10.48226/978-83-66666-37-5 Faculty of Modern Languages and Literature Adam Mickiewicz University, Poznań 2021, 41.

¹¹⁹ Galdia, M. 'Legal Constructs: Reflections on Legal-Linguistic Methodology', *Legilinguistic studies* 12 Studies in Legal Language and Communication studies DOI 10.48226/978-83-66666-37-5 Faculty of Modern Languages and Literature Adam Mickiewicz University, Poznań 2021, 62.

¹²⁰ Galdia, M. 'Legal Constructs: Reflections on Legal-Linguistic Methodology', *Legilinguistic studies* 12 Studies in Legal Language and Communication studies DOI 10.48226/978-83-66666-37-5 Faculty of Modern Languages and Literature Adam Mickiewicz University, Poznań 2021, 153.

¹²¹ Gémar, J.-C. 'Contributions of jurilinguists to law and its language: a threefold research strategy' in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34' 35-51 at 37 and with concrete examples 37-49.

comparative legal linguistics an evolving field of study',¹²² explaining that 'legal linguistics is an interdisciplinary field that ... chooses to abandon the monolingual perspective. It combines modern comparative law and legal linguistics while tackling the challenge of a multilingual research arena,'¹²³ adding that '[l]egal linguistics ... targets the development, use and characteristics of legal language – mainly its terminology, syntax and semantics. The amalgam of comparative law and legal linguistics... reaches out to other branches of knowledge including legal history, legal semiotics and legal informatics.'¹²⁴

This introductory section has highlighted elements for studies in legal linguistics, including legal history, legal semiotics, legal informatics, sociology of law, philosophy of law, legal anthropology, economic analysis of law, legal language, legal argumentation, legal interpretation, legal translation/interpreting, justifying legal decisions, providing legal advice, stating and commenting on the law, in addition to the following from earlier research: knowledge of domestic law, EU law, comparative law, cultural studies, language for specific purposes, linguistic analysis, semantics and at least two languages, legal drafting, an understanding of special features of legal texts, semiotics and discourse analysis, as well as the reciprocal influence of EU and Member State national law, human rights law and international law. The following section examines some of these as overlapping core elements.

B. Core elements of legal linguistics

1. Legal language

In 'What we can say the law is...'¹²⁵ Hedley Christ introduces law through the theme of language. Glogar develops the theme, thoroughly analysing legal language as a concept.¹²⁶ Galdia avers that '[l]aw is language',¹²⁷ adding that '[l]egal [l]inguistics deals with ... language use in law'¹²⁸ and 'linguistic operations in law, e.g. creating law with the help of language, legal argumentation, legal interpretation, legal translation, justifying legal decisions, providing legal advice, stating and commenting on the law'.¹²⁹ In the

¹²² Husa, J. 'Critical approaches to comparative legal linguistics', in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34, 52-69 at 54.

¹²³ Husa, J. 'Critical approaches to comparative legal linguistics', in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34 52-69 at 64.

¹²⁴ Husa, J. 'Critical approaches to comparative legal linguistics', in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34, 52-69 at 64-65.

¹²⁵ Christ, H. 'What can we say law is: Does linguistics help in the analysis?' *Diretto e Processo* 2021, 39-55

¹²⁶ Glogar, O. 'The Concept of Legal Language: What Makes Legal Language 'Legal''? May 2023 *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique* 36(3):1-27 DOI: 10.1007/s11196-023-10010-5

¹²⁷ Galdia, M. 'Legal Constructs: Reflections on Legal-Linguistic Methodology', *Legilinguistic studies* 12 Studies in Legal Language and Communication studies DOI 10.48226/978-83-66666-37-5, 68.

¹²⁸ Galdia, M 2009, *Legal Linguistics*. Frankfurt am Main: Peter Lang, at 17.

¹²⁹ Galdia, M. *Legal Linguistics*. Frankfurt am Main: Peter Lang, at 142

same vein, he avers that ‘...in the research of law the primary interest should be directed to its language because law is... primarily a linguistic phenomenon’¹³⁰ and ‘[s]haping... legal language is a task of legal linguists as is its analysis in comparative legal linguistics.’¹³¹

According to Cao, ‘Legal language has developed its characteristics to meet the demands of the legal system in which it is expressed.... Each legal language is the product of a special history and culture’,¹³² adding ‘[l]anguage and culture or social contexts are closely integrated and inter-dependent.’¹³³

At national (monolingual) level, legal linguistics can address problems of text organisation and style, e.g., placing of discourse markers, sentence length and sentence word order.

Plain language¹³⁴ might involve, e.g., ‘translating’ a standard form contract between a bank and its private customers from ‘traditional’ legal English to its plain modern counterpart. Thus:

- 2.2 The bank hereby expressly agrees that the account holder or any authorized user will not be liable hereunder for any unauthorized instruction in so far as such instruction was received after notification had been given to the bank by said account holder or authorized user that the password had become known to some third party or that the actions, negligence or other breach of security attributable to the bank has caused said unauthorized instruction.

becomes:

- 2.2 You will not be liable for instructions not authorised by a User if:
 - 2.2.1 they are given after that User (or you) has notified us that they think the Password is known to someone else;
 - 2.2.2 the Security Codes have become known through our actions or negligence;
 - 2.2.3 the instruction was given as a result of some other breach of security, not caused by you or a User.¹³⁵

To further illustrate, ‘ownership’ is not defined at EU law level, and MS legal systems define ownership differently, while a dichotomy divides civil law and common law understandings of ownership.¹³⁶

¹³⁰ Galdia, M. ‘Researching the language of law’, in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34, 17-34 at 19.

¹³¹ Galdia, M. ‘Researching the language of law’, in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34, 17-34 at 21.

¹³² Cao, D. ‘Translating Law’, *Multilingual Matters* 2007, 28.

¹³³ Cao, D. *Translating Law*, *Multilingual Matters* 2007, 31.

¹³⁴ Williams, C. “Changing with the Times: The Evolution of Plain Language in the Legal Sphere” in *Alicante Journal of English Studies* 28 (2015): 5-12; Campos, M.Á. & Isani, S. ‘Aspects of Language and the Law: Exploring Further Avenues’, 183-203 ... with an overview of the history of the Plain English movement in the domain of law, its main successes, areas of resistance and a glimpse of what the digital world will imply for legal language.

¹³⁵ Source: Lloyds TSB: copy in author’s possession.

¹³⁶ Kaisto, J., Juutilainen, T. & Kauranen, J. ‘Non-fungible tokens, tokenization, and ownership’, in *Computer Law & Security Review* Volume 54, September 2024, 105996. The authors explain that civil

Language of law is also about, e.g.:

- legal argumentation,
- different genres of legal discourse
- semiotics of law, and
- legal rhetoric:
 - 'One should aim not at being possible to understand, but at being impossible to misunderstand.'¹³⁷
- the language used between lawyer and client;
- the language used among lawyers;
- the language of the courts (much of it oral);
- the language of law reports;
- the language of academic texts on legal matters;
- the language of legal documents.

Clearly, legal language would form an essential part of any legal linguistics course.

2. Legal culture

Although the multiple definitions of legal culture rule it out as a variable in legal research, at the same time common sense cautions against abandoning the term altogether in legal linguistic studies. For, as Cao puts it, '[l]egal language has developed its characteristics to meet the demands of the legal system in which it is expressed.... Each legal language is the product of a special history and culture,¹³⁸ defining legal culture as 'historically conditioned attitudes about the nature of law and about the proper structure and operation of a legal system ... at large in ... society'... with law as an expression of ... culture...expressed through legal language.'¹³⁹ Cotterrell sees culture as a 'lens through which all aspects of law must be examined in order to gain access to the meaning of foreign law and legal phenomena.'¹⁴⁰

Cancino clarifies that study of legal language, which is so tightly bound to culture, in reality also involves cultural training, which in turn enables students to 'achieve intercultural competences as culture comes alive in ... legal terms, fixed expressions, metaphors, collocations, etc. in the shape of historical, societal and legal knowledge'. Stressing that law is 'no more or less than part of a culture's way of expressing its sense

law recognizes a limited number of property rights and a limited number of legal objects that can be subjected to these property rights, whereas common law is more flexible and allows private parties more freedom in the types of ownership interests that they can create. In civil law jurisdictions, property is based on law or legal acts. Ownership is thus an absolute dominion encompassing all the listed rights to the relevant object but in the common law tradition, the notion of ownership includes a variety of different rights to the same property.

¹³⁷ *Institutio Oratoria* (Institutes of Oratory)". Quintilian (Book VIII, Chapter II), circa 95 AD. (also from Quintilian my favourite 'The advocate who seeks to persuade should first seek to please'.

¹³⁸ Cao, D. 'Translating Law', *Multilingual Matters* 2007, 28.

¹³⁹ Cao, D. 'Translating Law', *Multilingual Matters* 2007, 31.

¹⁴⁰ Cownie, F. 'Comparative Legal Education', in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds.) (2023) 350-357 DOI: <https://doi.org/10.4337/9781839105609.comparative.legal.education> at 350; Cotterrell, R. *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory*, Ashgate 2006; also Comparative Law and Legal Culture in 709-738 <https://doi.org/10.1093/oxfordhb/9780199296064.013.0022>

of the order of things', she notes that '[l]egal language differs from other languages for specific purpose in that law is entirely created by humans', adding that one of the many attempts to define legal culture' is the 'ideas, attitudes, values, beliefs and behaviour patterns about law and the legal system.'¹⁴¹

Nelken explains that legal culture *qua* concept suggests its potential to 'make comparisons of legal systems more sociologically meaningful by alerting us to the way aspects of law are themselves embedded in larger frameworks of social structure and culture that constitute and reveal the place of law in society'. After giving many illustrations, including 'the nature of legal education and legal training', he adds that '[l]egal culture can be discerned in different approaches to regulation, administration and dispute resolution...and the part played by 'alternatives' to law, including not only arbitration and mediation but also the many 'infrastructural' ways of discouraging or resolving disputes.'¹⁴²

This section, perhaps more than any other in this chapter, emphasises that learners of (legal) English need intercultural communication skills training as an integral part of their study in that it should enable them to communicate more appropriately and effectively with much greater understanding and self-awareness.

3. Legal translation (legal dictionaries)

Cao highlights the influence of legal traditions and legal culture on how law is written. As a result, written legal language echoes the vital constituents of a legal culture, as well as presenting the legal translator with its many-sided connotations.¹⁴³

Pozzo highlights three problems with legal translation:

- translating legal concepts, with their deep cultural ties;
- expressing the particular style, or characteristics, of a language disclosing a particular legal mentality – difficult to achieve in another language;
- discerning unwritten values innate in a particular community which affect:
 - interpreting legal concepts,
 - filling gaps in the text and
 - settling language uncertainty.¹⁴⁴

She adds that '[i]n order to uncover the invisible patterns and ascertain the immanent values of a legal system, a comparative law analysis needs to understand the deep links between law and culture.'¹⁴⁵

¹⁴¹ Cancino, R. 'Legal Language – a Cultural Ambassador. A Language for Various Purposes, not only for Specific Purpose', 2014. Conference paper <https://www.semanticscholar.org/paper/Legal-Language-%E2%80%93-a-Cultural-Ambassador.-A-Language-Cancino/5931185a1851c1f59009eb3504a541f66742cf1f> at 1.

¹⁴² Nelken, D. 'Legal Culture' in Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds.) (2023) 436–443 at 438 DOI: <https://doi.org/10.4337/9781839105609.legal.culture>

¹⁴³ Cao, 'Translating Law', *Multilingual Matters* 2007, 29.

¹⁴⁴ Pozzo, B. 'Comparative law and language'. In: Bussani M., Mattei U., (eds.) *The Cambridge Companion to Comparative Law*. Cambridge Companions to Law. Cambridge University Press; 2012: 88-114 at 95.

¹⁴⁵ Pozzo B. 'Comparative law and language'. In: Bussani M., Mattei U., (eds.) *The Cambridge Companion to Comparative Law*. Cambridge Companions to Law. Cambridge University Press; 2012: 88-114 at 104.

According to de Groot and van Laer:

Comparative lawyers need legal translation and legal translators need comparative law research. Translators who must translate the content of legal documents... are constantly confronted by comparative law. Arguably, comparison of the content of the legal terminology of the source legal system and of concepts behind the legal terminology of a legal system which uses the target language as its legal language should be translators' core activity during the translation process.¹⁴⁶

The same authors add that, in the search for the golden fleece of equivalence, acceptable equivalence is not the same as absolute equivalence¹⁴⁷ and that the translator is then left with three subsidiary solutions:

- using the source language term 'as is', or a transliterated variant;¹⁴⁸
- paraphrasing to describe the source language term;¹⁴⁹
- devising a neologism – inventing a (novel) term for the target language, if necessary with a brief explanatory footnote.¹⁵⁰

De Groot and van Laer offer desirable characteristics for dependable legal dictionaries, commenting that 'too many dictionaries fail to offer much more than glossaries containing unsubstantiated translations'.¹⁵¹

Because it incorporates elements of and links among legal language, legal traditions, legal culture, legal terminology, legal writing and comparative law, legal translation fits neatly within the frame of any course of study in legal linguistics.

4. Legal terminology

At the outset, it is important to understand that '[w]hile legal terminology...is definitely part of legal-linguistic research, it is by far not exhaustive in terms of legal language.'¹⁵² But, as noted in the previous section, legal terminology forms a vital element of translation within the frame of legal linguistics. (Comparative) legal linguistics can

¹⁴⁶ Groot, G-R de & Laer, C.J.P. van Legal Translation, in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds.) (2023): 524-529 DOI: <https://doi.org/10.4337/9781839105609.legal.translation> at 524.

¹⁴⁷ Groot, G-R de & Laer, C.J.P. van Legal Translation, in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds.) (2023): 524-529 DOI: <https://doi.org/10.4337/9781839105609.legal.translation> at 525.

¹⁴⁸ Groot, G-R de & Laer, C.J.P. van Legal Translation, in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds.) (2023): 524-529 DOI: <https://doi.org/10.4337/9781839105609.legal.translation> at 526-7.

¹⁴⁹ Groot, G-R de & Laer, C.J.P. van Legal Translation, in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds.) (2023): 524-529 DOI: <https://doi.org/10.4337/9781839105609.legal.translation> at 527.

¹⁵⁰ Groot, G-R de & Laer, C.J.P. van Legal Translation, in *Elgar Encyclopedia of Comparative Law* Smits, J. M., Husa, J., Valcke, C. & Narciso, M. (eds.) (2023): 524-529 DOI: <https://doi.org/10.4337/9781839105609.legal.translation> at 527-529.

¹⁵¹ Groot, G-R de & Laer, C.J.P. van Legal Translation, in *Elgar Encyclopedia of Comparative Law* Smits, J.M., Husa, J. Valcke, C. & Narciso, M. (eds.) (2023): 524-529 DOI: <https://doi.org/10.4337/9781839105609.legal.translation> at 528-9.

¹⁵² Galdia, M., 'Researching the language of law', in *Research Handbook on Jurilinguistics*, Wagner, A. & Matulewska, A. (eds.) 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34, 17-34 at 21.

address problems of terminology at international level. In the section on legal language, we saw that the term 'ownership' suffers from problems as between some EU Member States as well as between common law and civil law jurisdictions.¹⁵³ And '[o]ne of the problems (of multilingualism in Europe) which needs highlighting arises from a lack of definitions for legal terms in directives, which then are given different meanings in the various national systems.'¹⁵⁴ But this is not the only problem internationally.

For example, a terminological item of international importance may require:

- extensive discussion between stakeholders
- coordination of terms stemming from different legal systems
- more than a brief dictionary definition.¹⁵⁵

Another example is the Venice Commission Rule of Law Checklist, with six essential components of the rule of law plus benchmarks & standards.^{156 157}

Paper 6 also examines the terms 'shipowner' and 'seafarer', both key concepts in international maritime regulation,¹⁵⁸ as codified in the Maritime Labour Convention 2006 guidelines, in terms of securing seafarers' rights, revealing multiple 'seafarer' legal definitions in existing maritime conventions, including those of the International Labour Organisation (ILO). A similar examination of the term 'shipowner' revealed that the term can even apply to persons or organizations that are not actually shipowners and that some ILO conventions simply do not define the term at all.¹⁵⁹

Yet another example is the term 'marriage' in the context of the late singer Jerry Lee Lewis's (third) marriage in the late 1950s to his thirteen year-old first cousin in the state of Mississippi, where the ceremony occurred, and which at the time had no official minimum age for marriage, nor was first-cousin marriage illegal there until 2010.¹⁶⁰

¹⁵³ See n 136 Juutilainen, T., Kaisto, J. & Kauranen, J. 2024 *Computer Law & Security Review*, Volume 54, September 2024, 105996 <https://doi.org/10.1016/j.clsr.2024.105996>

¹⁵⁴ Pozzo, B. 'Comparative law and language' in: Bussani M., Mattei, U., (eds.) *The Cambridge Companion to Comparative Law*. Cambridge Companions to Law. Cambridge University Press; 2012: 88-114 at 106.

¹⁵⁵ For more on this, see above in the section on legal translation as well as Goddard, C, 'Legal terminology in English: the challenges of international contexts', in *ESP Across Cultures* vol. 18, 2021: 105-123 at 107 ISSN 1972-8247 - ISBN 979-12-5995-006-2 - DOI http://dx.doi.org/10.4475/0062_6 .

¹⁵⁶ Goddard, C. 'Legal terminology in English: the challenges of international contexts', in *ESP Across Cultures* vol. 18, 2021: 105-123 at 107 ISSN 1972-8247 - ISBN 979-12-5995-006-2 - DOI http://dx.doi.org/10.4475/0062_6

¹⁵⁷ Venice Commission [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)

¹⁵⁸ Goddard, C. 'Legal terminology in English: the challenges of international contexts', in *ESP Across Cultures* vol. 18, 2021: 105-123 at 109- ISSN 1972-8247 - ISBN 979-12-5995-006-2 - DOI http://dx.doi.org/10.4475/0062_6

¹⁵⁹ Goddard, C. Legal terminology in English: the challenges of international contexts, in *ESP Across Cultures* vol. 18, 2021: 105-123 at 109-110 ISSN 1972-8247 - ISBN 979-12-5995-006-2 - DOI http://dx.doi.org/10.4475/0062_6

¹⁶⁰ Although at the time Lewis was still married to his second wife, he and his third bride went through a second ceremony once the divorce from his second wife had been finalised.

News of the bride's age and family relationship emerged while Lewis was on a concert tour of England: the scandal was such that the tour had to be cancelled and Lewis had to remake his career.

In short, seemingly simple terms such as 'marriage', 'seafarer', 'shipowner' and 'rule of law' may mean different things to different people in different legal systems: all the more need, then, for practitioner awareness and ability to undertake a comparative law analysis, not to mention reliable legal dictionaries.

5. Comparative law

Although Paper 3¹⁶¹ explains why comparative law may be ruled out as a variable in some areas of legal research,¹⁶² at the same time it cautions against abandoning the term altogether in legal linguistic studies. Indeed, Raitio stresses the use and importance of comparative law in ECJ cases,¹⁶³ while Husa notes that 'surveying the legal systems of the Member States is an important part of legislative drafting in the European Union.'¹⁶⁴ Husa clarifies that '[f]or comparative study of law... the final object of interest is not the foreign legal language as such... but the substantive content of foreign law', which in turn would ideally require knowledge of the foreign language concerned, thus allowing the researcher to weigh up 'the legal functions adopted in different systems for a similar type of socio-legal problem', using 'factors... drawn from history, economics, politics, culture and... geography.'¹⁶⁵

Positing that '[t]he scholarly distance between legal translation and comparative law is filled by comparative legal linguistics,'¹⁶⁶ Husa avers that 'comparative study of law is inherently multilingual and interdisciplinary.... so that [c]omparative legal linguistics means adding linguistic analyses – such as history, theory, terminology, or vocabulary – to what would otherwise be merely a language-savvy comparative study of law'¹⁶⁷ Husa

¹⁶¹ Goddard, C. 'Fishing with new nets in familiar waters: a legal linguistic foray into comparative law, legal culture, and legal ideology' in Lapland Law Review, 2011, issue 1. Law and Language in Partnership and Conflict, Salmi-Tolonen, T., Tukiainen, I., Foley, R. (eds.), 122-144. ('Paper 3')

¹⁶² Cotterrell, R. 'The Concept of Legal Culture' in Nelken, D. (ed.) (1997) *Comparing Legal Cultures* Dartmouth: Aldershot 13-30, 13: 'The main conceptual mechanisms of comparative law seem inadequate for the purposes of sociology of law, since the latter requires comparison not of legal doctrine as such but of legal ideas and practices regarded as inseparable from a broader social context.'

¹⁶³ Raitio, J. *passim*, 'European Union Law and Comparative Law', in Smits, J. M., Husa, J. Valcke, C., & Narciso, M. (eds.) *Elgar Encyclopedia of Comparative Law* (2023) 78-85 DOI: <https://doi.org/10.4337/9781839105609.comparative.law>

¹⁶⁴ Husa, J. 'Merging International Law and Comparative Law: Balancing Between Normative and Non-Normative' (2021) 85 *The Rabel Journal of Comparative and International Private Law* 745-774 at 762.

¹⁶⁵ Husa, J. 'Critical approaches to comparative legal linguistics', in Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics*, 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34, 52-69 at 62.

¹⁶⁶ Husa, J. 'Critical approaches to comparative legal linguistics', in Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics*, 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34, 52-69 at 65.

¹⁶⁷ Husa, J. 'Critical approaches to comparative legal linguistics', in Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics*, 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34, 52-69 at 63.

goes on to elucidate that, while legal systems were once seen in terms of comparative law as formal nation-state legal systems, '[t]oday the term is used more broadly so that it contains not only rules, institutions, case law and doctrines but also even some elements of social relations, historical factors, ideologies, culture and tradition.'¹⁶⁸

Elements considered would typically include: 'history, ideology, legal style, legal reasoning and thinking, codification level of law, judicial reasoning, structural system of law, structure of court system, spirit and mentality of legal actors, training of lawyers, law's relation to religion and to politics, the economical (sic) basis of law, the background philosophy of legal thinking, the doctrine of sources of ... law, the empirical effectiveness of formal legal rules, the role of tradition in law, and paradigmatic societal beliefs about law,'¹⁶⁹ stressing above all that: 'the comparatist must grasp the legal style of a system and use the distinctive features as a basis for classifying legal systems into groups,' explaining that within that style many individual factors need to be considered: 'historical development, distinctive mode of legal thinking, characteristic legal institutions, sources of law and ideology'.¹⁷⁰

Thus comparative law clearly embraces, overlaps or connects with other items so far examined in this section: legal language, legal terminology, legal culture, legal translation and, as we shall see, legal history.

6. Legal history

The study of legal history covers a wide range of elements, including legal sociology, legal ideology, or legal culture, such as the effects of law on social change and vice-versa, or the interventionist approach of the state, or attitudes to law. Equally, legal history may examine political and economic influences on law and legal systems, for example tracing the effects on legal systems of changes in public policy, technological change, and globalisation.¹⁷¹

Heutger and Schrage explain that legal history and comparative law share many common features: 'They both add knowledge to legal understanding and ask for in-depth studies and the knowledge of at least one foreign language. It is not always easy to draw the borderline between the two disciplines,'¹⁷² adding that 'legal history and comparative law are matching subjects, providing all lawyers with deeper insight into

¹⁶⁸ Husa, J. 'Legal Families' in Smits, J. M., Husa, J. Valcke, C., & Narciso, M. (eds.) *Elgar Encyclopedia of Comparative Law* (2023) 443-452 at 443 <https://doi.org/10.4337/9781839105609.families>

¹⁶⁹ Husa, 'Legal Families' in Smits, J. M., Husa, J. Valcke, C., & Narciso, M. (eds.) *Elgar Encyclopedia of Comparative Law* (2023) 443-452 at 444 <https://doi.org/10.4337/9781839105609.families>

¹⁷⁰ Husa, J. 'Legal Families' in Smits, J. M., Husa, J. Valcke, C., & Narciso, M. (eds.) *Elgar Encyclopedia of Comparative Law* (2023) 443-452 at 447-8 <https://doi.org/10.4337/9781839105609.families>

¹⁷¹ Finnish legal history: some topics from a comparative viewpoint. PhD written exam paper. University of Lapland. 2011. Copy with author and on file at ULapland.

¹⁷² Heutger, V. & Schrage, E. Legal History and Comparative Law. In Smits, J. M., Husa, J. Valcke, C., & Narciso, M. (eds.) *Elgar Encyclopedia of Comparative Law* (2023): 458-470 at 470. DOI: <https://doi.org/10.4337/9781839105609.legal.history.comparative.law>

legal solutions in time or in geographical settings.¹⁷³ On a practical note, they observe: 'Any lawyer who has worked in codification commissions will realize that legal history and comparative law come together there.'¹⁷⁴

V. Outlook

According to Galdia, legal linguistics as a field of professional activity is seldom undertaken by scholars and others whose work involves only legal-linguistic matters. This is partly due to lack of institutional support for legal linguistics because,¹⁷⁵ although in principle committed to progress, 'established academia' nevertheless does not always embrace newly-fledged fields of study such as legal linguistics.¹⁷⁶ And all the more so when (comparative) legal linguistics comprises elements of both academic study and training for practice because, as we have seen, 'training is not regarded by the academy as the sort of intellectual pursuit that qualifies a discipline to become part of the university'.¹⁷⁷ In addition, '...traditional legal subjects enjoy a high level of institutional anchorage while (legal linguistic) research is sporadic and largely unsystematic due to lack of institutional support for it.'¹⁷⁸ As we have also seen, legal linguistics as an emerging discipline appears to have no such patronage.¹⁷⁹ What is more, universities are under pressure to focus on ECTS credits in main areas of the curriculum. And, as already noted,¹⁸⁰ student interest is limited to university requirements for a pass: a grasp of doctrine and statutory law.

All in all, it is hard to disagree with Galdia when he states: 'problems of institutionalization of research... in this area... may impede its further development.'¹⁸¹ although he remains hopeful that 'in the future some of the discussed areas of research

¹⁷³ Heutger, V. & Schrage, E. Legal History and Comparative Law. In Smits, J. M., Husa, J. Valcke, C., & Narciso, M. (eds.) *Elgar Encyclopedia of Comparative Law* (2023): 458-470 at 470. DOI: <https://doi.org/10.4337/9781839105609.legal.history.comparative.law>

¹⁷⁴ Ibid.

¹⁷⁵ See Tuori, n 21.

¹⁷⁶ Galdia, M. 'Conceptual Origins of Legal Linguistics' *Comparative Legilinguistics* 18-56 vol. 47/2021 DOI: <http://dx.doi.org/10.2478/cl-2021-0011> at 59.

¹⁷⁷ Cownie, F. 'Comparative Legal Education', in Smits, J. M., Husa, J. Valcke, C., & Narciso, M. (eds.) *Elgar Encyclopedia of Comparative Law* (eds) (2023) 350-357 DOI: <https://doi.org/10.4337/9781839105609.comparative.legal.education> even at 373. n 71

¹⁷⁸ Galdia, M. 'Researching the language of law', in Wagner, A & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics*, 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34, 17-34 at 20.

¹⁷⁹ See Tuori, n 21.

¹⁸⁰ Thornton, M. 'The Law School, the Market and the New Knowledge Economy' - Part I/II, *German Law Journal*, volume 10, issue 6-7: Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education, July 2009, 641-668 at 661 DOI: <https://doi.org/10.1017/S2071832200001280> (n 81)

¹⁸¹ Galdia, M. 'Researching the language of law', in Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics*, 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA 17-34, 17-34 at 20.

could merge to form a truly comprehensive and better-defined new discipline which might receive a new denomination or simply be called, for instance, legal linguistics.¹⁸² Husa is of a similar view: 'comparative legal linguistics can expect a bright future... as a special branch of knowledge combining comparative study of law and legal linguistics.... the advantages of such an interdisciplinary field are clear – but so are the obstacles, too, as all interdisciplinary fields are at risk of being overshadowed by older established fields'¹⁸³

Other major challenges remain. For example, marketing (comparative) legal linguistics to potential applicants, employers, educational institutions and stakeholders must show legal linguistics as having clear practical professional relevance. In addition, concerted institutional action (e.g. ILLA) is required.

Meanwhile, as to key components that future lawyers need to acquire during education and training (i.e. the basics of (comparative) legal linguistics), two areas stand out as being realistically achievable by promoting:

- awareness of general differences between the civil-law and common-law legal systems, in particular conceptual and terminological aspects;
- use of plain (legal) English/legal writing in English;
- intercultural communication skills generally and in legal contexts

Some key legal-linguistic items such as incongruity of concepts and terms between legal systems could be taught at an introductory level and reinforced from time to time throughout legal education and training (e.g., (contract) drafting in ICT/international contexts). In addition, items such as specific writing skills in English could be introduced at an introductory level and reinforced in courses on specific areas of law. Other items not included in this chapter for reasons of space include: legal theory, legal semiotics, legal informatics, sociology of law, philosophy of law, legal anthropology, economic analysis of law, creating law, legal argumentation, legal interpretation, legal translation, justifying legal decisions, providing legal advice, stating and commenting on the law.

As an endnote to this series of studies at the interface of law, language & learning: just recently (February 2025), the author received notification from the publishers of an upcoming publication on legal education.¹⁸⁴ But nowhere in the extensive contents section was any mention of (comparative) legal linguistics to be found.

¹⁸² Galdia, M. 'Researching the language of law', in Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics*, 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34, 17-34 at 26.

¹⁸³ Husa, J. 'Critical approaches to comparative legal linguistics', in in Wagner, A. & Matulewska, A. (eds.) *Research Handbook on Jurilinguistics*, 2023 Edward Elgar Publishing, Cheltenham UK and Northampton MA USA17-34, 52-69 at 66.

¹⁸⁴ Cownie, F., Bradney, A. & Jones, E. (eds.) *Elgar Concise Encyclopedia of Legal Education*.

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Appendices

Appendix A: details of research results for comparable courses or programmes 2006

Preliminary research disclosed that, apparently, no course of study or training was currently available that matched, or even approached, programme scope. However, research did disclose several programmes that featured some aspects of the proposed programme curriculum. For example, two universities in London were offering specialist translators' programmes that partly matched the Programme. These were:

- City University (London) Legal Translation Diploma/MA;
- London University (Institute of Advanced Legal Studies) MA in Advanced Legislative Studies.

Further, a group of five European universities (Aarhus School of Business (Aarhus University), The Heriot-Watt University in Scotland, Universidad Pontificia Comillas in Spain, Universität des Saarlandes in Germany and Université de Mons-Hainaut in Belgium) had planned to launch a cooperative programme for a European Master in Translation, based on a model from the European Commission, DG Translation. This programme also partly matched the RGSL Programme. However, no evidence could be found to show that this programme had started. In addition, London University offered a course in legislative drafting as part of a programme of advanced legislative studies. The Programme was perhaps equivalent to a synthesis of the above programmes in its overall approach. Moreover, the fact that these programmes were new suggests response from the institutions concerned to market need.

Appendix B: RGSL MA in legal linguistics: Scope of curriculum

Programme Organisation 2007-

As originally envisaged, the programme was to be delivered as follows

4.1 Autumn Semester (03 September-21 December 2007)

Essential core courses to lawyers who need training in linguistics and to non-legal professionals who need training in law. These courses are mandatory, and are specific to each group. The preparatory programme is followed by mandatory courses that establish foundations in legal linguistics. Next, students may choose from a series of elective courses – credit-carrying options and non-credit-carrying extra-curricular options.

- Linguistics for Lawyers (Mandatory)
- Law for Non-law Professionals (Mandatory)
- Mandatory Courses: legislation, legal research, characteristics of legal translation, comparative law, comparative legal linguistics, legal terminology
- Electives (Options): Students choose any combination of two courses. Choice of options must be specified on application to ensure availability. These are introductory, not full, courses: application and transposition, principles of legal writing, principles of contract drafting, international commercial law #, European Union Institutional and Substantive Law #.

Those marked # are integrated with RGSL LLM programmes.

4.2 Spring semester (07 January-19 April 2008)

This semester presented the option to develop skills acquired in the winter semester, to add new skills, and to carry out a legal linguistics research and translation or legal drafting project that might later be developed into the final thesis/project.

Mandatory

Law Workshops: good and bad legislation; drafting, transposing legislation

Linguistics Workshops: good and bad translations editing, revising, proofreading
Translation tools and the translator
Legal linguistics research, drafting, and translation project
Internships: students had the opportunity to compete for internships with local businesses in the private and public sector. Each student had to prepare and to present a factual and analytical report linking the Programme to practice.

4.3 Summer Semester (28 April-15 August 2008)

Masters Thesis or Research and Translation or Drafting Project
Each student must write and defend a master's thesis or research or translation project. The topic is filed with the RGSL thesis coordinator at the beginning of the Summer Semester. Tutoring is available. The purpose of the thesis or project is to demonstrate ability to undertake scientific study in the mixed disciplines of law and linguistics, based on a clear methodology.

Appendix C: RGSL LLM in legal linguistics: Scope of curriculum¹⁸⁵

'The Riga Graduate School of Law is offering a LL.M in Legal Linguistics. The degree is full-time, based in Riga and taught in English...

The Riga Graduate School of Law is offering an interesting postgraduate degree in the field of legal linguistics. This is a full-time degree based in Riga. All courses are taught in English.

The description here comes from the University's own website:

The programme opens with an introductory module. This features courses aimed at providing basic knowledge and concepts of legal and language sciences. Students with a legal background acquire basic knowledge in language sciences, while students with a language or other background acquire the necessary basis for legal studies and legal thinking.

Mandatory electives Introduction to Law

Introduction to Language Sciences

The second module comprises legal and interdisciplinary courses making up the core of the programme.

Mandatory Courses Comparative Law and Comparative Legal Linguistics

EU Law

Translation Law

Legislative Drafting

Characteristics of Legal Translation

Legal Writing and Research

Legal terminology Research Methods

Creating and Editing English Legal Texts

The third module consists of elective courses in law, chosen from amongst a wide variety of other RGSL masters programmes courses depending on the student's specialisation.

An opportunity is also available to improve skills in translating legal texts into Latvian as target language.

Electives

Other RGSL masters programmes courses

Translation of Legal Texts into Latvian

Programme activities are scheduled "executive style" (i.e. evenings and Saturdays) so as not to interfere with other activities. Cycles of lectures/classes take place every other week.'

¹⁸⁵ <https://jurtrans.com/ll-m-in-legal-linguistics/>

Appendix D: details of research results for comparable courses or programmes 2025

I. University of Cologne Faculty of Arts and Humanities European Legal Linguistics

European Legal Linguistics in Cologne Lives On <https://erl.phil-fak.uni-koeln.de/>
Since the end of the European Legal Linguistics degree programmes, we have been offering content and formats from the degree programmes as part of the key qualifications and preparatory seminars within the law degree programmes of the University of Cologne and in seminars for students of linguistic and Romance studies. We are also continuing the one-day seminars at the ECJ in cooperation with Vertreter_innen various cabinets and the ECJ's Research Service.

In addition, our Cologne Summer Schools in European Legal Linguistics LegisEULab will continue to take place.

Information about all events, our activities and successes can be found under the menu item "Activities".

Association for the Promotion of European Legal Linguistics (VERL)

Fördervereins der Europäischen Rechtslinguistik

Zeitschrift für Europäische Rechtslinguistik. <https://erl.phil-fak.uni-koeln.de/erl-foerderverein>

Supported by the Cologne Summer Schools of the University of Cologne and the "Kölner Gymnasial- und Stiftungsfonds", the Cologne Summer Schools of European Legal Linguistics (CSS-ERL) build on an expertise in European legislation and jurisprudence. This is the result of many years of cooperation with the Directorate for Legislative Acts of the European Parliament in Brussels as well as the European Court of Justice in Luxembourg and is intended to bring together the theory and practice of EU lawmaking. Students from different disciplines work on an issue from a legal, linguistic and jurisprudential perspective, with a special focus on EU law and policy, multilingualism and translation.

Learning objectives of the Summer Schools include:

- Raising awareness of multilingualism and authentic multilingualism in the EU
- Sensitisation to European policy and European law issues
- Linguistic thinking and working methods
- Interdisciplinary academic work and text editing in English.

Opposite you will find an overview of the Cologne Summer Schools in European Legal Linguistics that we have run.

The proceedings and results of our summer schools are published in Kölner Publikationsreihe Europäische Rechtslinguistik (KPER).

EU Legislative Laboratory | LegisEULab 2024 <https://erl.phil-fak.uni-koeln.de/css-erl-sommerschulen/css-erl6> accessed 30.01.2025

Our popular interdisciplinary EU law-making laboratory will take place again in 2024 with the participation of Akteur_innen from EU institutions (5-11 September).

Information on the application on the flyer in the right-hand column.

Deadline: 30.04.2024

The introductory events will take place in June 2024.

Coming up soon: our interdisciplinary legal-linguistic EU legislative drafting lab 2024 (Sep. 5-11) featuring EU institutional professionals.

For application information, see the flyer to your right.

Deadline: April 30, 2024

Kick-off sessions will take place in June, 2024.

<https://erl.phil-fak.uni-koeln.de/>

European Legal Linguistics - The Concept

The European Union (EU) is an association of 27 European states that are determined to "share a peaceful future on the basis of common values by uniting in an ever closer union." [EGRC, Preamble]

The European Union is built on the idea of "unity in diversity": different cultures, customs and traditions, beliefs and languages. This unity in diversity is based on the conviction that the project of European unification can only succeed if European multilingualism is preserved. Currently, almost 500 million people with different cultural and linguistic backgrounds live in the EU. Multilingualism is reflected in the 24 official languages.

European Legal Linguistics is dedicated to the problems arising from social and institutional multilingualism in the EU and develops a methodology for inter- and transdisciplinary approaches in research and teaching.

Due to current structural decisions of the Faculty of Arts and Social Sciences, no students in the first semester can be enrolled in the Bachelor's degree program in European Legal Linguistics for the time being. We will be happy to answer any questions you may have.

Review of the "Terrorism Directive" (EU) 2017/541

Legal Linguistics as Applied Linguistics

The linguistic analyses of the students of the Cologne European Legal Linguistics at the annual one-day seminar at the Directorate for Legal Acts of the European Parliament led to the review and correction of the various language versions of Directive (EU) 2017/541 on combating terrorism by the linguists. The corrections are published in the Official Journal of the European Union L 91 of 9.4.2018.

For the first time in July 2019, representatives not only of the European Court of Justice but also of the translation services of the European Parliament and the Commission took part in our one-day seminar at the ECJ in Luxembourg. The linguistic analyses of our students have been discussed in detail and will lead to further corrections in legal acts of the European Union.

II. European Judicial Training Network: Linguistics Programme

<https://ejtn.eu/activity/linguistics-programme/>

The EJTN Linguistics Programme is designed for the training of the EU judiciary in legal English, French, German and newly in Spanish, across different fields of law. Many legal language seminars are organised each year as part of this programme, which began in 2011 in various EU countries.

AIM

The Linguistics Programme's seminars aim at developing both the legal and linguistics skills of EU judges and prosecutors and creating the conditions for direct contacts between legal practitioners of the different Member States in order to promote a common European legal culture.

KEY TOPICS

The courses are intended to familiarise participants with the various legal instruments in the different fields addressed and provide them with training on specific terminology. The training adopts an interactive, small-group methodology and features the participation of tutors, a linguistic expert and a legal expert.

ACHIEVEMENTS

In 2021, 290 European legal practitioners from 18 EU Member States received training under the auspices of EJTN's Linguistics Programme. In 2021, participants could choose from a wide range of linguistics seminars, some online and some it was possible to

organise again in face-to. The EJTN's Linguistics Programme offered 11 seminars for judges and prosecutors and 4 Summer School seminars for trainee judges and prosecutors.

Activity Reference	Date	Title	Venue
LI/2022/01	7-11 March	Legal language training in cooperation in civil matters	Barcelona, Spain
LI/2022/02	30 March – 1 April	Legal language training in cooperation in cybercrime	Budapest, Hungary
LI/2022/03	27-29 April	Legal language training in cooperation in asylum & refugees	Thessaloniki, Greece
LI/2022/04	16-20 May	Legal language training in cooperation in criminal matters	Bordeaux, France
LI/2022/05	30 May – 3 June	Legal language training in cooperation in civil matters	Kroměříž, the Czech Republic
LI/2022/06	4-8 July	Legal language training in cooperation in human rights' EU law	Wustrau, Germany
LI/2022/07	19-21 September	Legal language training in cooperation in family law	Vilnius, Lithuania
LI/2022/08	10-14 October	Legal language training in cooperation in human rights' EU law	Sofia, Bulgaria
LI/2022/09	24-28 October	Legal language training in cooperation in criminal matters	Madrid, Spain
LI/2022/10	2-4 November	Legal language training in cooperation in environmental law	Vilnius, Lithuania
LI/2022/11	28-30 November	Legal language training in cooperation in cross-border organised crime	Zagreb, Croatia

SUMMER SCHOOLS

SLI/2022/01	9-13 May	Summer school: Legal language training in cooperation in family law	Vilnius, Lithuania
SLI/2022/02	20-24 June	Summer school: Legal language training in cooperation in civil matters	Naples, Italy
SLI/2022/03	18-22 July	Summer school: Legal language training in cooperation in criminal matters	Trier, Germany
SLI/2022/04	22-26 August	Summer school: Legal language training in cooperation in human rights	Krakow, Poland

Krakow, conversation classes for judges & prosecutors 10 x 60 mins

Learning Objectives:

Engage in applied use of spoken language through active use in online dialogue with peers in similar roles.

Acquire a deeper comprehension and use of legal terminology and jurisprudence through exercises and activities.

Evidence advancement of knowledge through interactive weekly activities and an end-of-course presentation to allow participants to gauge their advancement.

<https://www.lsi.edu/en/legal-english-course.php> LSI (Language Studies International) online

language focus LE in legal contexts among other areas of professional EN

III. St Petersburg University

<https://english.spbu.ru/admission/programms/graduate/legal-linguistics>

The master's programme "Legal Linguistics" is aimed at developing in students knowledge of the theory and methodology of legal linguistics. During training, students acquire knowledge and practical skills in the main fields of linguistics related to expertise and law. They also master linguistic research methods, and the theory and practice of linguistic analysis when working with different types of texts.

Main courses

Introduction to Linguistic Evaluation and Assessment

History of State and Law

Legal Rhetoric

The Official Language and Language Policy of the State

Linguistic Expert Evaluation of Legally Valid Text

History of the Language of Russian Law

Interpretation of Law

IV. Ramon Llull University: Grado en Derecho

<https://www.esade.edu/bachelor/en/programmes/law/why-were-different/languages>

Languages + Legal English

- Program overview
- Academic Information – Curriculum
- Why we're different
- Career options
- Professional profile
- Chat with our students

Complete your Bachelor in Law in Spanish and English

The Esade Bachelor in Law program includes Law-related subjects in Spanish and gradually in English. In addition, the curriculum incorporates a strong foundation in other languages: In addition to the compulsory English classes, there is Legal English and even a second or third optional language – French or German and Mandarin or Arabic. By the end of the program, your mastery of languages together with your education in Transnational Law will help you to become a lawyer with a clearly international profile: You'll be able to work in any country around the world.

Fomenting your language skills

Gradual Spanish – English program

English classes are compulsory throughout the program: You'll finish with the equivalent of the Advanced level. In addition, the curriculum combines subjects in Spanish with others taught in English, for example, Legal Ethics or Comparative Law. Subjects in English are incorporated progressively so that, when you finish the program, 40% of the subjects you complete will have been in English.

Compulsory English

In addition to subjects taught in English, you'll also have to enrol in year-long English language classes the first three years of the program. These include Legal English: You'll acquire all the vocabulary and typical expressions used in Law practice. If you like, you can also complete a fourth optional course to help you achieve the Proficiency level of English.

Second language

Once the compulsory level of English has been completed, you will be able to study a 2nd language, to choose between French, German, Mandarin or Arabic.

You will study either language up to 6 hours per week with native-speaking faculty in small yet highly participatory classes. Your mastery of these languages will not only include being familiar with legal vocabulary but also key competencies such as oratory skills and writing legal documents.

Compulsory English & Legal English in details

Subject structure

1. Research and broadening your legal vocabulary in English and in different areas of Law. We will also work on writing responses to case studies.
2. Introduction to oral communication and rhetoric.

3. Moot courts in English and persuasive oral presentations through different techniques.
-

V. University of Passau: The FFA for Law programme

<https://www.sprachenzentrum.uni-passau.de/en/language-courses/ffa-programmes/ffa-for-law/>

If you are a law student, the FFA for Law programme is a tailored foreign languages programme you can study alongside your degree studies. The programme is focused on legal language tuition and allows you to acquaint yourself with the basics of the relevant language areas' legal systems.

The subject-specific language programme is particularly important if you intend to study abroad, as the assessments completed within the programme receive special recognition when applying for a place at a foreign partner university.

The lecturers teaching the FFA for Law programme are native speakers who have the requisite qualifications for teaching legal language courses.

The Faculty of Law oversees the examinations for the FFA for Law programme. The Chair of the Board of Examiners is Professor Dr. Jörg Fedtke.

More about the compulsory language training for law students

The FFA for Law programme is taught for the following languages:

Chinese/Czech/English/French/Italian/Polish/Portuguese/Russian/Spanish

Entry requirements

The FFA is not offered at beginner's level but builds on existing language skills. You will therefore need to have a solid grounding in the language or study the Foundation courses prior to starting on the FFA programme. At the start of each semester, the Language Centre holds placement tests to ensure language students are placed at the correct level. If you have existing certificates or other proof of language ability which you would like to have recognised, please talk to the team co-ordinators.

Language certificate for law students ('Sprachschein' according to §24 II 1 JAPO 2003)

When registering for the examination, you need to provide a foreign legal language certificate. The Faculty of Law offers its own language courses for this certificate.

However, a successfully completed Intermediate 1 (Aufbaustufe 1) level also constitutes a language certificate in accordance with §24 JAPO.

Certificates

All transcripts and certificates can be collected from the office of Ms. Ulrike Buchheit (Nikolakloster building, Innstrasse 40) during office hours.

Overview of courses offered

Intermediate general language tuition; area studies and the legal system

FFA Intermediate 1: Winter semester, 2 contact hours per week (english); 4 contact hours per week (all other languages)

FFA Intermediate 2: Summer semester, 2 contact hours per week (english); 4 contact hours per week (all other languages)

Subject-specific language tuition; legal system(s) in the language area; qualification: FFP I

FFA Advanced 1.1: Winter semester, 2 contact hours per week (english); 4 contact hours per week (all other languages)

FFA Advanced 1.2: Summer semester, 2 contact hours per week (english); 4 contact hours per week (all other languages)

Subject-specific language tuition; specialisation*; qualification: FFP II

FFA Advanced 2.1: Winter semester, 4 contact hours per week (all languages)

FFA Advanced 2.2: Summer semester, 4 contact hours per week (all languages)

*For the oral examination of FFP II, you may choose between Civil Law, Criminal Law and Public Law.

VI. University of Bologna

<https://www.unibo.it/en/study/phd-professional-masters-specialisation-schools-and-other-programmes/course-unit-catalogue/course-unit/2024/424119>

84914 - Legal English (B2)

Academic Year 2024/2025

Docente: Angela Carpi

Credits: 9

SSD: IUS/02

Language: English

Moduli: Angela Carpi (Modulo 1) Gabriella Fennella Catalini (Modulo 2)

Teaching Mode: Traditional lectures (Modulo 1) Traditional lectures (Modulo 2)

Campus: Bologna

Corso: Single cycle degree programme (LMCU) in Law (cod. 9232)

Also valid for First cycle degree programme (L) in Employment and Business Relations Consultant (cod. 9230)

Single cycle degree programme (LMCU) in Law (cod. 9232)

Course Timetable

from Feb 24, 2025 to Apr 14, 2025

Course Timetable

from Feb 28, 2025 to May 16, 2025

Learning outcomes

Knowledge of English Legal Language

Course contents

The course is divided into two modules of 30 hours each. The first module is devoted to Common Law Legal System in general, while the second module is dedicated to legal English grammar.

In general, the course aims at refining the receptive skills of students, with a particular emphasis on the written text.

The English legal language is used, in the first part of the course, as a tool to study the common law legal system, still in the optics of legal language.

The grammar part of the course will focus in particular on the register and vocabulary used in legal context and in professional communications, aiming at raising the level of self-reflection on the language and formal communications in it.

The texts chosen will range from the purely theoretical / academic sphere, to concrete examples of language use in transactions and dissertations.

The objectives of the course are the following: a better understanding of communication strategies, an improvement of the ability to self-learn language and reflection on the underlying structures.

The program is organized as follows:

Law (Module 1)

1. The legal lexicon

1.1 Languages and languages of law; 1.2 Legal translation between risks and opportunities; 1.3 multilingualism in Europe; 1.4 English as a lingua franca; 1.5 The Plain English Movement.

2. The English legal language

2.1 The British common law system and its historical evolution; 2.2 Stare decisis; 2.3 The language of case law; 2.4 the language of the legislator; 2.5 The Scottish experience; 2.6 The circulation of the model: the United States of America; 2.7 The American legal language; 2.8 False friends.

3. The language of civil law

3.1 The torts system; 3.2 The law of contract; 3.3 The law of property.

4. Legal language in action

4.1 Procedure and trial; 4.2 Acts and communications; 4.3 The role of the Judge; 4.4 Attorney; 4.5 The relationship between the parties; 4.6 The decision

5. The European dimension

5.1 English in supranational contexts; 5.2 The language of the European institutions; 5.3 The principle of multilingualism; 5.4 The Court of Justice; 5.5 The linguistic services of the European Union.

Grammar (Module 2)

1. Brief introduction to some characteristics of the grammar of Legal English compared to the grammar of ordinary language, including: auxiliary and servile verbs not apostrophized; greater formality; extensive use of the present time; use of some pronouns in order to avoid gender discrimination.

2. Use of definite article the and use of the indefinite a, an; cases of omission of the article. Exercises.

3. Use of prepositions: a. some fundamental prepositions to express logical relationships, for example: phrase of agent, efficient cause, phrase of time, place, mode. Prepositions that hold verbs. Exercises.

4. Use of prepositions: b. prepositions required by some verbs typically used in Legal English: eg. to provide for, to consist in / of, to deal with, to call upon, to give rise to ... Exercises.

5. Use of prepositions: c. prepositions with certain nouns or adjectives: eg, within 2 months, under Article..., responsible for, claim for, right of Exercises.

6. Use of prepositions: d. use of prepositional phrases typical of legal language (in the name of, with regard to, in order to... Exercises.

7. Past tense v. present perfect: using these two tenses. Exercises.

8. The future and other verbal forms with the value of commitment, obligation and programmatic value (will, shall, must ..). Exercises.

9. Elements of syntax: position of adverbs; position of adjectives, differences from ordinary language; syntax of the apposition; alternative forms to the use of the Saxon genitive. Exercises.

10. Secondary sentences: the main subordinating conjunctions and relative pronouns (eg which / that, there + prep...). Exercises.

Readings/Bibliography

Module 1 (prof. Angela Carpi)

G. Garzone, R. Salvi, LEGAL ENGLISH, II edition, Egea, 2007. EXCEPT THE PARTS ON "Focus and Language" and "Key Structures", that are part of Module 2

Optional supplementary readings (in both Italian and English)

BARBARA POZZO-MARINA TIMOTEO (a cura di), Europa e linguaggi giuridici, Giuffrè, Milano, 2008, XIII-XXX; 259-300; 303-432.

F. De Franchis, Dizionario Giuridico. 2 volumi: Inglese-Italiano; Italiano-Inglese, Giuffrè editore, Milano.

Module 2 (Prof.ssa Gabriella Catalini)

G. Garzone, R. Salvi, LEGAL ENGLISH, II edition, Egea, 2007. Parts on "Focus and Language" and "Key Structures", of all Chapters.

Teaching methods

The course follows an interdisciplinary approach, aimed at direct student involvement.

Lectures are flanked by classroom exercises to enhance self-learning, the analysis of some case law that have marked the history of the system, the reading and commentary of some central morphemes of the common law system, the vision of some videos showing the system in action.

The intensity and continuity of participation in the course will be assessed by self-certification.

Assessment methods

The evaluation takes place only through the final exam, which ensures the acquisition of the required knowledge by conducting a written test, for the grammar part, and by an oral examination, for the law part. The final grade will be the average of the two parts of the exam.

The written test consists on 30 questions with multiple choice answer, of which about 15 will be texts with expressions or words to be inserted while 15 will consist in the comprehension of a text. Each question allows the student to get 1 point. A minimum score of 18 points is required to pass the test successfully.

The oral exam consists of an interview with the teacher and the assistants of the teacher, on the program of module 1 (legal part). The oral interview, which focuses on issues related to those indicated in the "Program and contents" section, aims at assessing the level of understanding and mastery of the comparatistic perspective in the study of the English legal system. The achievement by the student of an organic vision of the topics addressed and the exposure of the same with mastery of language, will be evaluated with marks of excellence. The predominantly mnemonic and notional knowledge of the topics dealt with, which results in an exhibition not supported by a capacity for synthesis and analysis of the themes dealt with in an organic perspective and a correct but not always appropriate language, will lead to an average pass outcome; training gaps and / or inappropriate language, albeit if in a context of minimum knowledge of the examination material, will lead to a barely sufficient mark; training gaps, inappropriate language, lack of orientation within the texts, will be evaluated negatively.

In order to sit for the exam, registration through the electronic platform "Almaesami" is required, in compliance with mandatory deadlines (usually 7 days before the date set for the examination). Those who do not succeed with the enrolling by the due date, are required to report promptly (and in any event before the official closing of the registration lists) the problem to the school's secretary office. The professor, evaluated the problem, will decide about the admission to Registration via email messages and out of the terms, will not be accepted.

Only students that are regularly enrolled and that paid all the due university taxes, will be able to sit for the examinations. Under no circumstances it will be possible to sit for the examination and proceed with the registration not simultaneously.

Teaching tools

Teachers will use Power Point presentations, reading material given to the class or distributed through electronic platforms The vision of movies in original language might be as well used.

During the course, experts can be invited to hold lectures.

<https://studieren.univie.ac.at/en/degree-programmes/master-programmes/international-legal-studies-master/>

UWien/Admission to master programme International Legal Studies

The prerequisite for admission to a master programme is the completion of an eligible Bachelor or diploma programme (= in the same discipline). Here you will find information on the prerequisites required for admission. If your previous degree programme is considered as a eligible degree programme will be evaluated on a case-by-case basis.

Our advice: Thoroughly acquaint yourself about the prerequisites for admission to your chosen master programme at an early stage. Thereby, you have the possibility to fulfil prerequisites during the course of your previous studies, for example by completing

specific extension curricula ("Erweiterungscurricula" - EC).

If your degree programme is not listed as example in the Master Access Guide, your application will be checked individually to determine if an admission to the master programme is possible. To do this, you must apply for admission to the degree programme by the relevant deadline. The University of Vienna can only assess the eligibility of your previous degree on the basis of your complete application. Preliminary assessments are not possible.

VII. McGill: Principles of Jurilinguistics

<https://scsapps.mcgill.ca/itimetable/translation/CourseSynopses/706?dc=TRANSLATION>

Course Description

Introduction to the field of jurilinguistics. Examination of the theory of jurilinguistics, including the theory of legal translation (text typologies and equivalency in legal translation), the principles of co-drafting, legal terminology development, and other aspects of legal language, such as readability and plain language.

Prerequisites

NONE

Corequisites

NONE

Schedule

This Course was not Offered During Spring/Summer 2024 Term

Available Section(s) for Fall 2024 Term

Section	CRN	Day	Offered	Location
CCTR 530/761	1571	TUE	TBA	

The tentative timetable is not yet available for the Winter 2025 Term

The tentative timetable is not yet available for the Spring/Summer 2025 Term

<https://www.mcgill.ca/study/2024->

[2025/faculties/continuing/graduate/programs/graduate-diploma-gr-dip-legal-translation](https://www.mcgill.ca/study/2024-2025/faculties/continuing/graduate/programs/graduate-diploma-gr-dip-legal-translation)

Graduate Diploma (Gr. Dip.) Legal Translation (30 credits)

Offered by: Global & Strategic Comm. Degree: GD-LGT

Program Requirements

The Graduate Diploma in Legal Translation is a 30-credit graduate-level, online program designed to meet the need for professionally trained legal translators and jurilinguists in Canada in both the public and private sectors, not only in translation, but also in revision, co-writing of legal texts, and consultancy in legal aspects of language in multiple professional settings. Principles and practices encountered in jurilinguistics, as well as legal translation in key sectors in high demand. Computer-aided translation tools are an integral part of the curriculum, as is an internship or an applied research project. The program can be completed in two years (six continuous semesters – fall/winter/summer). The maximum time for finishing the program is four years. Fall and winter entry options are offered.

see above

CCTR 530 - Principles of Jurilinguistics.

Introduction to the field of jurilinguistics. Examination of jurilinguistic practices, including: drafting, legal translation, legal terminology development, revision, interpretation of law, and other aspects of legal language, such as readability and plain language.

This is a bilingual course

Restriction: Open to students enrolled in the Graduate Diploma in Legal Translation or with departmental approval.

3.000 Credit hours
Schedule Types: Web Course
School of Continuing Studies
Global & Strategic Comm. Department
Restrictions:
Must be enrolled in one of the following Faculties:
 School of Continuing Studies
Geneva – see flyers

VIII. European Master in Translation

https://commission.europa.eu/document/download/b482a2c0-42df-4291-8bf8-923922ddc6e1_en?filename=emt_competence_fw_k_2022_en.pdf

IX. University of Vienna Master's programme in International Law

<https://studieren.univie.ac.at/studienangebot/masterstudien/internationale-rechtswissenschaften-master>

Master

Completion of the Bachelor's and Master's degree programmes in International Law is a professional preparation for the classic legal professions. The focus is on international law and international and cross-border issues. The bilingual degree programme prepares students for a career in international law through its German and English-language courses.

The aim of the Master's programme in International Law is to provide a vocational training for all classic legal professions and other legally oriented professional areas, building on a corresponding Bachelor's programme.

In addition to a universal legal education, the ability to face the legal challenges of a globalized world is taught to a special degree. This is achieved through the subject-specific in-depth study of content with cross-border relevance and the large proportion of foreign-language teaching.

Graduates can use the Master's degree to enter any legal profession: lawyers, the judiciary, notaries' offices, companies, NGOs, administration, etc.

<https://ssc-rechtswissenschaften.univie.ac.at/bama-irewi/masterstudium/>

The aim of the Master's programme in International Law at the University of Vienna is to supplement and deepen the academic professional training on the basis of the Bachelor's programme in International Law or another relevant or equivalent degree programme at a high academic and didactic level.

On the one hand, a universal legal education is imparted, which combines basic knowledge in all subjects with their subject-specific methods with the ability to apply knowledge and methods appropriately.

Upon completion of the Master's programme, students receive a vocational training for all classic legal professions and other legally oriented professional areas. In particular, the ability to face the legal challenges of a globalized world is taught. This is achieved in particular by deepening the subject in content with cross-border relevance and the large proportion of foreign-language teaching.

The courses and examinations are held in German and English (possibly also in another foreign language). The proportion of foreign-language courses and examinations is around 60%

Selected articles published in scientific review

CHRISTOPHER GODDARD

Legal Linguists: As (in)substantial as Ghosts and True Love?¹⁸⁶

1. Introduction

This paper aims to establish whether the term ‘legal linguist’ contains substance; put differently, whether the profession of legal linguist exists in the shape of a set of identifiable skills which certain individuals possess, skills that respond to the needs of a market that in turn recognizes those skills as belonging to the profession of legal linguist. Is this an emerging profession or simply a set of non-eponymous skills deployed within other professions? What questions need to be framed – and answered – in order to provide clarification?

As an emerging discipline, legal linguistics needs to be effectively showcased for two related reasons. Firstly, marketing to potential applicants, employers, and stakeholders must show legal linguistics as having clear practical professional relevance. Secondly, legal linguistics programmes must be appropriately focused to respond to the needs of the discipline and the market. This would include establishing whether the discipline can be linked to the term ‘legal linguist’ and where and how legal linguistic skills can be applied.

This paper begins by examining legal linguistics as a discipline, and the correlation between disciplines and professions. This is followed by a focus group survey questionnaire to establish whether the discipline of legal linguistics is matched by an eponymous profession with its own skills set. The survey was assembled and distributed, and its results are discussed here.

2. Legal linguistics: an emerging discipline

While linguistics as a discipline in the modern sense emerged in the early twentieth century, legal linguistics has only recently been establishing itself as a discipline. According to Mattila’s definition, legal linguistics ‘examines the development, characteristics, and usage of legal language’. (2006: 11) Salmi-Tolonen, who sees ‘law and all legal activity as communication’ (2004: 1167), implies a concurring definition within a statement of the purpose of the discipline, which is ‘to study the language of the law, in all its forms, and its development and usage in order to create new knowledge of the interplay between language, law and society’ (2004: 1169 footnote deleted). The author offers a shorter definition that, on a higher conceptual level, subsumes both: ‘the purposive, scientific study of language in legal contexts’.

However, a variety of terms is in use to describe research into legal language. English, German, and French all have two terms, respectively ‘forensic linguistics’ and ‘law and language’, *Rechtslinguistik* and *Recht und Sprache*, *linguistique juridique* and *jurilinguistique*, while elsewhere other terms are used or may not exist at all. (Mattila 2006: 8) This suggests that international conceptual and terminological uniformity could be lacking.

¹⁸⁶ The title alludes to Maxim 76 in the Penguin Classics 1959 English translation of *Maxims* by François, Duc de la Rochefoucauld.

2.2. Lawyers, translators, linguists, and legal linguistics

Today's and tomorrow's lawyers may increasingly require some knowledge of legal languages other than their own in order to cooperate with foreign lawyers and other professionals, such as translators. Equally, translators can benefit from familiarity with legal linguistics matters. The process of European unification increasingly requires translations of legal texts, many of which involve linguist-translators rather than lawyers. (Mattila, 2006: 20)

Overarchingly, the 'internationalization of legal life' (Zweigert & Kötz 1998: 21) involves the reality of non-native speakers of English operating as lawyers and legal translators in a professional context increasingly dominated by English. It is among this group in particular that purposive scientific study of language in legal contexts features prominently as a professional requirement. Interestingly, too, a significant overlap exists in the legal linguistic knowledge and skills needs of both groups. (Goddard, 2009: 168-199)

While translators and linguists undoubtedly require some knowledge of law in order to work with legal texts, lawyers may easily be assumed to wield linguistic skills that they do not possess. Traditionally, lawyers become familiar with legal language by studying and writing about the law. In doing so, they absorb or adopt legal terms and legal style, if perhaps uncritically. However, the full grasp of legal language and its features that is vital for professional effectiveness requires purposive study, which may be lacking. (Mattila, 2006: 19-20; Salmi-Tolonen, 2004: 1172, in particular footnote 22)

2.3. Specific problems addressed by legal linguistics

Constraints of space and topic-relatedness allow only a brief overview of the technical application of this discipline. In general, legal linguistics offers potential theoretical approaches to practical problems encountered in legal communication at national, international, and supranational levels. For example, legal linguistics may offer tools to drafters and translators working with legal texts.

At the national (monolingual) level, legal linguistics can address problems of text organisation and style. A good example would be 'translating' a standard form contract between a bank and its private customers from 'traditional' legal English to its plain modern counterpart. Thus:

The bank hereby expressly agrees that the account holder or any authorized user will not be liable hereunder for any unauthorized instruction in so far as such instruction was received after notification had been given to the bank by said account holder or authorized user that the password had become known to some third party or that the actions, negligence or other breach of security attributable to the bank has caused said unauthorized instruction.

becomes:

- 2.2 You will not be liable for instructions not authorised by a User if:
 - 2.2.1 they are given after that User (or you) has notified us that they think the Password is known to someone else;
 - 2.2.2 the Security Codes have become known through our actions or negligence;
 - 2.2.3 the instruction was given as a result of some other breach of security, not caused by you or a User.

(Source: Lloyds TSB)

In countries where two or more languages are officially in operation, legal linguistics would address problems of, for example, semantics in production of bilingual or multilingual legislation. Here, countries such as Canada, Switzerland, and Finland spring immediately to mind. A fascinating example is offered by production of the German-Italian legal dictionary for Alto Adige/Südtirol, which involved comparative legal linguistic study of terms in

Austria, Switzerland, and Germany. (Mattila, 2006: 175-6)

At the international and supranational levels, the chief hurdles for legal linguistics to address appear to be conceptual problems and absence of equivalence or presence of asymmetry between different legal languages and systems. (Goddard, 2009: 177-181, 183) Literal translation of the designations of legal terms may be meaningless or misleading to an individual from another legal system. (Mattila, 2006: 261-3) This situation arises from what can perhaps be described as legal cultural reasons, here in the shape of each country's individual legal history, its 'legal cultural baggage'. Although considerable difficulty exists with defining 'legal culture' as a concept, '[g]iven the boundaries of jurisdiction, politics, and language, the nation state does make a convenient starting point for comparing legal culture'. (Nelken 2004: 2, 5) Examples of such problems are legion but would include, for example, designations of functionaries linked to the legal profession such as the French *maître* in front of the personal names of lawyers, or the English *Queen's / King's Counsel*. A literal translation of these titles is void (meaningless) for the outsider. Another problem relates to difficulties related to semantic field between two or more languages (Salmi-Tolonen, 2004: 1186, 1189)

3. Disciplines and professions

It is probably true that at any point in time, the spectrum of disciplines and professions show some as nascent or emerging, others as established, with others as obsolescent or disappearing. As for whether disciplines are mirrored in eponymous professions (and vice-versa), the legal profession and law as a discipline offer contrasting examples from common law and civil law. In England, lawyers were traditionally initiated into a craft upheld and transmitted from generation to generation by a closely-knit corps of professional lawyers. Common law was seen, first of all, as a practice, with the notion of artificial reason justifying the craft-like education of future lawyers, so typical of common law (Postema 2003: 3-11), so that it was not until the eighteenth century that Blackstone was given the first chair in English law at Oxford. While England built up its specific common-law culture, 'on the Continent the revival of Roman law, with its institutional foundation in university-based legal scholarship and education, spawned a transnational legal culture and a transnational corps of learned lawyers.' (Tuori, 2007: Ch 2)

Disciplines impart skills that can be deployed in professions which may, but need not, eponymously echo their parent discipline. Thus, even if the discipline of legal linguistics is gaining recognition, it does not necessarily follow that the legal linguist exists at all.

4. The notion of 'legal linguist'

This section examines whether the legal linguist is definable as a profession, according to a focus group survey.

To obtain perceptions of 'legal linguist', the author framed a survey questionnaire (see Annex) sent by email to a focus group of academics, potential employers, legal translators, and past and potential students of the Riga Graduate School of Law's master's programme in legal linguistics. The questions were arranged to test the consistency of responses. Replies were received from the following:

- Four potential students, including two translators working with law firms.
- Two former students, one with a law qualification, the other without.
- One translator with the European Court of Justice.
- One lawyer-linguist from the European Council.
- Four academics.

In view of the limited spread of respondents, this research should be seen as preliminary, though the author contends that this is justifiable due to constraints of time and space.

Responses appear in their original form, that is, the language has not been proofread.

Only responses are shown that relate to the issue dealt with in this paper. Questions that do not relate to issues in this paper are marked ‘Not relevant for this paper’

For reasons of space, I have deleted ‘*Response*’ where none was given.

Replies to survey questionnaire	
A. Does “legal linguist” consist of specific identifiable skills? If so, what skills?	
<i>Response:</i>	Yes, domestic law, EU law, comparative law, cultural studies, LSP
<i>Response:</i>	I think a legal linguist should have skills in linguistic analysis, legal argumentation, semantics and at least two languages.
<i>Response:</i>	knowledge of foreign languages + knowledge of legal matters
<i>Response:</i>	Knowledge of linguistics and law; as to practical skills: legal translation/interpreting, legal drafting
<i>Response:</i>	legal skills and language skills in particular
<i>Response:</i>	Has both legal and linguistic background. An understanding of special features of legal texts. Is aware of differences between legal systems.
<i>Response:</i>	exquisite and thorough understanding of legal texts, ability to improve them, make them reader-friendly and business-focused
<i>Response:</i>	Legal linguist definitely needs qualified skills both in Law and Linguistics and knowledge of at least one or two foreign languages.
<i>Response:</i>	I am not very experienced translator of legal texts. However, I would say that this profession is an interdisciplinary profession where the attention has to be paid as to the specific language, as well legal aspects, such as: specific reading skills (knowledge of the different interpretation methods of legal texts, traditions of thought, knowledge of the specific culture i.e. German legal system, tradition), specific writing skills, also technical skills in order to know how to compose correctly legal texts, terminology knowledge and skills to build up new terms in target language, knowledge of legal documents types.
<i>Response:</i>	legal and linguistic skills combined
<i>Response:</i>	Yes. To my mind a legal linguist must have theoretical and practical background of both law and linguistics in the working languages (i.e. Latvian-English).
<i>Response:</i>	ability to understand and correctly use the language and its legal terminology
B. Is legal linguist a recognised – or recognisable – profession?	
<i>Response:</i>	neither – nor
<i>Response:</i>	Not yet, as far as I know.
<i>Response:</i>	no
<i>Response:</i>	It is an emerging profession which is recognisable, but probably not recognised yet
<i>Response:</i>	No. Not really. In EU institutions we are called lawyer-linguists. Pure lawyers

have little time for them and regard them as lawyers who are failures. Linguists have more respect for them <i>Response:</i> Yes – at least in the EU institutions. <i>Response:</i> certainly recognised among linguists, maybe less so among lawyers <i>Response:</i> Definitely recognisable as a profession, although there are some individuals possessing skills necessary for a legal linguist but without an academic degree (translators who work with legal texts on daily basis or lawyers working in an international environment or using at least two languages in their work).
C. If not, is legal linguist included under some other professional classification(s)? <i>Response:</i> not for the time being, but it should become a recognised and recognisable profession a.s.a.p.! <i>Response:</i> Translators do some of the job, and specialised lawyers (although they tend not to do thorough linguist analysis. <i>Response:</i> legal translator <i>Response:</i> legal translator, lawyer linguist <i>Response:</i> Not that I know of. We fall between two stools: not pure lawyers and not pure linguists, so that leads to a general neglect and lack of anyone to promote our viewpoint. <i>Response:</i> skills pertaining to legal linguists are separated among translators, editors, drafters, but none of them is required to make texts better. <i>Response:</i> Nowadays it is indeed under some other professional classification such as Linguistics and Law, so individuals graduated from one of the mentioned faculties, or desirably having both professions are nowadays engaged in the field of legal linguistics as too few Universities can offer nowadays specific programmes at Master's or PhD or LLD level in legal linguistics. <i>Response:</i> See the answer to B. <i>Response:</i> generally tend to be linguists rather than lawyers <i>Response:</i> translator
D. Is a legal linguist the same as a lawyer linguist? <i>Response:</i> no, 'lawyer linguist' is a lawyer with specialised linguistic skills and 'legal linguist' is a linguist with specialised skills in the field of law <i>Response:</i> Related – at least some legal training will be necessary <i>Response:</i> yes <i>Response:</i> In my view, legal linguist is a wider term than lawyer linguist; it includes lawyer linguists, but also linguists who are not lawyers studying different aspects of the interface between language and law <i>Response:</i> Broadly yes. lawyer-linguist is a job description in the EC institutions and basically means legal-linguistic reviser of legislative texts <i>Response:</i> This may be the case. To my mind, legal linguist may also refer to lawyers doing research on or working with questions related to the interrelationship between law and language. <i>Response:</i> legal linguist might not be the same as lawyer linguist, but in a small market it will turn out to be the same. <i>Response:</i> No, it is not, as concept of Legal Linguist is of much wider sense than lawyer linguist's, as the engagement of the lawyer as a linguist is restricted in his/her specific field of Law, where she/he works <i>Response:</i> in Latvian language the actual translation is <i>jurists lingvists</i> (lawyer linguist). I perceive a difference in that way that the educational background of a lawyer linguist is lawyer as the primary qualification with a further professional education in linguistics. As to the legal linguist the case is vice versa. <i>Response:</i> in real life, legal linguists' legal background and knowledge tends to be smaller than that of lawyer linguists <i>Response:</i> Lawyer linguist must have legal background, but legal linguist should have either legal or linguistic background supplemented by the missing knowledge <i>Response:</i> no. Lawyer linguist must be a lawyer, which is not necessary for Legal linguist. Both can work as translators, but the linguist cannot work as a lawyer.
E. Who might want to employ a legal linguist? Not relevant for this paper
F. How might a potential employer define what a legal linguist is and what they do? Not relevant for this paper
G. For a potential student, what does a legal linguist's qualification mean in terms of professional development and the employment market? Not relevant for this paper

H. What can an individual do, or do better, after a legal linguistics programme?
Not relevant for this paper
I. Before a legal linguistics programme, what does a student believe they can offer employers after the programme?
Not relevant for this paper
J. Should all graduates of a legal linguistics programme offer the same competence?
Not relevant for this paper
K. Do lawyers who complete a legal linguistics programme differ in competence from translators and others who complete the same programme?
Not relevant for this paper
L. Does the term <i>legal linguist</i> contain the same conceptual substance between different languages and legal cultures?
<i>Response:</i> no <i>Response:</i> I guess so, as the job does not yet exist. <i>Response:</i> no, obviously. does this concept exist in all languages/legal cultures? <i>Response:</i> No, the term may imply different types of competence <i>Response:</i> do not know. balance between the two, but always one side predominates. Everyone is either first lawyer or first linguist. A good context needs both. cf ECJ translation depts <i>Response:</i> the term <i>legal linguist</i> is yet to be imported in different languages. <i>Response:</i> Legal linguist is very often associated with legal translator which is not correct, though more or less I can admit that it contains the same conceptual substance in different languages <i>Response:</i> I have not enough knowledge to answer this question. <i>Response:</i> possibly yes <i>Response:</i> yes <i>Response:</i> yes, in general
M. Why might someone want to employ a legal linguist?
Not relevant for this paper
N. For a <i>graduate</i> in legal linguistics, what does a legal linguist's qualification mean in terms of professional development and the employment market?
Not relevant for this paper
O. Is a legal linguist the same as a legal translator?
<i>Response:</i> no, a translator is not necessarily a skilled linguist, i.e. a linguist with large theoretical knowledge in the field of applied linguistics – speciality: LSP <i>Response:</i> No <i>Response:</i> At the CJ, yes. But legal linguist could in principle be someone who also drafts legal instruments. <i>Response:</i> No, legal linguist may be a lawyer linguist etc. <i>Response:</i> Broadly yes. Overlap. But depends on the types of text translated, or revised <i>Response:</i> Not necessarily. Legal translator may also be a linguist without a background in law. <i>Response:</i> the market makes them the same; however, a legal linguist might focus on editing text more than translating them. <i>Response:</i> No way, though legal linguist implies the qualification of legal translator but not vice versa as the general competence of legal linguist covers much more than that of legal translator <i>Response:</i> I think it is a broader term, it means also editing, composing, analysing. <i>Response:</i> in my case, yes ☺ however, a legal linguist may engage in a wider spectrum of activities/duties, such as maybe publishing, and other work outside law firms <i>Response:</i> Legal linguist can have either translator's background or lawyer's background, but legal translator should have translator's background supplemented by legal knowledge – it all depends on the base knowledge <i>Response:</i> almost... translator is a linguist. A lawyer could be a translator if he is a linguist.
P. What kinds of organization might directly benefit from what legal linguists do?
Not relevant for this paper
Q. After a legal linguistics programme, what does a student believe they can offer employers?
Not relevant for this paper

R. What does a legal linguist actually do? <i>Response:</i> Legal linguist is supposed to understand and to be able to interpret linguistic issues of the legalese in general enabling the other specialists in the field of law to benefit from his/her professional judgements. He/she can also be employed as legal translator, court interpreter and work in terminology institutes as expert in the field of legal terminology. <i>Response:</i> Analyse meanings of different language versions of legal texts written by the legal linguist himself/herself or by others. <i>Response:</i> Here, at the CJ, they translated from FR into all the other languages of the EU. <i>Response:</i> Translation/interpreting, drafting, research, teaching... <i>Response:</i> translate, revise, draft legal texts <i>Response:</i> A legal linguist might, for instance, work as a lawyer linguist, lawyer analyst, freelance translator, researcher, or in a ministry as a part of national lawdrafting process etc. <i>Response:</i> edits texts. <i>Response:</i> Translation of the legal documents, inspection ways of transposition of new concepts from source to target legal systems, expertise of the legal documents etc. <i>Response:</i> analysis, comparisons, editing, translation, composition of legal texts. <i>Response:</i> see F <i>Response:</i> works with legal texts in a broad sense (including writing, editing and translation of legal texts) <i>Response:</i> translations
S. How can legal linguistic skills be applied in practice? <i>Response:</i> in many different ways: translations, interpretations, in /bilateral and multilateral/ comparative law activities, activities connected to EU law etc. <i>Response:</i> I do not understand the question. <i>Response:</i> As any other skills – by design and by chance. <i>Response:</i> Translation, drafting, research, teaching <i>Response:</i> translation, drafting, revision <i>Response:</i> In translating legal texts, such skills come useful. <i>Response:</i> legal linguists may invest their time in text improvement, clarification and market-adaption. <i>Response:</i> by self-actualization of the all acquired skills and competence in the relevant field of engagement. <i>Response:</i> analysing contracts, legal agreements, notary acts etc. <i>Response:</i> the “linguistic” skills can be applied in translations; the “legal” skills help to understand legal documents (both are useful even for reading an employment contract).
T. What kinds of organization might indirectly benefit from what legal linguists do? Not relevant for this paper
Additional comments and suggestions: <i>Response:</i> The subject discussed here is extremely complex and future oriented. Both professions – lawyer linguist and legal linguist /I consider them as two professions with overlapping jobs/ need profiling and acknowledgment. The programmes offering an extensive and comprehensive training to both lawyer linguists and legal linguists are to be on the agenda everywhere. A step forward in that direction is for sure the proposed Tempus project “Language and Law in European Context”. And now, a few words about “the other one”, i.e. lawyer linguist: the lawyer linguist (LL) is expected to represent an ideal balance of law and language and the key word is specialist knowledge in both disciplines. The most important issues regarding the profile of a LL are qualifications required for the job, tasks to be performed and goals to be achieved. On one hand the /potential/ employers don’t agree on the scope of activities of a LL, and on the other hand, recruitment practices and qualifying criteria for the profession in question haven’t been harmonized yet. Therefore, this new profession is to be introduced to a broad target audience as an expert who is capable of producing a legal document functioning properly as translated document in a different language and legal system. <i>Response:</i> Additional comments and suggestions: add semiotics and discourse analysis; consider the team aspect where people reinforce each others' skills. There is a general ignorance about what JLs do and they tend to be looked down on, perhaps even despised by some. They are not aggressive and upwardly thrusting personalities. They none the less play an invisible but important role in keeping things going and ensuring the quality of the final legal/legislative product. I aim to talk about the revision aspect at Bergamo. <i>Response:</i> legal linguistics is a possibility to raise public awareness of text quality,

language is a precise matter and language imprecision, lack of clarity not only annoys but may cause adverse consequences.
Response: Looking for implementation of legal linguistics education in a larger number of countries/higher education institutions.

6. Discussion

The evidence collected here suggests the need, or at least the desire, for professional profiling and due professional acknowledgement of lawyer-linguists and legal linguists. The legal linguist as a professional is seen as possessing specific identifiable skills (Questions A, R, S). Though respondents were far from unanimous, skills included, for example, knowledge of domestic law, EU law, comparative law, cultural studies, LSP, linguistic analysis, legal argumentation, semantics and at least two languages, legal translation/interpreting, legal drafting, an understanding of special features of legal texts, semiotics and discourse analysis.

Practical deployment of legal linguistic skills is seen as including:
legal translator, court interpreter and work in terminology institutes as expert in the field of legal terminology; drafting, research, revising and editing texts; inspecting ways of transposing new concepts from source to target legal systems; teaching.

However, while one respondent sees legal linguist as an emerging profession, which is recognisable but not yet recognised, many respondents think instead that the skills of legal linguists are separated from those of lawyer linguists, (legal) translators, editors and drafters. (Questions B, C, D, O).

As to conceptual substance of the term ‘legal linguist’ in different languages, respondents’ answers were inconclusive.

6. Conclusion

Although legal linguistics appears to be an emerging discipline, at the same time no common meaning or understanding of the term appears to exist between languages. Indeed, a variety of expressions are used, as we have seen in section 2 of this paper, and it has to be established whether these are parallel or overlapping disciplines. Moreover, responses to the questionnaire are somewhat unclear on this point. Research appears desirable in order to establish the scope of legal linguistics, with a view to establishing international conceptual and terminological uniformity.

It appears that a link does not necessarily exist between a discipline and an eponymous profession and vice-versa. Again, although the legal linguist may be an emerging profession, two important caveats remain. Firstly, the scope and skills of a legal linguist are not yet clear. Secondly, it remains to be seen whether those skills will be subsumed into and deployed in some profession.

In view of the limited spread of respondents, this research should be seen as preliminary, though the author contends that this is justifiable due to constraints of time and space. However, research into concepts of legal linguist should delve into further sources, such as textbooks, dictionaries, and encyclopaedias. More importantly, research should cover the appearance of legal linguists and parallel professions (e.g. lawyer linguist) in the European Union (EU) and other comparable bodies, such as the World Trade Organisation (WTO) and the United Nations (UN). In particular:

- (a) How the profession of lawyer-linguist was created in the EU and what kind of discussion took place then, such as the need for this kind of profession, what kind of people should be recruited.
- (b) How, in such discussions, what (if any) distinction appears between ‘legal linguist’ and ‘lawyer-linguist’?
- (c) How are lawyer-linguists recruited in the EU today (e.g. qualification requirements, what kind of competitions are arranged)? What are their exact tasks in the EU and do sub-categories of these exist? What is their relation to other close-related professions in the EU (e.g. translators, etc)?
- (d) Do comparable professions exist in other bodies where much legal translation is done? (e.g. UN, WTO): basically repeating items a-c above in respect of these bodies.¹⁸⁷

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Annex: survey questionnaire

Invitation to Participate in a Research Project

- **What does it mean to be a legal linguist?**
- **Who are the beneficiaries of legal linguistics programmes?**

I am currently involved in a research project addressing practical issues related to legal linguistics programmes. The project addresses two questions, with results to be presented later this year in the form of conference papers. The first question asks what it means to be a legal linguist. The results are to be presented in a paper to be delivered at the CERLIS conference *Researching Language and the Law: Intercultural Perspectives*, University of Bergamo, Italy, 18-20 June 2009. The second question examines who are the beneficiaries of legal linguistics programmes, in the shape of clients, customers, and stakeholders. The results are to be presented at the *XVII European Symposium on Languages for Specific Purposes* at Aarhus Business School 17-21 August 2009.

These questions need to be clarified, so that that legal linguistics programmes may, first, be appropriately focused and, second, seen by potential applicants, employers, and stakeholders as having clear practical professional relevance. To find answers to these questions, I combine theoretical and practical research, the latter in the shape of a survey among a focus group including academics, alumni and applicants from a legal linguistics programme, as well as potential employers and stakeholders. For efficiency and for your convenience, the questionnaire addresses both research questions. The study is performed as partial fulfilment of the requirements for a doctoral degree in legal linguistics at the University of Lapland, where my supervisor is Professor Heikki Mattila. The study is also intended to provide useful analytical information for a proposed Tempus project "Language and Law in the European Context".

Your participation in this project will provide useful information on the topic. You have been selected to participate in the project because of your involvement in legal linguistics.

You will be asked to complete a survey consisting of twenty (20) open questions, with an additional 'open forum' question at the end, allowing space for you to say anything you would like to add. The total time required to fill out the survey should be no more than 60 minutes.

Participation in the study is strictly voluntary. You may withdraw from the study at any point without penalty. Participation involves no foreseeable risks and is not associated with your job performance evaluation. All data from this study are confidential and will be used for research purposes only. Data from questionnaires and instruments are anonymous. Names of participants will not be connected to information.

If you have any questions about the study, I shall be happy to deal with them.

If you would like to receive a summary of the results of this research, please let me know.

Christopher Goddard Christopher.Goddard@rgsl.edu.lv + 371-28376208

Riga Graduate School of Law, Strelnieku iela 4 k-2, Riga LV- 1010, Latvia.

QUESTIONNAIRE: “What does it mean to be a legal linguist”? Who are the beneficiaries of legal linguistics programmes?

Would you please put your answers in the line below the question (next to the word 'response') and please email your reply to Christopher.Goddard@rgsl.edu.lv

If you cannot answer a question, please leave the response blank.

A. Does “legal linguist” consist of specific identifiable skills? If so, what skills?

B. Is legal linguist a recognised – or recognisable – profession?

C. If not, is legal linguist included under some other professional classification(s)?

D. Is a legal linguist the same as a lawyer linguist?

E. Who might want to employ a legal linguist?

F. How might a potential employer define what a legal linguist is and what they do?

G. For a *potential student*, what does a legal linguist's qualification mean in terms of professional development and the employment market?

H. What can an individual do, or do better, after a legal linguistics programme?

I. Before a legal linguistics programme, what does a student believe they can offer employers after the programme?

J. Should all graduates of a legal linguistics programme offer the same competence?

K. Do lawyers who complete a legal linguistics programme differ in competence from translators and others who complete the same programme?

L. Does the term *legal linguist* contain the same conceptual substance between different languages and legal cultures?

M. Why might someone want to employ a legal linguist?

N. For a *graduate* in legal linguistics, what does a legal linguist's qualification mean in terms of professional development and the employment market?

O. Is a legal linguist the same as a legal translator?

P. What kinds of organization might directly benefit from what legal linguists do?

Q. After a legal linguistics programme, what does a student believe they can offer employers?

R. What does a legal linguist actually do?

S. How can legal linguistic skills be applied in practice?

T. What kinds of organization might indirectly benefit from what legal linguists do?

Additional comments and suggestions:

DIDACTIC ASPECTS OF LEGAL ENGLISH: DYNAMICS OF COURSE PREPARATION

Christopher Goddard¹

Abstract

The advent of English as the global legal language highlights the need for translation of legal texts into English and production of legal texts in English. In practice, these processes involve non-native users (NNS) of English, who require both legal and linguistic knowledge and skills for task performance. These factors imply a corresponding need for education and training for NNS users of English in legal contexts. In turn, this situation presents significant challenges in terms of legal ESP across cultures, of which teachers need to be aware. The first of these, as a brief analytical review of the current status of English for legal purposes highlights, consists of pitfalls involved when English is used in legal contexts far from its common law roots. The second is a need for awareness of vital ESP-related theoretical aspects. These include teacher knowledge of the target discourse community, a materials-centred and appropriately sequenced syllabus relevant to real-life tasks, identification of key language-using tasks, concurrence between learners and teachers through language-teaching responses, and cross-cultural awareness on the part of both learners and teachers. Additionally, teachers need to be aware of the need for different approaches appropriate to specific education or training needs, here illustrated by broad examples of different types of group and relevant approaches: an example is given of course outlines and post-course evaluations of two public courses, one in contract drafting, the other for legal translators. Among the most challenging ESP courses in legal contexts are those for practising in-house lawyers: an example is given of a recent course intended as a template introductory short course, including course outline, approaches to analysing and developing authentic materials for legal ESP purposes, and post-course evaluation. The conclusion deals with lessons learned and suggestions for research.

1. Introduction

This paper examines language-teaching responses to the education and training needs of non-native users (NNS) of English operating as lawyers and legal translators in a professional context increasingly dominated by English. The professional reality is that many of these individuals draft legal texts in English or translate legal texts into English. Each of these tasks requires, in addition to legal knowledge, both legal skills and language skills. Acquiring those skills forms a vital part of education and training. Imparting those skills falls to instructors appropriately qualified and competent to do so. Teachers of ESP for legal purposes face a particular challenge in

¹ This paper forms part of the author's doctoral thesis in legal linguistics at the University of Lapland for delivery at the international conference "Law as a unifying factor of Europe – Jurisprudence and Practice" 21-23 October 2010 at the Faculty of Law, Comenius University, Bratislava.

that to a large extent law is language and language is law, while legal systems tend to be peculiar to specific nation states, unlike in other areas of ESP involving more universal concepts such as engineering, medicine or the natural sciences. To further complicate the picture, the close association of English with common law legal systems means that use of English outside its natural context can be problematic. As if this were not enough, a further complicating factor is the existence of several genres of legal English and the rise of the plain language movement to challenge those who remain loyal to more conservative forms of legal English. Finally, cross-cultural aspects may need to be considered. Teachers of legal ESP need to take these factors into account in addition to others generally applicable in ESP course preparation. To illustrate approaches to legal ESP course preparation, this paper briefly examines some scenarios in which legal English courses might feature and presents specimen course outlines and post-course evaluations of two public courses, one in contract drafting, the other for legal translators, before focusing on one of the most challenging areas: courses for practising in-house lawyers. The example given is of a recent (July 2010) course intended as a template introductory short course, including course outline, approaches to analysing and developing authentic materials for legal ESP, and post-course evaluation. The paper concludes with lessons learned and recommendations for further research.

2. Legal English as the global legal language

In the international legal arena, English appears to have acquired dominance as the lawyer's *lingua franca* (Drolshammer & Vogt 2003: 51; Mattila 2006: 240-252, 259) in the wider context of internationalization of legal life (Zweigert & Kötz 1998: 21; Sellers 2008: 1-5; Ferrari 1994: 95). The implications for law professionals operating internationally can be broadly summarized as a need for transnational legal and linguistic awareness. In the frame of this paper and on a more concrete level in the sphere of legal education and training, this translates as a need for awareness of how to use English in contexts involving interaction between two or more legal systems each with its corresponding legal language (see Goddard 2009a: 172-4; 194; 197-8 for review and analysis of the literature ²).

The associated pitfalls have been well researched (for review and analysis of the literature see Goddard 2009a: 175-184) but can be briefly summarized as:

- widespread use of common law language and contract models in non-common law contexts;
- use of common law functional clause models in non-common law contexts;
- translation issues, including conceptual mismatches and the enigma of equivalence, aggravated by the generally poor quality of legal dictionaries;
- asymmetry between legal terms and legal systems arising from social and other influences on legal systems themselves.

The last two items on the list appear to require legal and linguistic skills that may not easily form part of every ESP teacher's professional armoury. However, the same cannot be said for the first two items, which are easily accessible and comprehensible (Cordero Moss 2007: 221-239;

² Too many references to list but available at http://www.staff.amu.edu.pl/~inveling/pdf/Goddard_17.pdf.

Triebel 2009). Awareness of these can add considerably to the ‘street credibility’ of ESP teachers operating among law professionals. We will develop this theme in section 4 below on standards and in section 5.2 on approaches to course and programme preparation.

3. Varieties of legal English

Teachers of legal ESP need to be aware that legal English comes in several varieties. For example, in the field of legal writing one proposed set of variants (Bhatia 1993) is:

- academic, such as legal journals and text books,
- juridical, such as court judgments and law reports and
- legislative, such as laws, regulations, contracts and treaties, with their dispositive mechanisms and formulas to control the future actions of individuals, populations or countries that fall within their sphere of operation.

Another variety that could be added is the language used by lawyers to communicate with clients. For example, a report on an important court case in a law firm’s website newsletter for clients would look very different from a report on the same case prepared by a court reporter for a readership of lawyers³. However, the two types of report have one thing in common: they require considerable analytical and organizational legal reading and writing skills. What sets each apart, other than their different structure, is the dense, formal, traditional legal English style of the judgment compared with the modern, less formal, plain legal English style of the newsletter⁴.

Additionally, lines are blurred between legal English on the one hand and administrative or bureaucratic English on the other. Moreover, each area of law has its own specific terminology.

Thus, a lawyer whose work focuses only on, for example, shipping law, might also be familiar with terminology in related fields such as insurance or litigation but less so or even not at all with language associated with family law and inheritance or real estate.

Happily for the aspiring teacher of legal ESP, legal language has been the focus of considerable academic and practical attention since Mellinkoff’s famous work *The Language of the Law* (Mellinkoff 1963). Among many other notable contributors in addition to Bhatia’s work *Analyzing Genre: Language in Professional Settings* referred to above (Bhatia 1993), Wydick’s *Plain English for Lawyers* (Wydick 1998), Tiersma’s *Legal Language* (Tiersma 1999)⁵, Garner’s *Legal Writing in Plain English* (Garner 2001) and Gertrude Block’s *Legal Writing for Law Students and Lawyers* (Block 1999) immediately spring to mind as useful initial background reading. However, while varieties of legal English are relevant to teachers of legal ESP, of at least equal importance is a question discussed, though not answered, in the next section.

³ An excellent example is the different treatment given to the landmark House of Lords case of *Lubbe v Cape PLC* by the *Weekly Law Reports* (*Lubbe v. Cape PLC*, [2000] 1 W.L.R. 1545, 1554 (H.L.)) and by international law firm Baker & McKenzie in its newsletter item ‘New litigation Risk for Multinationals’. The author has copies of these.

⁴ Another example is the Unfair Commercial Practices Directive (<http://ec.europa.eu/consumers/rights/>) and its explanatory brochure (http://ec.europa.eu/consumers/cons_int/safe_shop/fair_bus_pract/ucp_en.pdf).

⁵ For legal ESP practitioners, a useful source of inspiration is Tiersma’s website <http://www.language-andlaw.org/>.

4. What standard to apply?

If legal English has its roots in common law legal systems such as England, then to the extent that those systems differ from civil law systems such as other EU countries it could be said that to a greater or lesser extent legal English is system-bound. If so, then as soon as legal English moves outside its ‘comfort zone’ of common law legal systems, it may run the risk of being a poor fit, for example with legal concepts and terminology as well as underlying substantive and procedural aspects of the foreign legal system in which it is being expected to operate. However, this is not to suggest that the structure of English inherently requires it to describe common law rather than civil law legal systems. Of course, for NNS law students planning to study in England, common law legal English and academic legal English might well be what they need. Much the same would apply to NNS law professionals (lawyers and translators) whose aim is to use the target language, English, within the sphere of the English legal system, such as contracts and other legal documents governed by English law, except that language of contracts or other specialisms would be substituted for academic legal English. Here, though, legal English is being used in its comfort zone. However, further research would be required to prove the ‘comfort zone’ theory.

But what of the Slovak lawyer working for a foreign buyer of a Slovak company where the due diligence and contract documents are in English but the governing law is Slovak law and – to complicate matters further – the legal department of the foreign buyer’s ‘mother company’ insists on using standard common law clauses framed in conservative legal English? Here English is clearly being used outside its comfort zone. What kind of legal English does the Slovak lawyer need, for example, to reword clauses such as representations and warranties and boilerplate (general clauses) to fit with the Slovak legal system and with the entirety of the documentation? Here, we may note that boilerplate contract clauses are not even in the ‘comfort zone’ of native speakers of English. And does the legal ESP expert called in by the Slovak lawyer and the mother company lawyer as consultant have recourse to a standard to apply?

The answer seems to be that, at least for the moment, no uniform standard appears to exist so that an ad hoc solution would have to suffice. However, certain areas of the law within the EU do appear to be generating their own legal English terminology quite independently of the English legal system. Many examples are to be found in EU directives and regulations. One of these is Article 2 of the Unfair Commercial Practices Directive cited above ⁶, which contains definitions such as “to materially distort the economic behaviour of consumers”, “professional diligence” and “transactional decision”. These appear to have been developed independently of the English common law system but will inevitably be absorbed by it in transposing legislation and regulation and thence into common legal and even general parlance.

Another source of new terms in English is the European Court of Justice (ECJ), which defines terms independently of Member State legal systems. Thus, the term ‘worker’ may be assigned a meaning by the ECJ that initially differs from that in some or all EU Member States. However, the ECJ meaning will inevitably filter through in time to become the meaning everywhere in the EU.

More generally, the European Commission has issued a booklet ‘How to Write Clearly’, for

⁶ See footnote 4.

all EU languages, not merely English⁷. This implicitly distances itself from conservative legal writing style. Although not specifically about legal language, some legal examples appear and the implications are clearly applicable to legal as well as administrative texts.

Again within the EU, a shift in terminology (and therefore in conceptual approach) is discernible. For example, a move away from the common law ‘tort’ and the civil law ‘delict’ is evident, especially in the field of public liability towards ‘non-contractual liability’ or, simply, ‘liability’. The problems of choosing between ‘tort’ and ‘non-contractual liability’ can be highlighted by the choices of Professor Christian von Bar. His major study on damages liability was about ‘torts’ (von Bar 1998, 2000). Some ten years later he produced another study on the same area, now about ‘non-contractual liability’. In the latter he explained the change of term as follows (von Bar 2009: xiii):

The title of this volume “Non-contractual liability arising out of damage caused to another” was suggested by Professor Eric Clive, Edinburgh. We have gratefully taken it up. The expression “tort law” is too tied to the Common Law tradition, while “law of delict” is too closely allied to the latin tradition and, moreover, no longer entirely correct, semantically considered, in view of the widespread forms of liability without intention or negligence.

Influences on legal English are thus apparent from within the EU – the Commission, the ECJ and academia. However, other than the Commission guidelines on clear writing, so far these efforts appear to lack coordination in the direction of a standard.

Without a standard, the aim should be at least to use language that is reader-friendly. In general, this means, e.g.:

- promoting plain modern legal language, concise sentences, stated positively, focusing on one idea with subject + (active) verb + object where the main idea comes first;
- 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.*

This position guides the approach to legal English training, as becomes clearer later in this paper from linguistic analysis of texts⁸.

5. Some theoretical didactic⁹ aspects of ESP in legal contexts

5.1. *Defining legal ESP*

The need for law and other professionals to use a language other than their native tongue for professional purposes is not new. In the legal context, persuasive evidence of this assertion exists in the shape of widespread use of legal Latin, German and French in earlier eras, in particular throughout Europe (Mattila 2006: 128-136, 180-186, 191-199). Today’s need, as we have seen, is for legal English in transnational contexts.

⁷ ec.europa.eu/translation/writing/clear_writing/how_to_write_clearly_en.pdf.

⁸ See language analyses in Tables 1-6 (all tables and figures are shown in Appendix).

⁹ In this paper the term ‘didactics’ denotes the ‘science or art of teaching’. It covers the whole range of activities (instructional design, teaching models, assessment practices, human development and curriculum development).

Examples of situations requiring English in legal contexts might include, in addition to examples already given:

- professional education or training in English. A good illustration is the Riga graduate School of Law, where English is the language of instruction on all study programmes at bachelor and master level. Students are international: for example, the September 2010 intake on masters' programmes consists of individuals from seventeen countries;
- international moot court competitions;
- legal academia, where English clearly predominates: for example, even the Internet-based *German Law Journal* is in English!;
- international dispute resolution, in particular arbitration;
- cross-border commercial and other transactions.

These scenarios involve what might be termed 'system requirements'. That is, if the linguistic requirement fails, the system breaks down.

For the ESP teacher operating in legal contexts, the importance of defining legal ESP and its varieties is linked firstly to finding out what learners need to learn, and secondly to drawing up an inventory for teaching purposes so as to determine how to use it to create a learning process. This in turn involves ESP course design processes such as needs analysis and language audit, on the basis of the need for relevance to learners of what is taught and a cost-effectiveness element and course 'surrender value' – that is, what can learners do (or do better) as a result of a course than they could before (Wilkins 1976: 69)?

Here it might be useful to recall the defining characteristics of ESP according to Dudley-Evans & St. John (1998: 4-5):

Absolute Characteristics

1. ESP is designed to meet specific needs of the learners
2. ESP makes use of underlying methodology and activities of the discipline it serves
3. ESP is centered on the language appropriate to these activities in terms of grammar, lexis, register, study skills, discourse and genre.

Variable Characteristics

1. ESP may be related to or designed for specific disciplines
2. ESP may use, in specific teaching situations, a different methodology from that of General English
3. ESP is likely to be designed for adult learners, either at a tertiary level institution or in a professional work situation. It could, however, be for learners at secondary school level
4. ESP is generally designed for intermediate or advanced students
5. Most ESP courses assume some basic knowledge of the language systems.

Bearing in mind all the above, legal ESP may yield a range of language-teaching responses, e.g.:

- a communication skills basis (e.g. dealing with written correspondence, telephone, video-conferencing or advocacy communication skills);
- a legal contexts basis, focusing on hard-core specifics such as negotiating and drafting specific documents;
- a study methods basis, e.g. where the aim is successful participation in a course or programme of study;

– a legal topics basis, where what is being taught is essentially general English but with a garnish of topical and professional relevance to enhance motivation.

All but the last require research and a materials-centred syllabus with a different approach for different varieties.

On this basis, legal ESP can perhaps be broadly and briefly defined as a range of language-teaching responses to (legal) system needs ¹⁰.

5.2. *Approaches to course and programme preparation*

Ideally, teaching touches on the already existing world of meanings which learners bring to them, within the umbrella of meaningful, relevant curricula sensitive to perceived learner needs, interests and experiences. As to the relation between teaching and learning, however, the traditional notion that teaching automatically leads to or in some way actually causes learning may be invalid. Ample evidence exists in the field of language learning (e.g. Kennedy 1973: 66) that learning occurs without teaching.

When designing activities for effective instruction, both content and sequencing are important (Calderhead 1984: 53, 59). That is, activities should be designed so as to be well-matched to learners' existing knowledge and skills. Additionally, activities should provide opportunities for further development and be well managed to ensure productive performance.

Practical methodological approaches to ESP course preparation should take into account (Knight 1996: 2):

- a. system needs: identify key language-using tasks that learners have to perform;
- b. course 'surrender value': what learners should be able to do, or do better, after the course;
- c. the requirement for quality of instruction, in particular design of materials and activities conforming in content and sequencing so as to be both comprehensible *and* meaningful to learners, also reflective of points (a) and (b);
- d. learner variables and obstacles to effective learning ¹¹.

Another point worth mentioning at this stage is that although language trainers need to be aware of certain language formulas for professional 'street credibility', ESP teachers may still remain outsiders in relation to the discourse community.

According to Richards (1990: 11) methodology can be characterized as the activities, tasks and learning experiences selected by the teacher in order to achieve learning, and how these are used within the learning process. In legal ESP in a classroom ¹² setting, the aim will be to bring some element of reality or authenticity into the learning process, either through materials used or tasks involved. This would form an important aspect of syllabus design.

A useful aim for ESP teachers to follow is that learners should concur with teachers: ESP programmes may come to grief in cases of mismatch between expectations. This can generally be avoided by a needs analysis for individual needs. Needs analysis may occur within a wider

¹⁰ This appears to reflect the view of Hutchinson *et al.* (1987:19) who state, «ESP is an approach to language teaching in which all decisions as to content and method are based on the learner's reason for learning».

¹¹ Regrettably, space does not allow us to develop these important themes here.

¹² The same would apply to courses delivered in house for clients such as law firms.

language audit which examines and prioritizes institutional language training needs, in particular identifying key players from both the professional and linguistic standpoint whose need for ESP is highest.

From the previous two paragraphs the following can thus be added to the list of items that the ESP teacher needs to consider in course preparation:

- a. relevance to real-life tasks;
- b. concurrence between learners and teachers through language-teaching responses.

In legal ESP, we should add a further item to the list: transnational legal and linguistic awareness on the part of learners and teachers¹³. These would include cross-cultural awareness. Although this paper has insufficient space to deal in detail with cross-cultural aspects of communication, nevertheless these cannot be ignored. Without digressing in an attempt to define culture, it should be noted that communication is an interactive event where people give meanings to messages, thereby jointly creating a social reality (see generally Nixon & Dawson 2002). Implicitly, effective cross-cultural communication requires pragmatic competence (see generally Thomas 1984, and for discussion Goddard 2004: 11-12, 13-23). Put differently, a high level of linguistic proficiency is no guarantee of pragmatic proficiency, so that language that is grammatically 'perfect' may still be perceived as inappropriate. Here, the critical reader might note that students will learn law in law classes but that users of legal English should be proficient users of English generally, a characteristic of ESP noted (see above) by Dudley-Evans & St. John.

5.3. *Course content and materials design*

It is important to draw the distinction between classroom and naturalistic settings for second language acquisition. From a psycholinguistic point of view, the classroom provides a more formal context, whereas in a naturalistic or informal context the learner tends to be involved as participant-observer in unsystematic, life-oriented language activity. Sociolinguistically, the two settings can be seen as two different domains (see generally Fishman 1964). The educational distinction between classroom language learning and naturalistic learning may be found in the distinction commonly drawn between training and 'learning on the job'. Training generally involves some deliberate organization of the learning process, mediated by competent individuals other than the learner, while naturalistic language acquisition is largely experiential and directed by learners themselves (Ellis 1989: 259; Kramsch 1993; Nunan 2000).

It should be borne in mind that both time and imagination are required to design and implement activities to ensure both valuable intervention in the form of instruction and productive performance and – the link between the two – stimulating learning tasks relevant to desired learning outcomes. Both content and sequencing are important in order to ensure that learners have the necessary knowledge and skills presented to them (Calderhead 1984: 53, 59). Put differently, the teacher has to consider the fitness of materials and tasks for intended learning outcomes. These in turn should be understandable to learners and operate as a vehicle for meaningful and effective learning. Suitability of materials may be prognosticated with foresight but better judged with hindsight. Thus, evaluation can influence selection, or deselection, of materials.

¹³ Implicit from the need for transnational legal and linguistic awareness (Section 2). However, as with learner variables and obstacles to effective learning (footnote 11) space does not allow us to develop this important theme here.

Variety of content and presentation appears to be a vital factor, especially as learners will not share the same preference for one way of learning. In selection of content, when addressing the question of appropriacy (British Council/BBC)¹⁴, one factor to be taken into account is the need for balance in the skills that need to be practised. According to Dubin & Olshtain (1986: 50): «When course designers choose to focus on skills rather than on knowledge or content, the definition of product is much more closely related to the use the learners are expected to make of the new language». The problem with many coursebooks is that each unit tends to follow the same pattern. Language may be monotonously presented in the same way. Monotony, too, can stem from a teacher's own methods – an unvaried lesson structure.

As to course surrender value, it is useful at the start of each course to ask learners to state what they expect to get from the course. This will enable them at the evaluation stage to voice awareness of their progress in terms of course 'surrender value'. Initial clear explanation of course parameters and content, along with course-long consensus checks between teacher and participants as to course content, may help to avoid mismatch between learner and teacher expectations (Nunan 1987: 177).

6. Types of legal English course: approaches

Before addressing the introductory legal English course for in-house lawyers, which forms the main focus of this part of the paper, it will be useful to briefly compare different approaches and evaluations from sample legal ESP courses for other situations. For the sake of convenience and space, the author has chosen only courses and programmes from his home institution.

6.1. *Bachelor programmes*

Students on programmes leading to a bachelor degree can generally be expected to be a 'clean slate' in terms of legal English. Input of legal English may vary depending on the main language of instruction. For example, students on the Law and Business programme or Diplomacy and International Relations programme, both interdisciplinary three-year bachelor programmes at the RGSL launched in September 2010, are taught entirely in English. With that in mind, they receive a short (two-hour) study skills component on Day 1. This is followed by concentrated legal ESP at the start of the first year, in the shape of three 30-hour courses designed to stimulate acquisition of lexis that they are likely to need in their studies, along with academic writing skills and presentation skills. Results will be evaluated and any changes required can be implemented with intake 2011-2012.

6.2. *Master programmes*

By contrast, students on programmes leading to a master's degree at RGSL¹⁵ receive a longer (eighteen hour) study skills course as part of a wider introductory course, but apart from the pro-

¹⁴ «Appropriacy refers to whether a word is suitable for the context it is being used in. It is an important aspect of language but an extremely complex one, as decisions about how to say things depend on understanding exactly what is right for the context and the culture». Available at: <http://www.teachin-english.org.uk/think/knowledge-wiki/appropriacy>.

¹⁵ Currently six programmes are offered: LLM in International & European Law; LLM in Law & Finance; LLM in Public International Law & Human Rights; LLM in Transborder Commercial law; LLM in European Law & Policy; MA in Legal Linguistics.

gramme in legal linguistics (see generally Goddard 2009b) legal English takes the form of optional tutorials, partly for reasons of lack of time (these are one-year intensive programmes) and partly because, in contrast with bachelor students, they are generally not regarded as being quite a ‘clean slate’¹⁶. However, students who wish to do so may attend legal English courses on the legal linguistics programme, which offers: legal writing (12 hours), contract drafting (12 hours)¹⁷, legislative drafting (24 hours), English grammar & stylistics (24 hours) and preparation for the international Legal English Certificate (ILEC)¹⁸.

6.3. *Continuing legal education (Continuing professional development)*

Whether offered for lawyers or translators, these fall into two categories:

- public courses on RGSL premises designed to attract individuals or groups from e.g. law and accountancy firms, public and other institutions;
- in-house courses made to order, mainly for international law firms.

We shall briefly look at two examples of the first type before focusing in more detail on a course of the second type.

6.3.1. *Principles of contract drafting*

This course, outlined in Figure 1, has been tried and tested over several years and provides an adaptable platform for courses for individuals from a wide variety of professional backgrounds, as well as BSc., LL.M and MBA students. For example, although BSc and MBA students may not be – or become – lawyers, they may be or become managers responsible for negotiating and implementing contracts, including instructing and supervising lawyers who actually prepare contracts. From that standpoint, the course is relevant to them, though not in the same way as it is for law students or practising lawyers but rather as an insight into the language and structure of contracts, especially in international contexts, as well as some common pitfalls. As already mentioned, the course is also offered as an option on the legal linguistics master programme. Additionally, students from other master programmes can enrol: those studying law & finance and those on the LL.M transborder commercial law track are most likely to register.

Although original course preparation followed ESP guidelines outlined above, end-of-course evaluations are taken every time the course is delivered, and from time to time the course content and presentation is reviewed. Figure 2 shows the evaluation from March 2009, when the course was attended by practising law and other professionals. While the evaluation is largely positive, some changes are suggested. These changes have now been implemented, with fewer power point slides and greater focus on practical aspects. While the flexibility and durability of the course have been proven, at some stage the course will be due for a major overhaul.

¹⁶ To distinguish between legal English and legal linguistics, broadly speaking legal English is English used in legal contexts, while legal linguistics is the purposive study of language used in legal contexts. According to Salmi-Tolonen (2004: 1169) «[t]he purpose of legal linguistics is to study the language of the law, in all its forms, and its development and usage in order to create new knowledge of the interplay between language, law and society».

¹⁷ Also offered as a continuing legal education/continuing professional development course: see Figure 1.

¹⁸ University of Cambridge ESOL.

6.3.2. *Legal English for translators and interpreters*

This course (see Figure 3 for course outline) was run as a four-unit pilot course in late 2008 and early 2009 and required very considerable preparation indeed. Although disappointingly few participants attended, those who did attend were experienced professional translators and interpreters, so that the positive evaluation, e.g. of component IV (Figure 4), was a considerable accolade. As a result of evaluations, if the course is run again, comparative law will feature earlier in the series and the reading materials will be distributed beforehand.

6.3.3. *Courses tailored to client requirements (law firms in house)*

A feature of these courses is that the interest level of participants in theory is low but in 'learning by doing' high. This seems generally to be so, even when the relevance and importance of theory is made clear. Course participants are busy law professionals, often attending the course in their own office or some other nearby venue, sometimes under the watchful eye of a partner. All want to come away at the end of the course with a sense of having learned something they can apply in their work.

For these reasons, even where pre-course needs analysis has been used it is useful at the beginning to have a short warm-up session. Here, everyone introduces themselves, states their interest in the course – and what they hope to get from the course. This then becomes the course surrender value that participants will hopefully bear in mind when completing the end-of-course evaluation, irrespective of what they may have said in their responses to needs analysis.

7. Example of a tailor-made in-house course

7.1. *The client*

In this case, the client was a German legal and tax consultancy based in Nürnberg with 100-plus lawyers, tax counsel and accountants and offices in ten countries (including Germany)¹⁹ throughout Central and Eastern Europe and correspondents in several others²⁰. The firm, which describes itself as «decentralized, in that all offices form a network of direct links»²¹, generally has at least one German lawyer (typically, a partner and a trainee) in each office, which is otherwise largely staffed by nationals of the country concerned. The 'company language' is both English and German and all personnel including partners are required to have some command of both languages.

7.2. *Course arrangements*

The course was set up at short notice at the client's request. Moreover, it was unclear who the participants would be, other than that at least one partner would be present, along with personnel from the firm's Vilnius and Minsk offices. In pre-course email exchanges, the organizing partner had agreed the course outline (Fig. 5), having indicated only that the focus of the course was to

¹⁹ Belarus, Czech Republic, Estonia, Germany, Hungary, Latvia, Lithuania, Poland, Slovakia, Ukraine.

²⁰ Bulgaria, Romania, Russia.

²¹ http://www.bnt.eu/index.php?page=en_standorte.

be “drafting documents”. The overall aim was that the course should be exploratory, with a view to establishing a template introductory legal English course for others of the firm’s offices.

‘Givens’ were that course participants were native speakers of German (with English as second language), Lithuanian or Russian (both with German as second language and English as a third language) and that they use English for transactions with an international element, such as cross-border mergers and acquisitions (e.g. due diligence, share purchase agreement), emails and news items in English for the firm’s multilingual website. Additionally, participants had different levels of English and experience. Moreover, the partner emphasized that this was an exploratory course, with a view to other future courses. For this reason and due to time constraints, no pre-course needs analysis was undertaken – perhaps unwisely. Crucially, the client supplied on request at least one sample text from each participant, some alongside versions in Russian and Lithuanian. This enabled pre-course analysis of texts (Figg. 6-12). Typically, analysis entailed identifying words, phrases or sentences for improvement and noting the problem involved. The aim was to use this information when working with participants to improve the texts in class.

Course venue was the firm’s Vilnius office in a light, air-conditioned room (this was a very hot summer) with laptop, media projector, screen, flip chart and marker pens all arranged by the client, who also printed out course materials, sent beforehand by email. In practice, these arrangements are usually best coordinated by one individual in the office reporting to a partner. This same individual would also arrange travel and accommodation. The course was to run on two half-days on Friday and Saturday, a total of 12 academic hours, a balance between firm’s time and participants’ time. An added advantage for overall economy and efficiency was that this allowed for travel on days 1 and 2, with only one night in a hotel. An end-of-course certificate was to be issued to participants, enabling them to claim one credit for continuing professional development from their local bar association.

7.3. *Course materials*

Course material consisted of the following:

- a set of 100 PPP slides on theoretical aspects of legal English as a lecture-cum-seminar-type warm-up and focus activity on Day 1. The aim of the slides was to prepare for Day 2, that is, to practise (with authentic texts) and implement (with participants’ own texts) theoretical aspects from Day 1. With that in mind, PPP slides covered language aspects as disclosed by pre-course analysis of participants’ own texts, of which more below, but in particular approaches to plain language drafting;
- a 22-page handout entitled ‘Aspects of Legal English: Introductory seminar and workshop’, with a course outline (Fig. 5) and timetable, exercises using authentic materials. These consisted of a newsletter item followed by a court report and a second newsletter item showing different treatment of the same topic, and finally an EU directive for analysis and ‘translation’ into a newsletter item. These practice exercises operated as a second (practice) stage with authentic materials in a particular skill area (analytical legal writing for different audiences) and thus as a transition between the theory from Day 1 and the implementation (workshop) stage using participants’ own materials;
- participants’ own materials (Figg. 6-12)²² for improvement on-screen, in-class. These had previ-

²² Extracts only for this paper due to constraints of space, though in the course participants received

ously been airbrushed for confidentiality and analysed (see Tables 1-7 corresponding to Figures 6-12 reproducing in list form the language samples highlighted in the figures and to which each table respectively corresponds) to identify areas for improvement, especially linked to the theoretical stage on Day 1. Basically, the focus was on correct use of plain English in legal contexts. For reasons of space, this paper contains only extracts from participants' texts with sample analysis of each.

8. Discussion

Analysis of texts showed that in general meaning was clear, in spite of much room for lexical and other improvements. Some texts showed English on one side of the page and the foreign language version (Lithuanian, Russian) on the other. Where typical common law expressions were used in cases of dual language texts ²³, this may suggest that the text was prepared in English. Conversely, the form and content of other texts in English may have been influenced by content of Russian, German and Lithuanian versions. In methodological terms, analysis was eclectic: pragmatic rather than purely linguistic.

The main focus was to collate the information to help set a standard. This enabled preparation of slides. These began with what to avoid, such as characteristics of legal English, common words with specialist meaning (e.g. *execute*), old or middle English words (e.g. *hereinafter*), words of French origin (e.g. *damage*), terms of art, jargon (e.g. *in the event that*), use of two or more words where one will do (e.g. legal pairs), passive verbs, nominalizations, use of *and/or* and *etc.*. Slides then focused on what to promote, such as preferring active to passive verbs, plain English, and so on.

In general, the course evaluation (Fig. 13) was positive. Interestingly, and somewhat disappointingly, some negative comments appeared on the balance between theory and practice, even though the theoretical part involving use of slides drew on analysis of texts. However, this should come as no big surprise given the author's awareness that in-house course participants show a strong preference for learning by doing and some disdain for theory. Nevertheless, some theory is vital. Clearly, though, the course slides need some revision firstly by shortening and secondly by simplifying it into a set of "do's and don'ts", as at least one participant suggested. Further emphasis on the link between analysis of texts at both the introductory stage and in the course outline would also be helpful.

Finally, use of participants' own materials – or at the very least authentic texts – appears to be instrumental to the success of in-house courses. Pleas of 'confidentiality' to justify non-production by clients of (participants') authentic texts are open to challenge by the response that confidential material is not required and can be removed by the client before production. Only rarely will a document remain confidential after it has been 'airbrushed' in this way. Anonymous use of one's own text makes a course relevant and useful to participants: a significant part of course value is added. Moreover, on-screen display appears to be a useful exercise in that it enables the

hard copies of the whole text, which was also shown on screen so that participants and the instructor could collaborate in identifying and rectifying or improving the text.

²³ Shareholder agreement Figure 6, articles of association Figure 7, power of attorney Figure 11, site operation & maintenance agreement Figure 12.

trainer and participants to collaborate in transforming these texts by applying, for example, plain language and stylistic improvements such as appropriate placing of discourse markers.

9. Conclusion

In examining language-teaching responses to the education and training needs of non-native users of English for legal purposes, this paper has looked at different types of need and different types of response, in greater or lesser detail. Presentation of different legal ESP contexts illustrates to some extent the different approaches required. As a constant, though, the guidelines for ESP course preparation²⁴ appear to provide a sound basis on which to proceed. To these might be added the importance of administrative arrangements, especially where course delivery is at a venue unfamiliar to the ESP teacher.

Of the courses examined here, that in contract drafting remains a solid warhorse. The translators' course will hopefully see further service, the nearest possibility being on an upcoming European Union legal linguistics project in Kosovo in which the author and his institution are involved. And with changes, the introductory course 'Aspects of legal English' could provide a useful template for future introductory in-house courses²⁵.

Areas for further activity suggested by this paper might include research exploring the 'comfort zone' theory outlined above, as well as possible links between textual errors and (legal) experience, language level, native language. It would also be interesting to see to what extent – in cases where English and foreign language texts appear side by side – the English text influences the foreign language text, and vice versa. Perhaps most importantly, the question arises of standards to be applied in English as a global – or even as a European – language in legal contexts. Can a universal or European standard be achieved, and if so, how?

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²⁴ See section 5.2 items marked a-f.

²⁵ In Bratislava, immediately following the conference at which the author delivered this paper, for the Bratislava office of the same law firm at whose Vilnius office the course was first delivered.

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APPENDIX

Principles of contract drafting in English

Course Aim, Goals and Outcomes

Aim

To review the principles of contract drafting, and in particular the practical world of international contracts in English.

Goals

Provide a theoretical overview of legal and linguistic approaches to contract drafting.

Enable participants to implement theory in the context of practical exercises involving realistic situations, including examples of real contracts airbrushed for confidentiality.

Outcomes

Understanding of the diverse legal and linguistic background of international commercial transactions and ability to draft and supervise drafting of sound international commercial contracts accordingly.

Contents

Part 1: Glossary of Contract Terms Page 4

Part 2: Course Textbook

Chapter 1: Process of Contract Drafting; Elements of Effective Contracts Page 10

Section A: Fundamental Policies and Values of Contract Law

Section B: Sources of Contract Law

Section C: General Writing Principles Applicable to Contract Drafting

Section D: Using Defined Terms

Chapter 2: Contract Principles Page 21

Section A: Basic Attributes of the Contractual Relationship

Section B: Overview of Contract Standard Provisions

Section C: Promises and Conditions

Section D: Warranties

Chapter 3: Establishing Agreement, Rights and Obligations, Remedies Page 27

Section A: Establishing an Agreement: Offer, Acceptance and Consideration

Section B: Remedies

Chapter 4: Planning Ahead for Problems; Contract Interpretation Page 30

Section A: Termination Provisions

Section B: Impracticality of Performance and Frustration of Purpose

Section C: Risk Allocation in Contracts

Section D: Clauses that Address the Possibility of Future Litigation

Chapter 5: Other Important Clauses; Assembling Contracts Page 35

Section A: Understanding General Clauses

Section B: Assignments

Section C: Contract Interpretation Issues

Part 3: Basic Language Guide to Drafting Legal Documents in English Page 40

Part 4: Assignments Page 52

Section A: Introduction and Self-Assessment

Section B:	Contracts Terminology and Language Development Exercise	
Section C:	Redrafting Skills Exercise	
Section D:	Exercises:	Does a Contract Exist?
Section E:	Exercise:	Drafting Termination Provisions
Section F:	Exercise:	Agreement to Use On-Line Banking Services
Section G:	Exercise:	Extract From Loan Agreement
Section H:	Exercises:	Reading and Understanding Contracts
Section I:	Further exercises	
Part 5: Appendix		Document File
Loan Agreement		Page 83
Agreement for Independent Contractor Services		Page 94
Select CISG Provisions		Page 102
Online Banking Agreements (2)		Page 109/115
ABC Car Hire Terms and Conditions		Page 121
Property Lease – commercial		Page 124
Procurement contract		Page 135
Share purchase agreement		Page 147

Source: author.

Figure 1 . Course Outline: Principles of Contract Drafting

[Name and logo of institution deleted]

COURSE: Principles of Contract Drafting in English

Course no.: [deleted]

Date: 3-5, 9, 11, 12 March 2009

Participants: 6

1. Generally, the course was

Poor	Fair	Average	Good	Excellent
			2	4

Comments

- this is a great course not only for lawyers, but also for administrative staff
- a lot of useful information, group work

2. The course met my expectations:

0 (not at all) 0 0 1 5 (very much)

3. I would recommend this course to other professionals working with contracts

0 (not at all) 0 0 0 6 (very much)

4. What did you like about the course?

Comments

- Exercises
 - I like course reference to real contracts
 - Practical examples, changes in the contracts
 - Course totally changed opinion about contract language and gives great overview about contract development
 - Very practical
 - The teacher, his knowledge, his style of teaching
5. What did you dislike about the course?

Comments

- too short course
- could be less PP presentation in the beginning and more practical training;
- now after this course I must correct all contracts.

6. How do you rate the course facilitator [name deleted]?

0 (poor) 0 0 0 5 (excellent)

Comments

- excellent language + great personality;
- perfect language and communication skills, excellent in teaching!
- He loves his job you can feel it. Every example, exercise and comment has a sense.

7. How do you evaluate administrative aspects – premises, timing etc.?

Comments

- Excellent
- Administrative aspects are good and flexible;
- Excellent (about the time – could start at 18:00 and last for 3 weeks with 2 classes per week)
- Very well organised but [words in Latvian deleted] (choir singing was disturbing*)
- Very good
- Could be better to start at 18:00

8. What other courses / seminars would you be interested in taking at RGSL?

Comments

- financial law
- international trade, EU Law
- all English language courses
- legal English
- more English courses

9. Where did you hear about the course?

- found at webpage of [deleted] which I visit regularly,
- from a friend
- e-mails; [deleted] home page
- booklet
- web
- from [deleted] email
- We are gathering testimonials for this course. If you liked the course, please write a testimonial one to three sentences long that we may use in our informative materials in the future
- Comments
- "For everybody who considers that he knows everything in contract drafting, please find his lack of knowledge on this course" [name of individual and company deleted]

* The choir of the Stockholm School of Economics regularly practises in the evening on the premises!

Source: author.

Figure 2 . Course Evaluation: Principles of Contract Drafting

LEGAL ENGLISH FOR INTERPRETERS AND TRANSLATORS

Course objective: to assist interpreters and translators to work with legal language and lawyers' thinking.

Course content: a mixture of theory and practical exercises. A variety of legal texts, e.g. legal opinions, reports, letters, and participants' own texts are used for exercises. The course involves mainly reading and writing skills.

Course format: Series of four weekend workshops, which can be attended separately.

Course participants: Interpreters and translators working with legal texts and at law firms and others who consider the subject relevant for their job.

Course outline

Workshop 1: How lawyers think

Introduction to Legal Reasoning and structure of a Legal Discussion

Understanding Legal text, Legalese

How to read and Understand Court Opinions

Legal Latin

Illustrating different methods of case analysis

Understanding law reports and specific legal texts: contracts, statutes

Proofreading course participants' own texts translated into English

Workshop 2: Legal Language and legal linguistics

The concept of legal language: functions, features, varieties

Legal linguistics as a discipline, the importance of legal-linguistic knowledge

Legal language as a Language for Special Purposes

Importance of communication theory and transmission of legal messages

Strengthening the authority of the law and lawyers' team spirit

Linguistic policy and the cultural task of legal language

Writing in cross-cultural contexts

Proofreading course participants' own texts translated into English.

Workshop 3: Legal Language, terminology, and writing

Law, language, and culture

Characteristics of legal language

Legal concepts and legal terminology

Categories and styles of legal writing

Grammar as a vital tool in legal writing

Detecting problems in source text

Making text more reader-friendly

Summarizing, revising, and editing text

Proofreading course participants' own texts translated into English.

Workshop 4: How the law works

Legal theory

Law and legal systems

Areas of law

Hierarchies of law, relationships between laws and legal systems Globalization and harmonization Lawyers and legal institutions Law in the context of politics and economics Problem areas for translators Proofreading course participants' own texts translated into English.

Source: author.

Figure 3 . Course outline: Legal English for Translators & Interpreters

COURSE EVALUATION: Legal English for Interpreters and Translators

Workshop IV "Comparative Law"

COURSE No. [deleted]

DATE: 27-29 March 2009

Participants: 4

1. Generally, the course was

Poor	Fair	Average	Good 1	Excellent 3
------	------	---------	--------	-------------

Comments

2. The course met my expectations:

1-5

0 (not at all)	0	0	1	3 (very much)
----------------	---	---	---	---------------

3. I would recommend this course to other law professionals wishing to improve their skills in English.

1-5

0 (not at all)	0	0	0	4 (very much)
----------------	---	---	---	---------------

- it concerned not only translators, but drafting as well

4. What did you like about the course?

Comments

- The combination of law and language, theory and Comparative law is particularly important.

- It was smooth, active, well prepared, very relevant and highly usable. I liked the well chosen theory material and the part of editing the participants' texts.

- The framework for understanding legal language and practical tools for improving translator's skills.

- The practical part was very valuable.

5. What did you dislike about the course?

Comments

- It would have been good to receive the theory material a little bit in advance, the course gave a good overview which might have been an excellent first workshop.

- Nothing.

- The theory part seemed a bit 'dry' – not put into perspective of translations practice (some bits were better than other).

6. How do you rate the instructor [name deleted]?

1-5

0 (poor)	0	0	0	4 (excellent)
----------	---	---	---	---------------

Comments

- Extremely well prepared.

- A great expertise combined with teaching skills.

- A great professional both in law and translation.

7. How do you evaluate administrative aspects – premises, timing etc.?

Comments

- Excellent.

- Excellent, cozy and welcoming.

- Very welcoming, comfortable and pleasant.

- Training – great, coffee should be at the same floor.

8. What other courses / seminars would you be interested in taking at [name deleted]?

Comments

- Anything designed for translators.

- Legal linguistics.

9. Where did you hear about the course?

2 www.[name deleted] 2

_ Other web search (please state where.....)

1 Received [name deleted] CLE Email update on courses at [deleted]

_ Newspaper advertisement

i. Which newspaper_____

_ Personal letter

1 From a friend/colleague

_ Other (please comment).....

10. We are gathering testimonials for this course. If you liked the course, please write a testimonial one to three sentences long that we may use in our informative materials in the future.

Comments

«Every translator of legal texts should attend this course. If translators wish to contribute to better translation environment, more successful results, client-friendly service, business-minded attitude, the translators MUST attend this course.»

«There is a lot to be done in [deleted] to improve legal documents and their translations. Attending these courses is one excellent way to achieve the goal.» [name of individual and company deleted]

«A great course for those who have mastered the basics and are looking to take another step further in their professions.» [name of individual and company deleted]

Your Name, Institution (for the testimonials, optional)

You can also choose to forward your testimonial to courses@[deleted] to keep the evaluation anonymous.

THANK YOU!

Suggestions:

- future series of courses could be started with comparative law

- it would be useful to have the course material in advance for reading and analyzing

Source: author.

Figure 4 . Course Evaluation: Legal English for Translators & Interpreters (IV of IV)

Aspects of Legal English**Who is this introductory training seminar and workshop for?**

It is for practising lawyers who are not native speakers of English but who need English in practical legal contexts in an international environment.

What is the aim of the seminar and workshop?

The aim is to raise awareness of the main challenges in the field and to develop principles and approaches in recognizing and dealing with those challenges.

How will the aim be achieved?

On Day 1: Starting with a seminar presentation (information exchange) leading to discussion, questions and answers, with a view to establishing some general principles and approaches to apply to legal texts in English in international contexts.

On Day 2: Starting by examining and working with legal texts (contained in this booklet) to practise principles and approaches on authentic legal texts, to acquire further principles and approaches from practice, followed by applying principles to course participants' own texts.

Note: this seminar and workshop runs for 12 academic hours* and may qualify for credits with your bar association.

One academic hour = 45 minutes

Source: author.

Figure 5 . Course outline: aspects of legal English

SHAREHOLDERS' AGREEMENT

This Shareholders' Agreement (hereinafter the **AGREEMENT**) was made and entered on the [x] day of [x] month of the year 2009 by and between:

The Parties hereby agree as follows:

DEFINITIONS AND INTERPRETATION

1.1. Whenever used in this Agreement, unless the context otherwise requires, the following terms when capitalized shall have the following meanings:

1.1.4. **COMPANY** means a closed stock company

1.1.5. **CONFIDENTIAL INFORMATION** means the information as defined in Clause 17.1 hereof.

SUBJECT MATTER

2.1. The Parties hereby acknowledge and agree

2.2. The Parties declare their best endeavours during the whole term of this Agreement... to procure that at all times during the term of this Agreement the provisions of this Agreement are duly observed and given full force and effect according to its spirit and intention.

ALLOCATION OF SHARES

3.1.1. a portion of all the Shares... shall be held by

The Parties hereby agree that during the term of this Agreement the subscription terms of any and all share issues of the Company shall be such that

MANAGEMENT OF THE COMPANY

4.3. Also the Parties agree that the General Meeting of Shareholders must be convened once per quarter.

4.5.1. The following decisions of the General Director require approval of the General Meeting of Shareholders adopted at the majority of 2/3 of the total vote cast:

entry into transactions by the Company regarding providing securities (pledges, mortgages, etc.), sureties and/or guarantees for the performance of the obligations of the third parties as well as for granting loans.

The General Director

4.8 ... In no event, the General Director has authority to take decisions and/or perform actions on behalf of the Company specified in Clause 4.5.1, unless such actions or decisions have been duly approved or decided by the General Meeting of the Company.

4.10. The General Director is obliged to convene General Meeting of Shareholders once per quarter.

BUSINESS OF THE COMPANY

5.1. Unless otherwise agreed in writing by the Shareholders or otherwise herein provided,...

NON-COMPETITION AND EXCLUSIVE RIGHTS

11.1.4. Must not become a member of a management body or employee of the legal person, which engages in business competing with Business of the Company, or provide respective services to such legal person, based on the service or other agreements.

13.1. In case any of the Shareholders fails to perform or improperly performs its obligations hereunder, it is liable to pay a fine, the amount of which is established as set forth below, for each such failure to each other Shareholder and to compensate the damages incurred by such Shareholder in excess of the aforementioned fine, including cases when no fine is established.

CONFIDENTIALITY

18.2. Each Shareholder must ensure that any third person, to whom the Confidential Information have to be disclosed due to the cause of business or due to other requirements established by the laws or the internal documents of the Company, properly keeps the Confidential Information as well as does not disclose it to any other party.

Source: client of author.

Figure 6 . Shareholders' Agreement (extracts)

Table 1. Sample language analysis from Figure 6

Language sample	Comment
hereinafter	Obsolete + redundant: delete
made and entered	Legal pair: one only needed
day of [x] month of the year	Obsolete form: can be shortened
by and between:	Legal pair: one only needed
hereby	Obsolete + redundant: delete
unless the context otherwise requires	Word order: <i>requires otherwise</i>
shall	Obsolete : use present simple tense here
a	Article: not needed
hereof.	Obsolete + redundant: delete
hereby	Obsolete + redundant: delete
acknowledge and agree	Legal pair: one only needed
at all times during the term of this Agreement	Redundancy: delete: <i>at all times... the term of</i> , leaving <i>during this Agreement</i>
the provisions of this Agreement are duly observed	Redundancy + obsolete: replace <i>the provisions of</i> with <i>this</i> + delete <i>duly</i> . Should read <i>this Agreement is observed</i>
full force and effect	Legal pair: one only needed
shall	Obsolete: use <i>will</i> to express intent
The Parties hereby agree that	Redundancy: delete.
any and all	Legal pair: one only needed
Also the Parties agree that	Redundancy: delete
per quarter.	Latinate English: <i>every quarter</i> better
adopted at the majority	Preposition wrong: <i>by</i> better
entry	Lexis: use <i>entering</i>
Regarding	Lexis + obsolete: <i>for</i> better.
etc.	Imprecise: replace with <i>e.g.</i> at start of list.
and/or	Error: vague, misleading: use one or the other or <i>either X or Y or both</i>
the	Article: redundant
In no event, the General Director has authority	Verb – inversion needed: <i>In no event has...</i>
and/or	Error: vague, misleading: use one or the other or <i>either X or Y or both</i>
is obliged to convene General Meeting of Shareholders once per quarter.	Various: should read must convene a General Meeting of Shareholders once every quarter

herein	Obsolete + redundant: delete
the legal person, which engages in business competing with Business of the Company	Various: punctuation + articles (2) + word order + punctuation (no comma needed): should read: <i>a legal person in competition with the Business of the Company</i>
In case any of the Shareholders fails to perform or improperly performs its obligations hereunder, it is liable to pay a fine	Various: <i>in case</i> should read <i>if</i> ; <i>any of</i> unnecessary: <i>hereunder</i> + <i>pay</i> redundant: delete; lexis <i>fine</i> incorrect. Should read <i>A shareholder who fails or fails properly to perform its obligations is liable to a penalty</i>
and to compensate the damages incurred	Various: article + lexis: should read <i>and to compensate damage incurred</i>
in excess of the aforementioned fine	Obsolete: should read <i>in excess of a fine</i>
any third person, to whom the Confidential Information have to be disclosed due to the cause of business or due to other requirements established by the laws or the internal documents of the Company, properly keeps the Confidential Information as well as does not disclose it to any other party.	Various: e.g. punctuation, verb form, lexis, redundancy. Should read <i>a third person to whom the Confidential Information has to be disclosed for business or statutory requirements or Company rules will maintain confidentiality.</i>

ARTICLES OF ASSOCIATION OF...**ARTICLE 1. GENERAL PART**

4. The property of the Company shall be separated from the property of the shareholders. The Company shall be liable for its obligations only to the extent of its assets. The shareholders shall be liable for the obligations of the Company only to the extent of the amount of the issue value of the shares to be paid by them. The Company is not liable for the obligations of the shareholders and the shareholders are not liable for the obligations of the Company, except for the cases such civil liability of the shareholders (participants) of the Company is established in the Civil Code.

ARTICLE 5. BODIES OF THE COMPANY

4. The bodies of the Company shall act only for the interests of the Company and for the benefit of its shareholders. The bodies of the Company shall have no right to adopt decisions or perform any acts which are in breach and/or contradict to the Articles of Association of the Company or objectives indicated herein as well as which are obviously loss-making (buying goods or services in a higher or selling them in a lower than market prices, also squandering the Company's property, etc.) or which are obviously economically inexpedient.

8. The Board shall:

8.4. take the decisions to establish or wind up the branches and representative offices of the Company; approve the regulations of the branches and representative offices of the Company; appoints and recall the managers of the branches and representative offices;

ARTICLE 8. THE HEAD OF THE COMPANY

4. The below indicated transactions may be concluded by the Managing Director only if the decision of the Board is adopted:

Source: client of author.

Figure 7 . Articles of Association (extracts)

Table 2. Sample language analysis from Figure 7

Language sample	Comment
shall be	Obsolete: use <i>is to be</i>
shall be	Obsolete: use <i>is</i>
shall be	Obsolete: use <i>are</i>
shall act	Obsolete: use <i>act</i>
For	Grammar: preposition: wrong – use <i>in</i>
shall have no right to	Obsolete: use <i>may not</i>
Any	Redundancy: delete
which are in breach and/or contradict to	Redundancy: delete <i>are in + to</i> Error: and/or: Vague, misleading: use one or the other or <i>either X or Y or both</i> Should read <i>which breach or contradict</i>
objectives indicated	Usage: should read <i>their objectives</i>
Herein	Redundancy + obsolete: <i>herein</i> - delete
in a higher ...in a lower than market prices	Grammar: preposition: error: should read <i>at + noun in singular</i> . Should read <i>at a higher....at a lower than market price</i> .
etc.	Imprecise: replace with <i>e.g.</i> at start of list.
Shall	Obsolete: use <i>will</i> for future intent or present simple to state rule.
The	Article: redundant
The	Article: redundant
the regulations of the branches	Articles x 2: redundant
appoints and recall	Number: if using present simple for rule, add <i>s</i> to <i>recall</i>
The	Article: redundant
the branches and representative offices;	Article: redundant
The below indicated transactions may be concluded by the Managing Director only if the decision of the Board is adopted:	Various (e.g. sentence word order, replace passive with active verb, lexis, article error): should read <i>The Managing Director may conclude the transactions listed below only with Board authorisation</i>

LEGAL MEMORANDUM I

Facts:

[Name of client] has sold and delivered goods for [name of defaulting customer], the Invoice was issued, but wasn't paid. The debt was confirmed by the debtor, partial payments were proposed, but were never done, negotiations on the reduction of the claim by acceptance of products were taking place.

[Name of client] submitted the claim to the court for the debt recovery, the preliminary court ruling was entered. The defendant, using his right to present objections, has presented false statements in his objections to the court. The rejoinder was submitted, and as a consequence the hearing of the court was scheduled.

Three questions are raised:

The first one relates to the conduct of parties in court, i.e. is the defendant liable for submission of false statements to the court? The second one is more general one, related to initial sales of goods and partly to the stage where payment plan is proposed. The third one is related to negotiations without intent for entering into agreement, e.g. negotiating the payment plan or schedule without intent to enter into one or adhere to it.

Source: client of author.

Figure 8 . Legal Memorandum I (extracts)

Table 3 . Sample language analysis from Figure 8

Language sample	Comment
has sold	Tense: should read <i>sold</i>
for [name of defaulting customer]	Preposition: error: should be <i>to</i>
,	Punctuation: full stop needed here
The	Article: error: should be <i>An</i>
wasn't paid.	Register: full form of verb <i>was not</i> needed
Confirmed	Lexis: better <i>acknowledged</i> or <i>admitted</i>
were never done,	Verb: error: should read <i>made</i>
on the reduction	Punctuation: full stop needed here
products were taking place.	Article: redundant – cut
submitted the claim to the court	Lexis: should read <i>goods</i>
	Obsolete + article + preposition: should read <i>filed a claim with the court</i> or <i>filed court proceedings</i>

the debt recovery	Article + sentence word order: should read for <i>recovery of debt</i>
, the preliminary court ruling	Punctuation (redundant comma) + article (error) + redundant lexis – should read: <i>a preliminary ruling</i>
His	Error: should read <i>its</i> or <i>the</i>
has presented	Tense: delete <i>has</i>
The rejoinder was submitted,	Article + lexis x 2: should read <i>A reply was filed</i>
the hearing of the court.	Sentence word order + articles x 2: should read <i>a court hearing</i>
The first one relates to	Redundancy: delete <i>one</i>
submission of	Lexis: should read <i>making</i>
one is more general one	Redundancy: delete second <i>one</i>
the stage where payment plan is proposed	Various: should read <i>the proposed payment plan</i>
The third one is related to	Redundancy + verb form: should read <i>The third relates to</i>
without intent for entering into agreement	Various: should read: <i>without intending to enter into an Agreement</i>

LEGAL MEMORANDUM II

With respect to the interest and dividends from investments into Lithuanian securities, according to the Law on CIT they would constitute the income from Lithuanian source. However, the Law on CIT states (Item 2 of Part 1 of Art.5) that the interest of foreign entity organised in other EU state, with which double taxation agreement applies, and received not through a permanent establishment, is not subject to CIT. Situation is different with respect to dividends. The general rule is that dividends are taxed with CIT. However, the DTA rules apply.

Please note that although under the Savings Directive income from the sale, refund or redemption of shares or units of UCITS is treated as interest payment, the Law on PIT does not provide for such treatment. Therefore, according to the current practise, which was again verbally confirmed to us, the Tax Authority would most likely treat the income received from sale or redemption of the shares of UCITS not as payment of interests but rather as capital gains and tax it accordingly.

Source: client of author.

Figure 9 . Legal Memorandum II (extracts)

Table 4. Sample language analysis from Figure 9

Language sample	Comment
investments into Lithuanian securities	Preposition: error – should be <i>in</i>
they would constitute the income from Lithuanian source.	Pronoun error: should be <i>these</i> Article: redundant: delete Number: either <i>sources</i> or <i>a source</i>
the interest of foreign entity	Article: redundant: delete Preposition/article absent: error: should read <i>from a</i>
Organised in other EU state	Lexis: error: should read <i>another</i>
,	Punctuation: error: unnecessary comma
with which double taxation	Article missing: add <i>a</i> before <i>double</i>
Situation is different	Article: missing: should be <i>The situation</i>
Dividends are taxed with CIT	Semantics: error; should read <i>CIT is payable on dividends</i>
units of UCITS	Word order: <i>UCITS units</i>
is treated as interest payment	Article missing: add <i>an</i> before <i>interest</i>
According to the current practise	Article redundant + spelling: should read <i>according to current practice</i>
treat the income received	Article: optional: delete for clarity
the shares of UCITS	Word order: <i>UCITS shares</i>
payment of interests	Grammar: delete final <i>s</i> from <i>interests</i>

LEGAL MEMORANDUM III

In case intermediaries (wholesalers) will be involved in trade of fuel products they establish their price by adding a mark-up which may not exceed 20% to the price established by the importer (producer).

According to Decision No. 1215, a retailer must obtain approval from State concern Belneftehim if the price established by the retailer exceeds the retail prices of State concern Belneftehim's. However, it is not required to obtain such approval in case retail prices are lower than those established by State concern Belneftehim. It must be added that procedure and conditions of granting the approval are not provided by legislation... As a result of abovementioned restrictions, currently all retail prices for fuel are similar to those established by State concern Belneftehim.

Source: client of author.

Figure 10 . Legal Memorandum III (extracts)

Table 5 . Sample language analysis from Figure 10

Language sample	Comment
In case	Grammar: replace <i>in case</i> with <i>if</i>
will be	Grammar: replace <i>will be</i> with <i>are</i>
trade of fuel products	Grammar: replace <i>of</i> with <i>in</i>
may not exceed 20% to the price	Grammar: replace <i>to</i> with <i>of</i>
According to	Lexis: <i>Under</i> shorter
State concern Belneftehim	Style: Add definition for long name often repeated: (' <i>Belneftehim</i> ') Semantics: <i>approval is not required</i>
it is not required to obtain such approval	
in case	Grammar: replace with <i>if</i>
It must be added that procedure and conditions of granting the approval are not provided by legislation...	Various: should read <i>Note: the procedure and conditions for obtaining approval are not laid down by legislation</i>
abovementioned	Obsolete: delete + replace with <i>these</i>
Currently all retail prices	Grammar: move adverb next after <i>are</i>

POWER OF ATTORNEY

Under this Power of Attorney the Agent is granted a right to act on behalf of the Company regarding all and any matters related to economic-commercial activity of the Company and the performance thereof, including but not limited: work relations between Company and its employees, including, but not limited to signing of the employment agreements, preparing and signing of other documents, execution and termination thereof, notices to respective institutions; performing administrative matters of the Company, including, but not limited to managing of Company's property (including acquisition and/or disposal thereof), acquisition of goods and services on behalf and for the interest of the Company, receipt and signing of the Invoices and other tax documents addressed to the Company, signing of the agreements and other documents; managing official documents of the Company (including but not limited to submission, signing and receipt of statements, applications, clarifications and other documents issued in the name of the Company), as well as managing of financial accountability documents (including, but not limited to submission of financial reports and tax declarations to all competent institutions, as well as signing thereof)

Source: client of author.

Figure 11 . Power of Attorney (extracts)

Table 6 . Sample language analysis from Figure 11

Language sample	Comment
Under this Power of Attorney the Agent is granted	Word order + verb: should read <i>This Power of Attorney entitles the Agent to</i>
a right to act on behalf of	Redundancy: delete <i>a right</i> Obsolete: replace <i>act on behalf of</i> with <i>represent</i>
Regarding all and any	Legal pair + obsolete: one only needed
economic-commercial	Lexis: replace with <i>business</i>
Thereof	Redundancy: <i>thereof</i> – delete
Including but not limited	Grammar: add <i>to</i> after <i>limited</i>
Including, but not limited to	Punctuation: delete comma
signing of the employment agreements	Redundancy: delete <i>of the</i>
Preparing and signing of other documents	Redundancy: delete <i>of</i>
execution and termination thereof	Semantics + obsolete: unclear what <i>thereof</i> refers to
notices to respective institutions	Redundancy: delete <i>respective</i>
performing administrative matters of the Company	Redundancy + semantics: simply <i>company administration</i> enough

managing of Company's property	Redundancy: delete <i>of</i>
and/or	Error: vague, misleading: use one or the other or <i>either X or Y or both</i>
disposal thereof	Redundancy: <i>thereof</i> – delete
signing of the Invoices	Redundancy: delete <i>of the</i>
signing of the agreements	Redundancy: delete <i>of the</i>
managing of financial accountability documents	Redundancy: delete <i>of</i>
submission of financial reports to	Nominalization + obsolete: <i>filing financial reports</i> better
signing thereof	Redundancy: <i>thereof</i> – delete

SITE OPERATION & MAINTENANCE AGREEMENT

by and between

17. RISK OF ACCIDENTAL LOSS OR DAMAGE

17.1. The Operator assumes all and any risks of accidental loss or damage of the Site from the moment of the [Launch], including accidental loss or damage of the Equipment, Materials as well as the Production. In case of failure to meet...

21. LIABILITY

21.3. In case of failure to meet payment term as indicated in Clause [x], the Owner will pay to the Operator against written request the overdue interest of **0.02%** from the outstanding balance for each delayed day.

LEGAL MEMORANDUM IV

New shareholders of the company should be exempted from any liability which is caused by the reasons emerged prior to the acquisition of the shares...

4.2. Liability of shareholders

Under Belarusian law the liability for wrongful activities of a company may be imposed on:

(i) the company itself; (ii) the management of the company, in case of their faulty actions and (iii) shareholders in case of their faulty actions...

Moreover, part 3 article 56 Civil code and part 3 article 39 Tax code establish a joint liability in case the spin-off balance sheet does not clearly define, which company is a legal successor of the original company with respect to particular rights and obligations.

4.5. Tax authority inspection

... During the tax authority's inspection the company's accounting and financial documents are checked, and penalties imposed, in case breaches of law will be disclosed.

4.6. Reorganisation procedure

It is to mention, that in case the reorganisation and purchase scheme will be used, the registration of the company will take place at least two times:

4.7. Terms

Reorganisation procedure includes steps which may not be waived, such as, inventory of assets and obligations (this may take a lot of time in case of a big company) notification of creditors, etc.

According to the Act on companies the company's creditors have the right to file claims to the company in case of reorganisation within 30 days after notification receipt. Therefore, and taking into account eventual checks through the tax authority, the minimum term of reorganisation procedure will be about 2-3 months...

In case there are creditors who demand execution of contracts, procedure may be dragged out until respective demands/claims will be satisfied.

Source: client of author.

Figure 12 . Site Operation and Maintenance Agreement (extracts)

Table 7. Sample language analysis from Figure 12

Language sample	Comment
by and between	Legal pair + obsolete: one only needed
all and any	Legal pair + obsolete: one only needed
damage of the Site	Grammar: preposition: replace <i>of</i> with <i>to</i>
damage of the Equipment	Grammar + redundant article: preposition: replace <i>of</i> with <i>to</i> + delete <i>the</i>
Materials as well as the	Redundancy + inappropriacy: replace <i>as well as</i> with <i>or</i>
In case of failure to meet payment term as	Lexis + absent article: should read ... <i>to meet the payment deadline</i>
the Owner will pay to the Operator	Grammar: preposition: redundancy: delete <i>to</i>
the overdue interest	Semantics: should read <i>interest for late payment</i>
of 0.02% from the outstanding balance	Grammar: preposition: replace <i>from</i> with <i>of</i>
for each delayed day.	Semantics: should read <i>for every day of delay</i>
any liability	Redundancy: delete <i>any</i>
which is caused by the reasons emerged prior to the acquisition	Redundancy + various: should read <i>caused by reasons emerging before acquisition</i>
The liability	
in case of their faulty actions...	Punctuation: redundant: delete comma Semantics: should read <i>in case of fault</i>
Establish a joint liability	Article; redundant: delete <i>a</i>
in case the spin-off balance sheet	Grammar: replace <i>in case</i> with <i>if</i>
does not clearly define,	Punctuation: redundant comma: delete
which company is a legal successor	Article: error: replace <i>a</i> with <i>the</i>
Penalties imposed, in case breaches of law will be disclosed.	Punctuation: redundant comma: delete Grammar: replace <i>in case</i> with <i>if</i> Article: absent: add <i>the</i> before <i>law</i> Grammar: replace <i>will be</i> with <i>are</i>
It is to mention, that in case the reorganisation	Redundancy: delete <i>It is to mention</i> Punctuation: redundant comma: delete Grammar: replace <i>in case</i> with <i>if</i> Article; redundant: delete <i>the</i>

and purchase scheme will be used,	Grammar: replace <i>will be</i> with <i>is</i>
the registration of the company	Article; redundant: delete second <i>the</i>
at least two times:	Lexis: replace <i>two times</i> with <i>twice</i>
Reorganisation procedure includes	Article: absent: add <i>the</i> before <i>registration</i>
such as,	Punctuation: redundant comma: delete
this may take a lot of time	Register: use <i>considerable</i> for <i>a lot of</i>
in case of a big company	Article: absent: add <i>the</i> before <i>case</i>
notification of creditors, etc.	Register/style: use <i>bigger</i> for <i>big</i>
	Imprecise <i>etc.</i> : replace with <i>or</i> . Before <i>notification</i> .
	Nominalization: replace <i>notification of</i> with <i>notifying</i>
According to the Act on companies	Lexis: <i>Under</i> shorter than <i>According to</i>
the company's creditors have the right to file claims to the company	Lexis: replace <i>have the right to</i> with <i>can</i>
within 30 days after notification receipt.	Grammar: preposition: use <i>with</i> not <i>to</i>
taking into account eventual checks through the tax authority	Grammar: preposition <i>of</i> missing before <i>receipt</i>
the minimum term of reorganisation procedure will be	Lexis: false friend <i>eventual</i> : replace with <i>possible (future)</i> or <i>potential</i>
In case there are creditors who demand	Lexis/word order: should read <i>the minimum time for reorganisation is</i>
	Grammar: replace <i>in case</i> with <i>if</i>
	Redundancy; expletive <i>there are</i> : should read <i>If creditors demand</i>
procedure may be dragged out	Article: absent: add <i>the</i> before <i>procedure</i>
until respective demands/claims	Redundancy: delete <i>respective</i>
will be satisfied.	Grammar: verb: change <i>will be</i> to <i>are</i>

Aspects of legal English: Introductory twelve-hour seminar and workshop

16 – 17 July 2010: Vilnius

Evaluation Summary

(six evaluations)

1. Generally, the course was

<i>Excellent</i>	<i>Good</i>	<i>Fair/Average</i>	<i>Poor</i>
1	5	-	-

Comments

The course was good, interesting and useful

Too general, however, useful

The introductory part could be shortened and the practical part emphasised

2. The course met my expectations: 1 (not at all) 2 3 4 5 (very much)

1 5

3. I would recommend this course to other law professionals wishing to improve their skills in English.

1 (not at all) 2 3 4 5 (very much)

1 4 1

4. What did you like about the course (which elements, sections should remain in the curriculum)?

I liked the general introductory part as well as practice and workshop; I think practice and especially the workshop was the most useful part.

Getting to know something about the background of the language like language and culture; exercises (filling in the words)

Workshop

Practice and workshop sessions; analysis of specific situations

Atmosphere, presentation, lecture

Practical work from Saturday should remain; introductory part with culture, history may be interesting for some but not for all – this I would clarify in advance.

5. What did you dislike about the course (which elements, sections were not effective and/or should not have been covered at all)?

I think the general introductory part, which was very interesting, should be shorter, especially taking into consideration the limited time.

In general I like the course but I would like to have small introductory part and more practical issues.

Introductory part not sufficiently specific; lacking summaries of “do’s” and “don’ts”; slow progress.

Participation of all members of workshop.

I personally liked the part on Friday on cultural history of English legal language – yet the focus might be shifted even more to practical work (*unreadable*)

6. How do you rate the instructor [name deleted]?

1 (poor) 2 3 4 5 (excellent)

5

Comments

- I really liked the style, the way the course was presented and that it was done in a very professional manner.

- Interesting to listen.

- Excellent explanation skills; easy to understand for non-native speaker.

- Interpretation of legal documents (act of law).

- Experienced, (*unreadable*), skilled; sometimes losing focus but always coming back on track.

7. What topic areas/activities should be covered in more detail or developed further? Please explain:

- I think more attention could be paid to practical part, especially common mistakes, do's and don'ts if they can be called like that.

- Rephrasing; practical work.

- This was a general course. It would be good to have a seminar on a particular issue (i.e. drafting legal opinion) next time.

- More attention to specific structures/words, (*unreadable*), (*unreadable*), argumentation-

- The group might be split up into working groups allowing team work-

8. How do you evaluate course materials/handouts?

1 (poor) 2 3 4 5 (excellent)

2 4

Comments

- More examples would be nice; (*unreadable*) summary would be useful.

- Panels have to work more with material.

- Might be worth (*unreadable*) some (*unreadable*); when the group contains less experienced participants it might be good to give more time to study material/texts.

Source: author.

Figure 13. Course Evaluation: Aspect of Legal English.

Fishing with New Nets in Familiar Waters: A Legal Linguistic Foray into Comparative Law, Legal Culture and Legal Ideology

CHRISTOPHER GODDARD¹

This paper aims to expose a gap in legal linguistic research methodology and to suggest possible means of filling that gap. The paper asserts that the terms “legal culture”, “comparative law” and “legal ideology” may be unsuitable as elements in research question variables due to absence of concrete, uniform definition. However, it is not suggested that research under the banner of these terms should be disregarded. The paper goes on to identify some examples of social institutions and social issues that might be addressed by law, language, or other means, as more concrete substitute elements for legal linguistic research questions. It concludes with findings, implications and recommendations.

After 35 years, I have finished a comprehensive study of European comparative law. In Germany, under the law, everything is prohibited, except that which is permitted. In France, under the law, everything is permitted, except that which is prohibited. In the Soviet Union, under the law, everything is prohibited, including that which is permitted. And in Italy, under the law, everything is permitted, especially that which is prohibited.
Newton N. Minow.²

1. Introduction

Law does not exist in a vacuum. As Tuori puts it: “The legal order does not constitute a hermetically closed system of norms; through legal principles it opens up towards general morality and ethics.”³ Moreover, law is not an autonomous system: its existence depends on external influences, since “the primal impetus for legal change always comes from outside the law”.⁴

It regularly occurs that issues in different legal systems are resolved in different ways through different legal institutions.⁵ Further, taking a broader, functional approach, different societies may employ different means to address social (and other) institutions as well as social (and other) issues.⁶ The means may involve not only legal rules and institutions but also other

¹ Riga Graduate School of Law, Riga, Latvia. This paper forms part of the requirements for the author’s doctoral studies in legal linguistics at the University of Lapland.

² Former chairman of the US Federal Communications Commission, cited in Ball, Donald A. and McCulloch, Wendell H. Jr. (1993) *Introduction to International Business*. Irwin Illinois (p. 368).

³ Tuori, Kaarlo (2007) “Legal Culture and General Societal Culture” in Wilhelmsson, Thomas, Paunio, Elina and Pohjolainen, Annika (eds.) (2007) *Private Law and the Many Cultures of Europe*, Alphen aan den Rijn: Kluwer 23-35 (p. 24); see also notes 45, 49 and 50 *infra* (Bogdan).

⁴ Tuori *op. cit.* (p. 33).

⁵ See note 51 *infra* (Bogdan).

⁶ Örüçü, Esin (2004) *Enigma of Comparative Law: Variations on a Theme for the Twenty-First Century*. Martinus Nijhoff: Leiden (p. 25).

rules and institutions which the lawyer or translator from another (target) legal system will need to access,⁷ very often through the language in which the first (source) system operates, in order to find effective solutions for expressing those means in the language of the target legal system,⁸ in particular in quest of the golden fleece of “equivalence”. Typically, access may be through research in comparative law (as the literature strongly suggests),⁹ comparative legal cultures, or comparative legal ideologies. But is this research enough? Put differently, can we be sure that research in these areas will produce the solutions we are looking for?

Indeed, as this paper attempts to show, comparative law, legal culture, and legal ideology may be flawed as research tools because they are either too narrow or lack uniform definition. For this reason, they could be unsuitable as elements of concrete research question variables. At the same time, dismissing research in these fields as also somehow flawed would be like throwing out the baby with the bathwater. Therefore, this paper examines a possible alternative systematic research framework to aid translators and lawyers in their approach to equivalence and other problems associated with target language representation of source language legal concepts and terminology. This involves adjusting our research question and asking to what extent legal translators and lawyers operating in two or more legal languages can benefit from knowledge of how different societies address social (and other) institutions and social (and other) issues through law, language, or other means.

In this paper I will briefly review translation challenges, then highlight problems with legal culture, legal ideology, and comparative law as research tools in the sense of concrete research question elements, before going on to explore social institutions and social issues as possible substitute or alternative research tools, especially as concrete elements in research question variables. Examining social issues as targets of public policy leads to external influences on legal systems – that is, the idea that law does not exist in a vacuum – to see whether these may explain differences in the way individual legal systems address social institutions and social issues and, indeed, whether these differences are reflected in conceptual and terminological terms. This preliminary study, like a military reconnaissance patrol, probes the field to establish whether further exploration might be useful and, if so, in what direction. The main limitations are that topics in the shape of social institutions and issues are taken at random and are somewhat few, while the study cannot, for reasons of space, go beyond the social context to address other areas such as economics, politics, and security. Nor, for reasons of space, can it examine the internal influences on legal systems such as different attitudes and perceptions in approaches to concepts and terminology.

⁷ Husa, Jaako (2011) “Comparative Law, Legal Linguistics and Methodology of Legal Doctrine” forthcoming in Van Hoecke, Mark (ed.): *Methodology of Legal Research. Which Kind of Method(s) for What Kind of Discipline(s)?* Oxford: Hart. (pp. 209-228).

⁸ See, e.g., Örüçü, Esin (2007) “A Project: Comparative Law in Action” in: Örüçü, Esin and Nelken, David (eds.) (2007) *Comparative Law: A Handbook*. Oxford/Portland: Hart (pp. 435-449, 441): “[D]irect translations or synonyms did not suffice...Functional equivalents were sought.”

⁹ See, e.g., Goddard, Christopher (2009) “Where legal cultures meet: translating confrontation into coexistence (footnotes 188-190) in *Investigationes Linguisticae*, Vol. XVII, Adam Mickiewicz University (pp. 168-205), available at <<http://www.staff.amu.edu.pl/~inveling/index.php?page=issues&vol=17&cat=0&article=208>>.

2. Translation challenges

As de Groot has pointed out, challenges in legal translation largely arise from the inherent “system-specificity” of legal language, in that “any given language can have as many legal languages as there are systems using that language as a legal language”, as opposed to “a single chemical, economic or medical language within a certain language”. Moreover, where the source language and the target language relate to different legal systems, finding virtual full equivalence is a challenge. Further, in expressing serious doubts about the “functional equivalence” approach – that is, using a term or expression in the target language which embodies the nearest situationally equivalent concept – de Groot notes that “for a target language term to be identified as an equivalent to a source language term, not only must there be functional equivalence, but also a similar systematic and structural embedding”.¹⁰ Put differently: “The required equivalence must not only be a *functional* one, but also must be well founded in terms of the technical structure of the legal system”.¹¹ This applies even if two languages are closely related linguistically.¹²

Not only is legal language system-bound,¹³ but for the last two centuries it has – at least in Europe – existed as a national phenomenon, which, in turn, has affected legal scholarship.¹⁴ The truth of this proposition is evident from the need for harmonization in the European Union (EU).¹⁵ But is this comparative law approach enough for the lawyer and legal translator operating in two or more legal languages, perhaps through the medium of English, between related or unrelated legal systems? We shall briefly look into this question under the section on comparative law.

3. Problems with legal culture, legal ideology, and comparative law as research tools

3.1. Legal culture

According to Nelken: “Legal culture as a topic for research raises both conceptual and methodological problems”.¹⁶ Cotterrell¹⁷ supports this idea and argues for the very limited

¹⁰ De Groot, Gerard-René and van Laer, Conrad J.P. (2008) “The Quality of Legal Dictionaries: an assessment” Maastricht Working Papers 2008-6 Faculty of Law (p. 3), at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1287603>.

¹¹ De Groot, Gerard-René Law (1991) “Legal Language and the Legal System: Reflections of the Problems of Translating Legal Texts” ‘Recht, Rechtsprache und Rechtssystem: Betrachtungen über die Problematik der Übersetzung juristischer Texte’, *Terminologie et Traduction*, 3, (pp. 279-312) in Volkmar Gessner *et al.* (eds.) *op.cit.* (p.158). Translation by John Blazek, Brussels.

¹² *Op. cit.* (p. 159).

¹³ *Op. cit.* (p. 155).

¹⁴ Zweigert, Konrad and Kötz, Hein (Translation by Tony Weir) (1998). *An Introduction to Comparative Law*. 3rd rev. ed. Oxford: OUP (pp. 15 and 29).

¹⁵ “For if no substantial differences exist between the national private laws, then a process of harmonization is unnecessary. Everything could stay as it is because everyone could rely on their case being decided in the same way in any European country. One could draw up contracts according to one’s own law and trust that they will be recognized by all other European countries. Differences in concepts, structure and content of the law would not matter.” Kähler, Lorenz (2007) “Conflict and Compromise in the Harmonization of European Law” in Thomas Wilhelmsson *et al.* (eds.), (pp. 125-139) (at p. 126).

¹⁶ Nelken, David (1997) in Nelken, David (ed.) (1997) *Comparing Legal Cultures* Dartmouth: Aldershot (p. 2).

application of legal culture as a precise research tool, for example, in examining the overall contextual matrix in which state law operates. This section examines the limits of legal culture as a research tool.

Blankenberg affirms¹⁷ that “The ‘legal cultures’ which we discuss in comparative law [...] will inevitably be those of the professional and not those of the general public [...] [T]here is no ‘legal culture’ outside existing legal institutions.” This could be said to be the narrow definition of legal culture. However, in the same volume, Nelken notes¹⁸ that elsewhere Blankenberg uses the term “legal culture” more broadly and thus confusingly. Blankenberg adds: “Our key concept of ‘legal culture’ is defined by means of socio-legal indicators. They tell us that, even though on paper the various legal systems are very much alike, the law in action may differ considerably.”¹⁹ The introduction to the same volume notes the range of definitions of legal culture, including some of the influences on how law develops and is applied.²⁰ Nelken and Cotterrell also note that Friedman’s definition of legal culture has varied considerably over the years.²¹

Again, legal culture is often more broadly described as concerning attitudes towards the law, or the role of law in society, such as:

- “what people think about law, lawyers and the legal order [;] it means ideas, attitudes, opinions and expectations with regard to the legal system”;²²
- the “historically conditioned, deeply rooted attitudes about the nature of law and about the proper structure and operation of a legal system”;²³
- “the framework of intangibles within which an interpretive community operates, which has normative force for this community [...] and which, over the *longue durée*, determines the identity of a community *as community*”;²⁴
- “the typical embodiment of values and behavioural patterns in societies’ (legal) institutions. Legal culture thus is situated at the crossroads of comparative law, law in action, and legal values.”²⁵

¹⁷ Cotterrell, Roger (1997) “The Concept of Legal Culture” in Nelken, 13-30 (pp. 21-25).

¹⁸ In Nelken (1997). “Civil Litigation Rates as Indicators for Legal Cultures” 41-65 (p. 65).

¹⁹ In Nelken (1997) “A Comment on Blankenberg” 69-88 (pp. 72-73).

²⁰ Blankenberg, Erhard and Bruinsma, Freek (1994) “The Role of Courts in the Netherlands and Germany: Dutch Legal Culture Compared”, in *Dutch Legal Culture*, 2nd ed., Deventer: Kluwer Law and Taxation Publishers, Deventer (Netherlands) (pp 3-13), reprinted in Gessner *et al.* (eds.) (p. 345). Translation by John Blazek, Brussels.

²¹ Gessner *et al.* (eds.) (1996). Foreword xvii: “The unavoidably open-ended concept of ‘legal culture’ can be given two interpretations. First, ‘legal culture’ can be used as it is in legal philosophy and legal theory to characterise the professional administration of the law. This approach would embrace the historical foundations of the law’s development in Europe, the academic training of jurists, the requirements imposed by the rule of law on legislation and legal practice, and the styles of legal argumentation. Second, the legal-sociological understanding of legal culture as the sum total of conditions that impinge on the law’s development and application, whether this be the procedural methods employed by institutions, the interests and qualities of the legal actors, or the general legal consciousness of the public”.

²² In Nelken, (p. 2) and Cotterrell, (pp. 15-16).

²³ Friedman, Lawrence (2006) ‘The Place of Legal Culture in the Sociology of Law’, in *Law and Sociology: Current Legal Issues*, Michael Freeman (ed.) Oxford: Oxford University Press.

²⁴ Merryman, John Henry and Clark, David S. (1978) *Comparative Law: Cases and Materials* Charlottesville: The Michie Company (p. 29).

²⁵ Legrand, Pierre (1999) *Fragments on Law-as-Culture* Deventer: Kluwer (p. 27).

²⁶ Van Rossum, Wibo “Comparative Legal Cultures” course overview available at

While these definitions correctly stress the element in legal culture of attitudes and values underlying the law, two main objections arise:

- Legal culture is seen as a given, inherent and inescapable: Merryman and Clark's "deeply rooted attitudes" suggest something mysteriously fateful like von Savigny's *Volksgeist*.²⁷ By contrast, other research sees culture itself as something that is acquired,²⁸ "the collective programming of the mind which distinguishes the members of one group or category of people from another".²⁹ This definition of culture as "mental software" suggests that culture is shared by a group of people but need not be defined on the basis of nationality.
- Legal culture is traditionally seen first and foremost as national,³⁰ whereas many legal cultures may exist *within* one country and may even cross national borders: "[G]lobalising processes have created one world-wide network of legal communications which downgrades the laws of nation-states to mere regional parts of this network which are in close communication with each other."³¹ While von Savigny's society was national and based on national *Volksgeist*, today society and legal orders are developing beyond the state.³²

This paper therefore asserts, firstly, that the narrow definition of legal culture is simply too narrow to help the lawyer and legal translator operating in two or more legal languages, in particular when using English as the medium and even more between unrelated legal systems than related ones, and, secondly, that the second definition still may not go far enough. Even culture itself has been variously described, for example (in addition to the definition above): "culture is not an argument, but rather a collection of attitudes, traditions, ideals and memories. It influences how people think without ensuring the legitimacy of their attitudes."³³ However, for the purposes of this paper it is clear that legal culture does not possess a universal, concrete conceptual definition.³⁴ As Nelken puts it, "it is beyond doubt

<<http://www.wibovanrossum.nl/page5/page2/page2.html>>.

²⁷ Savigny, Friedrich Carl von (1814) *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* Heidelberg: Mohr und Zimmer. It should be noted that Von Savigny himself never used the term *Volksgeist*.

²⁸ Hofstede, Geert (1997) *Cultures and Organizations: Software of the Mind* 2nd ed., New York, McGraw-Hill and (2001) *Culture's Consequences* 2nd ed., Thousand Oaks, Sage. See also, as to the work of Hofstede, Smits, Jan (2000) *The Good Samaritan in European Private Law* Deventer: Kluwer (p. 40).

²⁹ See *supra* note 28, p. 5.

³⁰ Although this may not be clear from the definitions themselves, it is clear from the context in which they are being used by these authors.

³¹ Teubner, Günther (1998) "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences", 61 *Modern Law Review*, (pp. 11-32) at (p. 16). See also Teubner, Günther (ed.) (1997) *Global Law Without a State*. Aldershot: Dartmouth.

³² Smits, Jan "Legal Culture as Mental Software, or: How to Overcome National Legal Culture?" in Thomas Wilhelmsson *et al.* (eds.) (2007) (pp. 141-151).

³³ Kähler, Lorenz, "Conflict and Compromise in the Harmonization of European Law" in Thomas Wilhelmsson *et al.* (eds.) (2007) pp. 126-139 at 126, adding (p. 129): "No tradition can justify its own continuation. Therefore, each reference to tradition or culture needs some additional argumentative support."

³⁴ Wilhelmsson, Thomas "Introduction: Harmonization and National Cultures" in Wilhelmsson *et al.* (eds.) (2007) (pp. 3-20): "Legal culture – if defined as the practices and tacit knowledge of the legal profession – is predominantly an elite culture"; "... the English feeling uncomfortable with formal rules, whilst the Germans are programmed to need structured environments" (p. 5 footnote omitted);

that a more precise definition is needed to make (legal culture) a workable concept.”³⁵ That alone makes legal culture unsuitable as an element of an independent variable for a research question.³⁶ But it does not necessarily invalidate research carried out in the name of legal culture, *a fortiori* if we can remove the label of legal culture and replace it with a viable alternative.

3.2. Legal ideology

According to Cotterrell³⁷ “much of what legal culture can embrace might be considered in terms of *ideology*”, which can be regarded “not as a unity but rather as an overlay of currents of ideas, beliefs, values and attitudes embedded in, expressed through and shaped by practice”. An example of legal ideology appears in trusts, where trustees have the appearance of power, which in fact is vested in beneficiaries.³⁸ Although not legal doctrine as such, legal ideology is heavily influenced by doctrine³⁹ and may help to see how doctrine frames or shapes social understandings: for example, how legal doctrine both constructs and perpetuates gender role stereotypes.⁴⁰ It also examines the link between social power and currents of thought. However, while law can be said to be “a system of enforceable rules governing social relations and legislated by a political system [...], the connection between law and ideology is both complex and contentious [...] because of the diversity of definitions of ideology, and the various ways in which ideology might be related to law.”⁴¹ Again, this suggests that legal ideology is not suitable as an element in a research question variable. Nevertheless, the concept of law as ideology is useful in enabling the researcher to view the law and the role of law more critically and to examine related sociological and political factors, including the way that law and non-law aspects of society mutually shape and influence one another.⁴² We shall examine some of these below under factors bearing on legal systems.

Tuori, Kaarlo “Legal Culture and General Societal Culture) in Wilhelmsson *et al.* (eds.) (2007). (pp. 23-35 at 23): “Culture and legal culture are difficult notions, contested categories. Because of the variety of meanings suggested, proposed or implied, some researchers have proposed outright abandoning of the very concept of legal culture; Roger Cotterrell is one of these”; *op.cit.* (p. 24) “...legal culture – i.e., the professional legal culture of learned lawyers...”

³⁵ See Nelken, David (2006) “Legal Culture”, in Smits, Jan (ed.) *Elgar Encyclopedia of Comparative Law*, Cheltenham: Elgar (p. 372).

³⁶ Unless, of course, a uniform definition of legal culture can be agreed upon.

³⁷ Cotterrell, Roger “The Concept of Legal Culture” in Nelken (1997) (pp.13-30). See generally, Cotterrell, Roger (1984) *The Sociology of Law*. London: Butterworths.

³⁸ Moffatt, Graham, Bean, Gerry, Dewar, John (2005) *Trusts Law: Text and Materials*. CUP: New York (p. 59).

³⁹ The concept of doctrine itself is not entirely clear. See Tiller, Emerson H. and Cross, Frank B. (2005) “What is legal doctrine?” *Northwestern University Law Review* Vol. 100, No. 1 at (pp. 517-534), available at <<http://www.law.northwestern.edu/lawreview/v100/n1/517/LR100n1Tiller-Cross.pdf>>.

⁴⁰ Levit, Nancy (1996) “Feminism for Men: Legal Ideology and the Construction of Maleness”, 43 *UCLA Law Review* 1037 at 1054, available at <http://works.bepress.com/cgi/viewcontent.cgi?article=1016&context=nancy_levit>.

⁴¹ Synpnowich, Christine, “Law and Ideology” in *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition) Zalta, Edward N. (ed.), available at <<http://plato.stanford.edu/archives/fall2008/entries/law-ideology/>>.

⁴² *Ibid.*

3.3. Comparative law

Comparative law is the “comparison of the different legal systems of the world”,⁴³ of the differences and similarities between the laws of different countries. Several disciplines have developed as separate branches of comparative law. These include comparative constitutional law, comparative administrative law, comparative civil law (in the sense of the law of torts, delicts, contracts and obligations), comparative commercial law (in the sense of business organisations and trade), and comparative criminal law.

According to Cotterrell, “The main conceptual mechanisms of comparative law seem inadequate for the purposes of sociology of law, since the latter requires comparison not of legal doctrine as such but of legal ideas and practices regarded as inseparable from a broader social context”.⁴⁴ Michael Bogdan notes⁴⁵ that the term “comparative law” is something of a misnomer and that ideas about the meaning of the concept vary greatly. He affirms that comparison should be purposive, such as when forum shopping for contracts or investments,⁴⁶ and stresses its contribution to legal education⁴⁷ and translation.⁴⁸

Moreover, Bogdan points out that comparative law studies should cover a foreign legal system in its entirety, justifying this with two examples: a social law question in one legal system may be reflected in the fiscal law of the counterpart system, and a matter of inheritance law in one legal system may be reflected in the matrimonial law of the counterpart system.⁴⁹ But what if an issue in one legal system is dealt with outside the counterpart legal system, or indeed is not an issue at all? Bogdan deals with this⁵⁰ by affirming that “the legal system is a social phenomenon and expresses only one aspect of the society. It therefore cannot be seen isolated from the same society’s other aspects”. He lists these other factors as the economic system, political system and ideology, religion, history and geography, demographic factors, co-influence of other means of control, and accidental and unknown factors.⁵¹ Put differently, law does not exist in a vacuum, as noted in the introduction to this paper.

However, if a social issue is also a legal issue in one legal system but is not a legal issue (or even a social issue) in another legal system, then comparative law studies (and perhaps also sociology of law) will be of no help to the lawyer or translator operating between those two legal systems; the problem is compounded if the language of neither system is English but they wish to express themselves in English, for example, as a relay or target language. Moreover, Bogdan’s view suggests that the term “comparative law” should perhaps be avoided as an element in a research question. At the same time, this is not to suggest that comparative law studies are of no use at all to the lawyer and translator, merely that what is being sought may not fall within the ambit of comparative law, so that comparative law

⁴³ Zweigert, Konrad and Kötz, Hein (1987:2). *An Introduction to Comparative Law*. 2nd rev. ed., Oxford: Clarendon Press. Translation by Tony Weir.

⁴⁴ Cotterrell, Roger ‘The Concept of Legal Culture’ in Nelken (1997). 13-30, (p. 13).

⁴⁵ Bogdan, Michael (1994) *Comparative Law*. Dordrecht: Kluwer.(pp. 17-18).

⁴⁶ *Op. cit.* (pp. 21-22).

⁴⁷ *Op. cit.* (pp. 25, 37-38).

⁴⁸ *Op. cit.* (pp. 50-51).

⁴⁹ *Op. cit.* (p. 49).

⁵⁰ *Op. cit.* (p. 54).

⁵¹ *Op. cit.* (pp. 70-77).

cannot deliver answers in circumstances where it cannot even recognise the questions. This concurs with Cotterrell's view of comparative law as inadequate to meet the requirements of legal sociology.

4. The law and its treatment of social institutions and social issues

Having suggested the unsuitability of legal culture, legal ideology, and comparative law as research tools in the limited sense of concrete elements of research questions, we now go on to explore the merits of using social institutions and social issues in relation to the law as possible alternatives. This is followed by a random trawl through the literature to examine factors influencing legal systems and, in turn, their concepts and terminology.

4.1. Social institutions

The term "institution" is used in sociology to describe normative systems operative in five basic areas of life and which could be termed *primary institutions*. In short, these are: the family, government, economy, education and religion.⁵² Interestingly, legal systems feature among the complex self-reproducing social forms that contemporary sociologists describe as *social institutions*.⁵³ Others include, in addition to governments and the family, human languages, universities, hospitals, and business corporations. One definition of social institution is:

[...] a complex of positions, roles, norms and values lodged in particular types of social structures and organising relatively stable patterns of human activity with respect to fundamental problems in producing life-sustaining resources, in reproducing individuals, and in sustaining viable societal structures within a given environment.⁵⁴

Another, much simpler definition is: "Institutions [...] are the more enduring features of social life."⁵⁵ The same author goes on to list modes of discourse, political institutions, economic institutions and legal institutions as institutional orders.⁵⁶ Another definition of institution is: "an interlocking double-structure of persons-as-role-holders or office-bearers and the like, and of social practices involving both expressive and practical aims and outcomes" such as shops, post offices, police forces, asylums and the British monarchy.⁵⁷

We should distinguish social institutions from:

⁵² "Sociology Guide – A Students Guide to Sociology, at <http://www.sociologyguide.com/basic-concepts/Social-Institutions.php>.

⁵³ Miller, Seumas, "Social Institutions", *The Stanford Encyclopedia of Philosophy (Fall 2008 Edition)*, Zalta, Edward N. (ed.), available at <http://plato.stanford.edu/archives/fall2008/entries/social-institutions/>.

⁵⁴ Turner, Jonathan (1997) *The Institutional Order*, New York: Longman (p. 6).

⁵⁵ Giddens, Anthony (1984) *The Constitution of Society: Outline of the Theory of Structuration*, Cambridge: Polity Press (p. 24).

⁵⁶ *op. cit.* (p. 31).

⁵⁷ Harré, Rom (1979) *Social Being*, Oxford: Blackwell (pp. 97-98).

- less complex social forms such as conventions, social norms, roles and rituals, which feature among the constitutive elements of institutions;
- more complex and more complete social entities, such as societies or cultures, of which institutions feature as constitutive elements.

Moreover, some institutions function as *meta-institutions* – that is, institutions or organisations such as governments – that organise other institutions (including systems of organisations). However, some institutions – such as the English language – are not organisations or systems of organisations. General properties of social institutions include structure, function, culture, and sanctions. The notion of institutional culture comprises the informal attitudes, values, norms, and the ethos or spirit that pervades an institution.⁵⁸ Good examples are provided by the regimental system in the British army and the “house” system in British boarding schools.

The importance of how different societies address social institutions through law, language, or other means will readily be seen in the framework of this paper. Social institutions may be suitable as elements of research questions, at least to the extent that they are uniform and concrete in definition.

4.2. Social issues and public policy

Social issues are problematic or controversial matters directly or indirectly affecting a society. Often, they are connected with moral values. Examples of major social issues include: poverty, pollution, access to justice, discrimination, abortion, same-sex marriage, gun control, religion (also in itself a social institution), crime, consumer protection, education, censorship, healthcare, unemployment, war, and peace. Social issues appear as features for research⁵⁹ and publication.⁶⁰

Social issues concern the fabric, even the integrity, of a community, often involving conflicting interests. Solutions lie beyond the control of individuals but may have to be imposed by the community or society, even in the form of laws. These may be shaped by “public policy”, in turn influenced by lobbies and pressure groups in society. In the law, public policy features as a largely unseen but ever present force, occasionally surfacing in court decisions to justify an unusual or landmark decision.

“Public policy” appears to have multiple definitions,⁶¹ for example:

⁵⁸ Miller, Seumas, (2008)

⁵⁹ A sample of subjects covered by the Social Issues Research Centre in the United Kingdom: Pubs: culture, etiquette, violence; Drinking: social aspects / violence / binge drinking; Racing: as a culture; corporate bonding; Eating habits: obesity / eating at home; Football: fans / violence in Europe. See: Social Issues Research Centre, at <<http://www.sirc.org/publik/publik.html>>.

⁶⁰ Some sample titles from the Journal of Social Sciences: Reducing Prejudice and Promoting Social Inclusion: Integrating Research, Theory, and Practice on Intergroup Relations; Restorative Justice and Civil Society: Emerging Practice, Theory, and Evidence; What is Peace Psychology the Psychology of?; Religion as a Meaning System: Implications for the New Millennium; Inequities in Higher Education: Issues and Promising Practices in a World Ambivalent about Affirmative Action; Ageism: Prejudice Against Our Feared Future Self. See: Journal of Social Sciences, at <<http://www.wiley.com/bw/journal.asp?ref=0022-4537>>.

⁶¹ Academics continue to contemplate the definition of public policy, since there is currently no

- “the basic policy or set of policies forming the foundation of public laws. The field of public policy involves the study of specific policy problems and governmental responses to them”;⁶²
- “a broad statement regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society”;⁶³
- “a decision or action of government that addresses problems and issues”;⁶⁴
- “policy at any level of government”;⁶⁵
- “whatever governments choose to do or not to do”.⁶⁶

Public policy might be expressed as a corpus or *acquis* of foundational operational principles for legal systems. These principles address the social, moral and economic values that bind a society together. In turn, these values vary from one culture to another. Additionally, they change over time; an example of such a change is briefly discussed below.

Public policy is commonly embedded or embodied “in constitutions, legislative acts, and judicial decisions”,⁶⁷ often in the shape of declared (state) objectives concerning the health, morals, and well being of citizens – or, to put it differently, as part of social law and state interventionism, both of which are treated in more detail below. In the interest or in the name of public policy, legislatures and courts may aim to render ineffective any action, contract, or trust that goes counter to these objectives, even where no statute expressly declares it ineffective.⁶⁸

A condition is against public policy if it is in the interest of the state that it should not be performed. What is contrary to public policy has varied from time to time, and many conditions now upheld which in former days would have been declared to be contrary to the (public) policy of the law. The rule remains, but its application varies with the principles which for the time being guide public opinion.⁶⁹

Thus, behaviour that is – or is not – a social issue in one generation may be or become a social issue – or non-issue – in the next, in line with “the principles which [...] guide public

consensus. The study of public policy began in 1922, when political scientist Charles Merriam sought to build a link between political theory and its application to reality. Numerous issues are addressed by public policy, including crime, education, foreign policy, health, and social welfare.
<<http://www.wisegeek.com/what-is-public-policy.htm>>.

⁶² Disaster Dictionary at <www.scmp.us/publications/disaster_dictionary.php>.

⁶³ Government of Alberta, at
<justice.alberta.ca/programs_services/public_education/Pages/vocabulary.aspx>.

⁶⁴ Congress link at <www.congresslink.org/print_lp_whyneedcongress_vocab.htm>.

⁶⁵ Journal of Epidemiology and Community Health at <jech.bmj.com/content/55/9/622.full>.

⁶⁶ Dye, Thomas (1992) *Understanding Public Policy*, 7th ed., Prentice Hall (p. 2). Such a definition covers government action, inaction, decisions and non-decisions as it implies a very deliberate choice between alternatives; see also Hall, Colin Michael and Jenkins, John M. (1995) *Tourism and Public Policy*. Routledge: “For a policy to be regarded as public policy it must at the very least have been processed, even if only authorised or ratified, by public agencies” (p. 529), at
<www.stile.coventry.ac.uk/cbs/staff/beeceh/BOTM/Glossary.htm>.

⁶⁷ Schuster, W. Michael II (2009) “For the Greater Good: The Use of Public Policy Considerations in Confirming Chapter 11 Plans of Reorganization” *Houston Law Review*, Vol. 46, (p. 467).

⁶⁸ Business Dictionary at <<http://www.businessdictionary.com/definition/public-policy.html>>.

⁶⁹ From the 2002 (8th) edition of *Williams on Wills*, at
<<http://www.duhaime.org/legaldictionary/P/PublicPolicy.aspx>>.

opinion” and which, presumably, in turn shape public policy. Good examples are smoking and male homosexuality: in 1950, smoking was not a social issue and was considered acceptable, even more or less fashionable, while male homosexuality was a social issue and was considered deviant if not more or less criminal. By 2010, the situation had become more or less the reverse.

The importance of how different societies address social issues through law, language, or other means will readily be seen in the framework of this paper. In particular, a social issue in one society may not be an issue in another society. For example, in an earlier paper, the author demonstrated that the political impact of the term “taxpayers’ money” differs in the United Kingdom, on the one hand, from France and Germany, on the other, and that an article on protecting the vulnerable, a subject that is outside the mainstream in the United Kingdom and therefore of interest there, would be of little interest in France or Germany, where it would be seen as discussing the obvious.⁷⁰

Thus, although the term “public policy” may – for the same reasons as “comparative law”, “legal culture” and “legal ideology” – be unsuitable as an element in a concrete research question, the same objection would not apply to the term “social issue”.

The next stage is to examine some of the external influences on legal systems that may explain differences in how the systems address social (and other) institutions and social (and other) issues – or do not address them at all if they are not seen as issues. The logical next step – for which regrettably this paper has insufficient space – would be to examine the internal influences on legal systems to see to what extent these differences are reflected in concepts or terminology; this, in turn, may give a clue as to differences in approach.

5. External factors bearing on legal systems

5.1. *Power relations in society – “legal reality”*

As we have seen, law does not exist in a vacuum. We now move on to examine some external influences bearing on legal systems. For reasons of space, this examination will be somewhat cursory, taking a brief look at the ideas of Hugo Sinzheimer and Niklas Luhmann.

Sinzheimer,⁷¹ writing in Weimar Germany, asserted that the factual power relations in a society are truly constitutive or determinative of the legal relations and practices in a country, and ultimately specified how they really worked.⁷² To put it differently, a proper understanding of the operation of law and legal institutions involves penetrating the legal reality (*Rechtswirklichkeit*) which stands behind the formally valid normative order: the fate of legal constructs depends on the factual relationship between forces in society, especially economic relationships.⁷³

⁷⁰ Goddard (2009). (pp. 168-205 at pp. 183-184).

⁷¹ Drawing on Ferdinand Lassalle. Lassalle, Ferdinand (1993) *Über Verfassungswesen*. Rede am 16. April 1862 in Berlin. EVA Reden; Bd. 8. Hamburg: Europäische Verlagsanstalt.

⁷² See Sinzheimer, Hugo and Fraenkel, Ernst (1968) *Die Justiz in der Weimarer Republik. Eine Chronik*. Berlin: Neuwied und Luchterhand (p. 229).

⁷³ Sinzheimer and Fraenkel (1968). (p. 383).

Sinzheimer understood that basic rights in the constitution – as in the Weimar constitution – can open the way to state interventionism;⁷⁴ this will be examined in more detail in the following section. He further asserted that legal science should go beyond the “commodity order” towards the “human order” and in so doing recognize and disclose that abstractions such as commodity, property, contract, and legal person also cover real contradictions, tensions, domination, and dependencies between human groups and classes.⁷⁵

Luhmann, too, examines the “equilibrium of real forces which bring about the law”⁷⁶ and “constitution” as a relational concept. He asserts that a constitution, for example, establishes a *structural coupling* between legal and political social sub-systems.⁷⁷ In Luhmann’s autopoietic systems theory, a structural coupling exists when the same social element operates simultaneously in two social sub-systems, thereby establishing a bridge over their reciprocal operative closure.

From a legal linguistic standpoint, the relevance of power relations is illustrated by Shore:⁷⁸ “any analysis of cross-cultural translation needs to take into consideration the institutional context and relations of power between the [...] parties [...] including the *inequality* of languages and what translation means as *institutional practice*”. Having dismissed the 2004 EU Constitutional Treaty as “a constitution disguised as a treaty”, Shore notes that the text “impose[d] a new and opaque legal terminology, the political effects of which were to disguise the transfer of national competences to the EU”.⁷⁹

Again in the legal linguistic context, different societies and different legal systems may employ different approaches to general clauses and discretionary powers in legal documents – i.e., signalling their intent to allow more or less discretion to judges and administrators.⁸⁰ However, this implies an interpretative ability on the part of judges and others which has been lacking, for example, in Central Europe.⁸¹ Moreover, language forms also play a role in signalling intent.⁸²

This brief overview suggests that the study of power relations in society may be of assistance to lawyers and translators, for example, in understanding how legal systems generate concepts and terminology.

⁷⁴ See Caldwell, Peter C. (2000) “Is a ‘*Social Rechtsstaat*’ Possible? The Weimar Roots of a Bonn Controversy”, in *From Liberalism to Fascism*, P. C. Caldwell and W. E. Scheuermann (eds.), Boston: Humanities Press (p. 137).

⁷⁵ See Sinzheimer and Fraenkel (1968) (p. 84) and Kahn-Freund, Otto (1981) *Labour Law and Politics in the Weimar Republic*, Oxford: Basil Blackwell (p. 102).

⁷⁶ Luhmann, Niklas (2004) *Law as a Social System*, Oxford: OUP. E.g., relationships between law and other aspects of contemporary society, including politics, the economy, the media, education, and religion.

⁷⁷ See Luhmann (2004) (p. 404 *et seq.*).

⁷⁸ Shore, Cris (2005) “All in the Translation: Interpreting the EU Constitution”. *SITES: New Series*, Vol. 2 No. 2, 2005 (p. 26) (original emphasis).

⁷⁹ *Ibid.*

⁸⁰ Levits, Egils “General Clauses and Discretionary Power of Administrative Institutions and Courts. Functions in Laws, Application in Individual Cases, Control in Higher Administrative Authorities and in Courts” in *Likums un Tiesības* 2004.

⁸¹ Levits, (2004) para. 37: “This has been a serious problem in Eastern European countries where these interpretation methods were neither recognized, nor used in the inherited socialist traditions of law.”

⁸² Levits (2004) e.g., para. 48 *et seq.*

5.2. State intervention/public powers

In European societies, the state has always intervened to a far greater degree through laws and adjudication in regulating the life of society than it does in the USA and – to a large extent – other common law countries,⁸³ where voluntary associations both perform social self-regulatory functions and specialise in implementing rights and interests. In Europe, by contrast, the major federations and churches collaborate with the state in resolving conflicts and regulating society.⁸⁴ This section touches briefly on the role of associations and non governmental organisations (NGOs), followed by examples of state interventionism in the shape of the welfare state and juvenile justice, before finally considering ideas of social justice and means of achieving social justice that are firmly linked to state interventionism and influences on the law and legal systems in which they operate.

5.2.1. Associations and NGOs

The following quotation sums up in a few words the kind of invisible differences between societies that may not be apparent from a study of comparative law:

In Germany, accidents and diseases seem to be more easily accepted as the price for progress and wealth than in Britain. Moreover, institutions like the Royal Society for the Prevention of Accidents and the British Safety Council, which have no equivalent in Germany, guarantee a certain level of continuing public discussion on health and safety topics. Local health and safety groups and workshops help to motivate and mobilize employees at workplace level. There are no comparable initiatives in German workplaces.⁸⁵

Workplace safety thus appears to be a social issue in one society (Britain), which addresses that issue in its own way that is not reflected in another society (Germany) because workplace safety does not feature as a social issue in that society, at least not in the same way.⁸⁶ This perhaps echoes the comment on “taxpayers’ money” in Section 4.2 above.

According to the thesis of this paper, since safety in the workplace is not a social issue in Germany, then it may not appear in the German legal system, in which case comparative law research may not find it – or may not find it where we expect it.⁸⁷ However, if we ask, for example, “What function does the British Safety Council fulfil in England?” and receive the answer “Its function is A”, then we can ask the legal linguistic question, “How does German society address A through law, language, or other means?” In any event, this is a matter of

⁸³ Münch, Richard (1993), *Das Projekt Europa*, Frankfurt-am-Main: Suhrkamp, (pp. 157-158), reprinted in Gessner *et al.* (eds.) (1996) (p. 517). Translation by John Blazek, Brussels.

⁸⁴ *Ibid.*

⁸⁵ Gräbe, Sylvia (1991) “Regulatory Agencies and Interest groups in Occupational Health and Safety in Great Britain and Western Germany: A Perspective from Western Germany” in *Law and Policy*, 13 (1), January 1991, pp. 55-72. Oxford: Basil Blackwell Ltd., reprinted in Gessner *et al.* (eds.) (1996), p. 370.

⁸⁶ A statutory insurance system is in place. Moreover, a sign of change appears in a web news item of 3 December 2009, “New names for the research institutes of the German Social Accident Insurance: The new names reflect the developments in the accident insurance system”, at <<http://www.dguv.de/content/news/2009/Q4/institute/index.jsp#>>.

⁸⁷ But see *supra* notes 48-50.

interest to lawyers and translators operating in two or more languages, whose task is to find the language to express relevant concepts and terminology.

5.2.2. *Styles of state intervention*

More invisible differences, again between Germany and Britain, appear in the following:

In the field of welfare-state intervention in the international perspective, in Great Britain, longstanding national tradition favours consensual interaction with the parties subject to regulation: under the common law tradition, the parties involved are regarded as equals. The common law tradition is also reflected in a preference for generalists as civil servants, and for informal action in enforcement. The assumption is that generalists are less concerned with technical details, and thus are less likely to establish close ties with special interest groups. In marked contrast to the British common-law tradition, Germany – whose legal tradition is rooted in Roman law – developed detailed administrative law rules specifying how civil servants were to deal with their clients. In this legal tradition, the state and its representatives (the civil servants) stand *above* society – they are not ‘equals’.⁸⁸

This illustrates differences in the attitude of the state towards society in administrative matters, which in turn may be reflected in language, a matter of interest to lawyers and translators as before.

5.2.3. *Styles of intervention in juvenile justice*

Another area of interest, again taken at random, is juvenile justice in the shape of a comparison between England and Canada (legal-centred model) and France (judge-centred model) as the first of five distinctive criteria, the others being:

- all-embracing versus strict demarcation for judicial intervention;
- judge as referee versus judge as instigator;
- formal versus substantive guarantees;
- individualist versus social concepts of family law.

For example, as a result of their continuous relationship, the French children’s judge and social services generally manage to reach agreement. Social workers familiar with the judge can anticipate the judge’s decision:

Moreover, they may be able to devise a code in their report-writing that enables the judge to read between the lines. Such a “personalized” report is not possible in England, where it would be considered highly suspect, almost illegal.⁸⁹

These distinct approaches to judicial intervention in family cases may be linked to different conceptions of the family in Anglo-Saxon and Latin countries. Latin societies are traditionally more respectful of parental authority and anxious to preserve family unity.

⁸⁸ Héritier, Adrienne (1993), ‘Europa: Herausforderung für sozialpolitische Theorien und Konzepte’, *Leviathan*, (pp. 103-126), reprinted in Gessner *et al.* (eds.) (1996), (p. 295). Translation by John Blazek, Brussels.

⁸⁹ Garapon, Antoine (1990) “Paternalism and Legalism in Juvenile Justice: Two Distinct Models” *The Liverpool Law Review*, XII, 1990, pp. 115-27. Deborah Charles Publications, Liverpool, reprinted in Gessner *et al.* (eds.) (1996) (pp. 340-344).

Anglo-Saxon societies, on the other hand, are more willing to accept the idea of children being brought up outside the family. The judicial model and the philosophy that inspires it would appear to cohere with the society which the legal system addresses.⁹⁰

Perhaps significantly, family law and inheritance seem resistant to harmonisation. For example, although Nordic legislative cooperation has achieved much in the field of private law, important differences remain,⁹¹ while EU law has largely left family law untouched. Beyond the EU, in Tunisia, which is heavily influenced by French law, “Islamic law is in evidence only in fragmentary form in several branches of the law, such as private law [where] it regulates only certain institutions of family law and inheritance law”,⁹² while in the Indian subcontinent during the colonial era “the traditional systems of law - Hindu law and Muslim law – remained in force [...] and the rules from these systems are still applied there [...] limited to traditional branches of the law, notably those relating to the family and inheritance”.⁹³ These matters would be of interest to lawyers and translators, especially to the extent that they are reflected in (legal) concepts and terminology.

5.3. *Ideas of social justice*⁹⁴

Ideas of social justice are closely linked with legal ideologies, power relations in society, the welfare state and state interventionism, including a wide spectrum of areas from promotion of multiculturalism and respect for different identities to (the more usual) fair distributive outcomes in society, allocation of wealth and power, and “social regulation” or “social law”, public policy – “the forces that bring about the law”. Hugo Sinzheimer states explicitly that social law is unequal law: social law privileges the weak against the strong; it challenges the abstract and purely formal idea of equality (before the law), which reproduces inequalities in the real world and, therefore, can function as a backbone for the strong and wealthy.⁹⁵ Ideas of social justice have also become supranational, for example in the EU, where one example would be the Unfair Commercial Practices Directive.⁹⁶ However, the “institutional architecture” for achieving social justice may vary between one state and another, and may consequently be differently reflected in their legal and social systems and perhaps also in the language of concepts and terminology employed.

5.3.1. *Means of achieving social justice*⁹⁷

Again, different societies may use different means – through law or otherwise – to achieve social justice, such as protection of “weaker parties” to contracts. This might, for example, be either through principles embedded in the private law system (common law systems) or through targeted social regulation (civil law systems), with much the same result. As we have

⁹⁰ *Ibid.*

⁹¹ E.g., as to inheritance of farms, where the Nordic countries have very different legislative solutions (Finland and Norway) or very little legislation (Denmark and Sweden).

⁹² Mattila, Heikki E.S. (2006) *Comparative Legal Linguistics*. Aldershot: Ashgate (p. 213).

⁹³ *Op.cit.* (p. 245).

⁹⁴ Collins, Hugh (2007) “Does Social Justice Require the Preservation of Diversity in the Private Laws of Member States of Europe?” in Wilhelmsson *et al.* (eds.), (pp.155-176).

⁹⁵ See Sinzheimer and Fraenkel (1968) (pp.195–196).

⁹⁶ Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (“Unfair Commercial Practices Directive”).

⁹⁷ See *supra* note 94.

seen, concepts of social justice may go beyond the welfare state and wealth to well-being,⁹⁸ including ideas of identity, self-worth, and social inclusion.⁹⁹

In the EU, arrangements for achieving social justice may vary between states in the “institutional architecture” deployed. Collins illustrates as follows:

Consider [...] three hypothetical legal systems, each of which seeks to secure to every family a ‘living wage’. Each national system, however, employs a different method: in one the private law rules invalidate unfair contracts and impose a restitutionary obligation on employers to pay a fair price for goods and services; in another legal system, private law upholds the contract, but mandatory regulation imposes a minimum wage on the parties as a term of the contract or an independent statutory right; and in a third system, the contract of employment remains valid and unaltered by private law and regulation, but the government provides ‘in-work benefits’ or ‘negative income tax’ in order to increase the take-home pay of the worker. The end result in each legal system is approximately the same – the worker receives a living wage – even though the method of delivery differs considerably.

Collins rightly draws two inferences from this. The first is that, in spite of private law differences, each of the three states follows its own approach in delivering social justice. The second point is that even apparently substantial differences between private law systems “may not reveal any significant difference in national attitudes towards social justice viewed in terms of welfare.” In comparative law terms, this example recalls Bogdan’s earlier comment¹⁰⁰ that legal systems need to be studied in their entirety. But does it have any significance in terms of concepts and terminology for the lawyer or translator operating in two or more languages between legal systems? This question invites further study.

6. Summing up

Imagine a legal system with a well-developed system of concepts and related terminology in some area of social practice reflected in law, which has to be translated into another language where that same system of concepts is absent both in related social practice and law. One example has already appeared in section 4.2 on taxpayers’ money; others were given in section 5.2.1, for example, on the role of associations and NGOs in the field of safety at work.

Another good example is cited by Lindroos-Hovinheimo: the advanced system of ombudsmen in the Nordic countries and translating the concept of the Finnish Consumer Ombudsman into Japanese, where the concept is lacking.¹⁰¹ She notes:

[...] the difficulty of translating the concept of Consumer Ombudsman into Japanese does not lie in the fact that the institution does not exist in Japan. The

⁹⁸ For the notion of “well-being”, see: Gray, John (2000) “Inclusion: A Radical Critique” in Askonas, Peter and Stewart, Angus (eds.) (2000) *Social Inclusion: Possibilities and Tensions*, Basingstoke: Macmillan (pp. 19, 28); Raz, Joseph (1986) *The Morality of Freedom*, Oxford: Clarendon Press (Chapter 12).

⁹⁹ Young, Iris Marion (2000) *Inclusion and Democracy*, Oxford: Oxford University Press.

¹⁰⁰ *Supra* note 48.

¹⁰¹ Lindroos-Hovinheimo, Susanna (2007) “On the Indeterminacy of Legal Translation” in Thomas Wilhelmsson *et al.* (eds.) (pp. 374-375).

problem is that *because* the institution does not exist in Japan, it is likely that there is no established way of talking about it or referring to it in Japanese. So the ultimate problem is not that the Japanese legal system lacks something, but that Japanese *use of language* lacks something.

Lindroos-Hovinheimo concludes: "The meaning of a legal text is determined by its local legal context". That is true, but perhaps that is only part of the story, because law does not exist in a vacuum: law is the product of social and other forces within a particular society. So we have to go beyond the legal system itself – and therefore beyond comparative law – to find answers. One might think that the natural place to search beyond the field of comparative law as such would be in the fields of legal culture and legal ideology. As we have seen, this may be true – but only to some extent.

If we take the above example, then according to the thesis of this paper, since the institution of Consumer Ombudsman is nowhere to be found in the Japanese legal system, comparative law research may well not find the answer, so we need to frame our question differently, because our research takes us beyond comparative law in search of an answer. In framing our question, we first have to ask, for example, "What function does the Consumer Ombudsman fulfil in Finland?" If the answer is X, then we ask "How does Japanese society address X through law, language, or other means?" Will the concept of legal culture, or legal ideology, help? This paper has explained why these concepts may be no more useful than comparative law, though they may provide useful pointers in the right direction. Again, research would likely be easier between two related or similar legal systems than between unrelated or dissimilar legal systems.

Galdia proposes the following solution:

[...] the essential problem in legal translation is the legal and technical qualification of legal institutions. This involves reinterpreting terms that are largely incompatible and that can only be solved by comparative law methods. Nevertheless, the scope of debate surrounding legal translation is characterised by an increasing amount of questions which relate to the technical language and pragmatic aspects of legal language. These are in turn elements of legal linguistics – which is indeed an evolving field of study for which the conditions and methods must still be clarified. The conceptual convergence of these two disciplines may result in procedures that will facilitate the methodically sound translation of legal texts.¹⁰²

Hopefully, this paper will have provided some value in that context.

7. Conclusion

This research shows that the terms "legal culture", "comparative law" and "legal ideology" may be unsuitable as elements in research question variables due to the absence of concrete, uniform definition, although it is not suggested that research under the banner of these terms should be disregarded. Again, while the need of lawyers and translators for knowledge of comparative law is not disputed, it does appear that both the angle and focus of legal linguistic research might benefit from study of the external influences on legal systems as

¹⁰² Galdia, Marcus "Comparative law and legal translation" *The European Legal Forum (E)* 1-2003, 1 – 4 2003 IPR Verlag GmbH München.

reconnitred in this paper. These might be of help in establishing how different societies address social (and other) institutions and social (and other) issues through law, language, or other means, at the same time crucially (for the lawyer and translator) establishing what social (and other) issues in one society are mirrored by non-issues in another. This requires considerable further research in the fields of legal sociology and the history of law and – dare it be said? – in the field or under the umbrella of legal linguistics, as well. Other external influences on legal systems such as economic, political, and security influences should also be studied, as well as other influences such as the mutual influence of EU and Member State national law, human rights law and international law. Finally, the internal influences on legal systems and how different attitudes and perceptions are reflected in approaches to concepts and terminology should also be examined, in the interest of achieving a better understanding of the legal linguistic consequences that lawyers and legal translators require.

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Learning to fly: the prospects for legal linguistics in the academic curriculum... and beyond

In the field of legal communication, the fledgling discipline of legal linguistics offers vital knowledge and skills required by, for example, lawyers and legal translators operating in two or more legal languages. This is especially so in the context of globalization and transnationalization of the law, where English is the *de facto* global legal language, with attendant linguistic challenges. However, legal linguistics currently occupies a precarious foothold in the academic curriculum. The paper attempts to establish core and peripheral legal linguistic skills with a view to completing both the spectrum and content of course and programme components. To balance the academic aspect, the paper also explores practical applications of legal linguistics. The aim is to affirm the relevance of legal linguistics in the curriculum for future law professionals with a view to examining how to nurture the fledgling discipline until it takes wing and soars as an established component of the academic curriculum linked to its use in professional life. References to the literature complemented by focus group survey data form the basis of analysis and discussion.

Introduction

Legal linguistics as an academic discipline is in its infancy. This paper aims to clarify the focus that legal linguistics courses or programmes require so as to be seen by educational institutions, potential applicants, employers, and stakeholders as having clear practical professional relevance. The context, examined briefly, is linguistic challenges to legal communication against a background of globalization and transnationalisation of the law with English as the *de facto* global legal language and law professionals operating in two or more legal languages. In addition to contextual references to the literature, a survey questionnaire is addressed to a focus group consisting of academics in the legal linguistics field to establish their views on what they identify as core and peripheral legal linguistic skills and practical applications of legal linguistics.

Legal Linguistics as an Emerging Discipline

According to Marcus Galdia, legal linguistics is in a 'state of emergence' (Galdia 2009: 35), in that 'until recently ... Legal Linguistics did not exist as an autonomous branch of legal science or linguistics, and its status as an interdisciplinary field of research has not been particularly strong either' (Galdia 2009: 65; see also Mattila 2006: 8-10). However, this is not to say that interest in legal language is new (Mattila 2006: 6-7). While examples of other emerging disciplines are many¹, one concrete example will suffice for this paper: knowledge management (Wiig 2000).

¹ See generally

http://www.emergingdisciplines.org/http://www.krii.com/downloads/km_emerg_discipl.pdf

Moreover, if new and emerging branches of law, such as medical and bio-law, communications law, information law, and pharmlaw, must jostle for position, recognition, and space in the curriculum (Tuori 2011: 159-160), this suggests an analogy with emerging disciplines such as legal linguistics. Tuori notes (2011: 160):

In the early phases of the campaign, a central claim would be over a chair at the law faculty and acknowledged status in the legal curriculum. When a chair has been obtained, it is turned into a bridgehead, allowing consolidation of victories achieved and the prospect of new conquests.

Again, if proponents of an emerging field of law have their ‘external patrons’ such as trade unions, non governmental organisations and employers’ organisations for labour law (Tuori 2011: 160), this, too, may suggest that a similar need applies to emerging disciplines. Legal linguistics as an emerging discipline appears to have no such patronage, a matter worth exploring elsewhere.

Before briefly examining the role of legal linguistics in the field of legal communication, the paper sets the context, in the shape of globalization and transnationalisation of the law, with English as the *de facto* global legal language.

Globalization and Transnationalisation of the Law: Legal Linguistic Challenges

In legal terms, globalisation could be said to comprise, firstly, the legal consequences of activities that go beyond the borders of the nation state, therefore beyond nation-state control and thus requiring ‘corresponding cross-boundary reactions’ (Tuori 2011: 296) and, secondly, denationalization of law coupled with the growth of non-state transnational legal systems (Tuori 2011: 291-304) including EU law or Europeanisation of law (Tuori 2011 244-247, 300-301). According to Husa (2011:255):

[p]resent challenges set forth by globalisation and Europeanisation have stirred the former tranquillity of the nationally oriented doctrinal study of law throughout Europe... nation-States and their systems of positive law are on the decline.

These developments in turn lead to legal pluralism, which Husa defines as the simultaneous existence of ‘multiple legal systems (or normative orders) in one geographical area’ (Husa 2011: 255). Here we should distinguish between the ‘legal order’ as mainly the sum of law-making, the ‘totality of valid legal norms’, ‘the law in force’; ‘legal system’ as an analytical breakdown of normative material by legal science into discrete areas of law; and ‘legal practices such as lawmaking, adjudication and legal scholarship’ as themselves social practices involved in producing and reproducing the legal order (Tuori 2011: ix, 6).

Examples of transnational legal systems based on functional grounds include the European Union and the World Trade Organisation (Husa 2011: 259) the *lex mercatoria* of international trade, the *lex sportiva* of international sports, and the *lex*

digitalis of the Internet. In none of these transnational legal systems have either municipal legal orders or international law subsumed the applicable norms. Moreover, designated transnational bodies settle disputes and impose sanctions in those same fields². While international arbitration bodies apply *lex mercatoria*, *lex sportiva* largely combats doping. Transnational *lex digitalis* is most developed in its regulation of disputes over domain names. Additionally, with or without nation-state consent, transnational law in the shape of European Union law or human rights law affects private individuals. Moreover, specific courts or other monitoring bodies are established to implement them, again with or without nation-state consent. (Tuori 2011: 302-305).

What does this mean in legal linguistic terms? De Groot (1996: 155) observes:

An international legal technical language is almost wholly lacking. It only exists to the extent that certain legal areas have become ‘internationalized’: this is particularly true for international law and European Community law. An international (multilingual) terminology is gradually developing in these fields. But for legal areas such as constitutional law, administrative law, criminal law or civil law, an international terminology is fundamentally absent.

One of the challenges facing a potential single legal language remains absence of equivalence and mismatch between terms and concepts (see e.g. discussion in Goddard 2009: 178-181). Galdia asserts that ‘[l]egal concepts can be expressed by ordinary language... legal language does not consist of concepts alone (2009: 95) while acknowledging the ‘[s]ystemic incompatibility of legal concepts.’ (2009: 119) However, even unified or harmonised concepts do not necessarily lead to unified legal language: as Heutger notes (2005:205) it is ‘[t]he use of different languages [that] is one of the obstacles to the EU-integration process’.

Indeed, as Twining rightly asserts (2002: 4), a ‘cosmopolitan’ discipline of law needs a vocabulary and conceptual apparatus that can be used confidently across jurisdictions and cultures: ‘If jurisprudence is to be general, its vocabulary and concepts need to travel well’. For example, in the field of corporate law, Kraakman (2004:4) argues ‘the need to develop an appropriate language in which issues of comparative (corporate) law could be addressed without confusion and misinterpretation.’ At the same time, others in specific fields such as contracts warn against the unsuitability, or pitfalls, of English as an international legal language (Beveridge 2002; Triebel 2009), of which more in the following section.

² For presentation of transnational legal systems, see B. Zangl, M. Zürn (2004), Make law, not war: Internationale und transnationale Verrechtlichung als Baustein für Global Governance, in B. Zangl, M. Zürn (Eds), Dietz, Bonn, pp.12 - 45.

An additional complication is that, even where two legal systems and the corresponding languages are very similar, actual day-to-day practice of the law may differ between those two systems. Moreover, de Groot (1996: 159) points to the challenge posed to translators of legal texts ‘between two legal systems which differ from one another in their systems and contents, while the legal languages used are closely related to one another’, citing as an example German-Dutch translation of legal texts (1996: 159):

[p]recisely because these two languages are so closely related linguistically, it is widely believed to be relatively easy to translate even legal texts from one into the other. However, this view frequently overlooks differences of system and detail. As a result of these differences, dangerous mistakes can easily find their way into translations, since there are extraordinarily many legal ‘false friends’ between Dutch and German.

According to de Groot (1996: 159) ‘the main difficulty in translating terms...does not lie in linguistic problems, but...is due to the fact that the concepts have different meanings in the Dutch and German legal systems.’

Further comparison between The Netherlands and Germany, in the shape of the role of courts, yields another interesting result. According to Blankenberg and Bruinsma (1996: 345), ‘even though on paper the various legal systems are very much alike, the law in action may differ considerably.’ Citing low litigation rates and numbers of judicial personnel in Holland compared with neighbouring Germany, they drily note: ‘the Dutch manage to settle cases out of court.’

But what if different societies and their legal systems address social (and other) institutions and issues differently, or even not at all? (Goddard 2011: 129-132). Indeed, as Galdia relevantly notes (2009: 53), ‘[l]egal language... is value-laden and transports convictions and views about the social practice... fundamental for the society in which it had emerged....values manifest themselves in legal language as an inherent part of it.’ Also to be borne in mind are external factors influencing legal systems (Goddard 2011: 132-137) as well as internal influences (Goddard 2011: 123, 132, 139).

To add zest to the discussion, Husa (2012: 173) notes that ‘... *what the text says* and *what the text means* cannot always be separated which indicates that the roles of a translator and lawyer cannot always be separated...’, thus explaining the existence of the jurist-linguist.³

³ Footnote 55 citing J. F. Morgan, Multilingual legal drafting in the EEC and the work of Jurist/Linguists, *Multilingua* 1 (1982): 109–118.

In short, the literature discussed above suggests that to some extent, that is, in certain legal fields, an international technical legal language is developing, but not so in others. At the same time, it also highlights significant challenges in this respect, some purely legal linguistic, others with comparative legal linguistic and other issues as symptomatic of deeper challenges to further development. This would suggest the need for a nuanced (comparative) legal linguistic response.

So what does this mean in terms of responses in legal education? As an example, Bussani & Mattei (1997) present the Common Core Project. The project, aimed at scholars, seeks to ‘unearth the common core of... European private law’ in the ‘general categories of contracts, torts, and property’⁴, with a view to ‘building a common European legal culture... through the creation of a model "European law school" capable of shaping a truly common legal education.’ (see also Cooper, 2011: 13). Presumably, the project is a considerable legal linguistic exercise in itself.

The Common Core Project is matched by the European Casebooks.⁵ This is another scholarly project with practical outcomes in the shape of publication of comparative law casebooks in several areas of law, with work in progress on other areas. As the project website states: ‘The aim of the Project is to enable students across Europe and beyond to discuss the same leading cases and materials.....[The Casebooks] intend to uncover common principles already underlying existing laws.’ The ultimate goal is to produce a common European lawyer. (Cooper, 2011: 13)

As Cooper (2011: 13) points out, ‘a common European law...cannot be formed without common European *concepts*. The theme that keeps recurring...is that common European concepts are necessary for the foundation of a common European legal language.’ Infantino also notes the need for a ‘common vocabulary and a standard terminology capable of summarizing the different notions arising from the European linguistic and legal plurality.’ (2009:9).

According to Gessner et al., ‘legal education in a period of rapid globalization, must enable future practitioners to deal with foreign legal systems’, especially in the context of a growing legal community with a focus ‘which goes far beyond the EU.’ (1996: xv-xvi) Galdia suggests legal linguistics as a major driver of work in this field: ‘[o]ne task for future Legal Linguistics is to form a conceptual characterisation of the research. This would help overcome geographic boundaries and help develop a unified Legal Linguistics’ (2009: 73) Focus on the role of legal linguistics in legal communication and in legal education follows after a brief review of the role of English as the lawyers’ global *lingua franca*.

⁴ Though omitting ‘procedure and legal institutions where the diversity of legal tradition may be even more important.’

⁵ Officially known as ‘*Ius Commune Casebooks for the Common Law of Europe*’. See: <http://www.casebooks.eu/welcome/> (last accessed 08/10/2012)

English as *de facto* Global Legal Language

Although focus on a particular language may at first sight seem inappropriate in a study on legal linguistics in the academic curriculum, nevertheless the practical reality of English as the global lawyers' legal *lingua franca* cannot be ignored. This reality implicitly intensifies the need for translation of legal texts into (or from) English, and – as a corollary – production of legal texts in English, often by non-native speakers of English. Moreover, warnings noted earlier from Triebel and Beveridge as to the unsuitability or pitfalls of English, at least in the field of international contracts, should not go unheeded.

For if Latin was once the *lingua franca* of law professionals, (Mattila 2006: 22-23, 128-131; Husa 2012: 168-169)⁶ today English could arguably be said to occupy the same role (Mattila 2006: 24, 27, 240-254, 259). However, as Husa notes, the two are not comparable. In particular, today's Euro-English lacks an 'interwoven legal grammar... English is situated on the surface level of law enabling technical and practical legal communication, but it does not contain a common European legal-language grammar.' (Husa 2012: 169).

Yet according to the European Commission (2010: 89) 'English as a drafting language of EU texts is...a neutral English, distinct from the common law systems and from the cultural constraints of countries using English as a national language.' Additionally, English is seen as 'more capable of expressing creativity than other EU languages, and to be practical and flexible enough to be the *lingua franca* for the drafting (of) EU texts.' This seems to reflect an earlier view (Jenkins 2003: 42) of a 'nativised hybrid variety of English, in effect, a European version of English which contains a number of grammatical, lexical, phonological, and discoursal features found in individual mainland European languages along with some items common to many of these languages but not to standard British (or American) English.'

The same view is supported by Galdia (2009: 274-5), who proposes a legal language developed by comparative legal linguistics for use in establishing and supporting global law and concurs with Jenkins and the European Commission in noting that '[w]ithin the European Union considerable progress has been achieved to develop a more neutral legal English.' Moreover, while Husa also notes serious challenges to English as a legal *lingua franca*, at the end of the day he endorses Mattila's solution of a comparative legal linguistic approach, 'a genuine amalgamation of skills in law *and* skills in...linguistics and translation' (Husa 2012: 180 [my italics]).

To the extent that English may, or may not, be adaptable to use as Galdia's above-noted globally applicable 'legal language developed by comparative legal linguistics', we should examine what 'legal language' means and what it does.

⁶ Though as Husa points out (2012: 169) 'the actual key-factor was not Latin itself; [Latin] was merely the *linguistic vessel of legal grammar*' (italics in original).

Legal Language

Legal language can be seen in a variety of ways. According to Mattila, legal language operates as a ‘functional variant of natural language with its own domain of use and particular linguistic norms... a language for special purposes’ (Mattila 2006: 3-4). Galdia asserts that ‘[l]aw is predominantly a linguistic phenomenon because it is created and applied in linguistic operations’ (Galdia 2009: 52) and that ‘[l]egal language means “legally relevant aspects of language use”’ but that ‘legal language is much more than terminology’ (Galdia 2009: 138).⁷

Husa gives a dynamic definition of legal language: ‘a *form of communication* allowing legal discourse between... legal actors’ (Husa 2012: 168) (italics in original).⁸ Galdia proposes that ‘[w]e rather should speak about linguistic aspects of law than about legal language’. (Galdia 2009: 177). Salmi-Tolonen sees ‘law and all legal activity as communication’ (2004: 1167).

Leaving aside problems with definition of ‘discourse’, for which this paper has no space, a simplified and somewhat broad synthesis of the above might be that legal language defines as *communication in legal contexts*, thus also embracing e.g. legal semiotics, at the same time neatly fitting with approaches to legal linguistics in the following section.

Legal Linguistics and Legal Communication

According to Mattila, ‘[l]egal linguistics examines the development, characteristics, and usage of legal language’. According to Salmi-Tolonen (2004: 1169), ‘[t]he purpose of legal linguistics is to study the language of the law.... and its development and usage in order to create new knowledge of the interplay between language, law and society’. While Galdia (2009: 37) asserts that ‘Legal Linguistics deals with ... language use in law’, he goes on to develop concrete expressions of legal linguistic tasks and activities:

- ‘Legal Linguistics deals with the most essential linguistic phenomena and linguistic operations in law’ (2009: 84)
- ‘discourse, text type, speech acts, narrative, style, prototype-stereotype, form of life, equivalence in legal translation’ (2009: 85)
- ‘[l]inguistic operations in law, e.g. creating law with the help of language, legal argumentation, legal interpretation, legal translation, justifying legal decisions, providing legal advice, stating and commenting on the law’ (2009: 142)
- ‘[l]egal Linguistics deals primarily with the language in which propositions about law are expressed’ (2009: 329)

⁷ Though recognising the relevance of legal linguistics ‘in modernising legal terminology.’ (2009: 126).

⁸ Citing Anne Lise Kjær, A Common Legal Language in Europe, in *Epistemology and Methodology of Comparative Law*, ed. M. Van Hoecke (Oxford/Portland: Hart, 2004), pp. 377-398, 387-388.

Before examining the role of legal linguistics in legal communication, first we need to define legal communication. To find clues in this respect, we need only revisit the quotes above from Salmi-Tolonen, who sees ‘law and all legal activity as communication’ and from Galdia, who gives examples of ‘linguistic operations in law’ in the shape of ‘creating law with the help of language, legal argumentation, legal interpretation, legal translation, justifying legal decisions, providing legal advice, stating and commenting on the law’. Further concrete examples appear in the section on core and peripheral legal linguistic skills.

Having at least partly clarified the role of legal linguistics in legal communication the paper raises the corresponding need for legal linguistics in the academic curriculum for law professionals. This will complete the academic section of the paper, which then goes on to present replies from a focus group of academics in the legal linguistics field to a questionnaire (see Appendix) aimed at establishing the views of focus group members on what are core and peripheral legal linguistic skills and what are the real-world tasks that practical application of legal linguistics can help resolve. These replies are seen in the light of the theoretical part now concluding. The aim is to establish the relevance of legal linguistics in the curriculum and link it to the world of work, with a view to promoting legal linguistics as an academic discipline.

Legal Linguistics in the Academic Curriculum for Law Professionals

Salmi-Tolonen suggests that legal linguistics requires application of systematic academically approved methods in order to become a basis in legal training (2004: 1169-70). Specifically, as noted above, she sees the aim as examining the interaction between ‘language, law and society’ by studying ‘the language of the law’ along with ‘its development and usage’. (Salmi-Tolonen 2004: 1169) Heutger (2005: 213) proposes that law schools should incorporate ‘law and language’ courses into their curricula, so that students could learn how to work with law and legal languages, rather than expecting them to memorise a legal dictionary. (Cooper, 2011: 13) For his part, Galdia sees legal linguistics as:

- ‘an introduction to the law especially in legal education. (2009: 75);
- ‘[f]rom the perspective of legal theory, [as] a linguistic view on law and legal theory (2009: 86);
- including ‘legal logic, such as analysis of legal reasoning and argumentation, interpretation and justification– for these reasons close to a theory of law’ (2009: 84, 86).⁹

Earlier research by the author (Goddard 2010) has revealed a notable absence of comparable academic programmes in legal linguistics from which to extract what the

⁹ Contrary to the general use of the terms as synonyms in legal theory, for *Bengoetxea* legal reasoning includes both argumentation, which takes place in the process of arguing the case, and justification, which refers to the reasoning the deciding court has accepted as justification for the judgment, see Bengoetxea, Joxerramon 1993 *The legal reasoning of the European Court of Justice : towards a European jurisprudence* Oxford : Clarendon Press ; New York : Oxford University Press, 1993, 144.

content should be, in the shape of specific legal linguistic skills for specific courses. Nonetheless, some help is available from the literature, as we shall see in the following section.

Core and Peripheral Legal Linguistic Skills

To obtain perceptions of legal linguistic skills and how these might be deployed in practice, the author framed a survey questionnaire sent by email to a focus group of academics in the field of legal linguistics. The questions were arranged to test the consistency of replies. Replies were received from five academics. The full questionnaire is reproduced in the Annex, while replies to selected questions relevant for this paper¹⁰ appear below in this and the following section. Replies are discussed in the light, and with the help, of the earlier theoretical section of this paper.

Question 1.1 elicited the following replies:

How would you define:
1.1 Core legal linguistic skills: legal research, statutory interpretation, legal translation, legal drafting, revising, editing; theoretical knowledge of legal linguistics; legal terminology; characteristics of legal discourse;
1.1 Core legal linguistic skills
In my mind, core legal linguistic skills are skills that enable the student to get an insight into the relationship between language as a communicative system for creation of meaning and the legal meanings that emerge from communication in the legal field. A legal linguist must be able to perform systematic analyses of a text in order to follow the process of creating specialised legal meaning. Concrete, I think that insight into the distinctions between lexicon (especially terminology), sentential syntax (especially complexity) and textual features is relevant. Furthermore a legal linguist needs insight into the legal basics of interpretation, argumentation and meaning creation. Knowledge about principles of statutory interpretation in different legal systems I would also see as core legal linguistic skills.
1.1 Core legal linguistic skills / The essential legal words & phrases, concepts & institutions
1.1 Core legal linguistic skills: To master legal linguistics means being able to use language efficiently in all social contexts relevant to law. These social contexts (situations in which language is used) are mostly institutional (language use in courts, in administrative proceedings, attorney's advice etc). The legal linguistic skills are therefore closely linked to institutions because legal language does not exist outside contexts that are defined by social institutions such as courts of law. Incidentally, institutions also define these skills; there is no private legal language. Therefore, at least theoretically, the most salient legal linguistic skill is to use language efficiently under conditions defined by others, i.e. by institutions that impose the rules for its use. Practically, when the improvement of such skills should be reached, some methodical

¹⁰ Replies to other questions will be dealt with elsewhere.

steps must be taken. First, the circumstances of language use must be identified; second, the relevant legal linguistic skills must be defined and trained. For instance, (1.) cross-examination is identified as a relevant linguistic operation in law, (2.) language use strategies that are most appropriate and efficient in such a context of use are identified and trained with students. Legal linguistic skills are acquired in numerous such language games. As a matter of fact, in common law countries some of these skills are already trained, yet at random and unsystematically, e.g. in moot courts. In the civil law countries this practical training is even more reduced or does not exist at all. Disappointingly, today, this professional training in legal linguistic skills takes place only in practical life, haphazardly and superficially; academic institutions that should provide legal education offer sterile legal doctrine instead of professional training in legal linguistic skills. Consequently, law as a teaching subject is deficient because it does not teach the most essential skills for the practice of law, i.e. the efficient use of the legal language. The legal linguistics addresses this deficiency and provides remedies for these shortcomings that are viewed by many law students rather critically.

1.1 Core legal linguistic skills

The legal text must be: functional (not rhetorical), objective, clear, formal, precise, concise. The language of law is an important element for bettering the image and prestige of public institutions. People who work in the field of law have to learn: legislation on documents, terminology, the key aspects of grammar and the principles of modern law writing style

1.1 Core legal linguistic skills: legal and linguistic reasoning and to have the capacity to combine both. Contact with more than one legal culture and more than one language.

In discussing replies, some help is available from the theoretical section of the paper, in particular Galdia, who proposes specific skills in the shape of:

linguistic operations in law, e.g. creating law with the help of language, legal argumentation, legal interpretation, legal translation, justifying legal decisions, providing legal advice, stating and commenting on the law' (2009: 142)

and

legal logic, such as analysis of legal reasoning and argumentation, interpretation and justification (2009: 84, 86)

These skills all seem to fit within Galdia's 'linguistic operations in law' (2009: 84) referred to above.

Comparing concrete items on Galdia's list with the replies, only three are a precise match:

- legal argumentation;
- legal translation;
- legal reasoning.

This is followed by two near matches from the replies:

- statutory interpretation (x2) and ‘legal basics of interpretation’(x1) (compared with Galdia’s ‘legal interpretation’) and
- ‘legal drafting’ (x1) compared with Galdia’s ‘creating law with the help of language’.

Although ‘analysis’ appears both in replies and in Galdia’s list, on closer inspection Galdia’s ‘analysis of legal reasoning and argumentation’ may to some extent match ‘perform systematic analyses of a text in order to follow the process of creating specialised legal meaning’ from the replies.

Items from replies that do not appear on Galdia’s list include:

- theoretical knowledge of legal linguistics;
- legal terminology;
- characteristics of legal discourse;
- lexicon (especially terminology);
- sentential syntax (especially complexity);
- textual features;
- concepts and institutions

However, Galdia’s ‘linguistic operations in law’ could cover other items from the replies, such as:

- legal research;
- revising;
- editing

Additionally, ‘linguistic operations in law’ could cover many items not given in the replies, such as client letters, legislative drafting, interlingual or intralingual translation of, for example, a piece of legislation into a public information leaflet or a court report into a newsletter item on a law firm’s website, drafting a court judgment, preparing memorials in litigation, advocacy before courts and tribunals, negotiations in legal contexts, conference interpreting, legal lexicography, writing and presenting legal scholarly works. These are merely examples that spring to mind but the list is far from exhaustive. If all are legal linguistic activities, then the relevance of legal linguistics in legal education seems clear, unless we want to separate education from training, a matter which deserves discussion but for which space is unavailable in this paper.¹¹

¹¹ However, a Google search elicits a course in Legal Communication and Research at the University of Miami School of Law at http://www.law.miami.edu/about_us/legal_communication_and_research_skills.php in which ‘Students develop and master advocacy skills in the context of a client’s simulated problem, evolving through initial case assessment, pretrial motion practice, oral argument, and appeal. By employing diverse written and oral communication strategies, students practice and hone important professional skills.’ (last accessed 08/10/2012). This seems to confirm some of the items listed as legal linguistic operations.

One reply that stood out from the others was the comment that ‘professional training in legal linguistic skills takes place only in practical life, haphazardly and superficially; academic institutions that should provide legal education offer sterile legal doctrine instead of professional training in legal linguistic skills’ with the result that ‘law as a teaching subject is deficient because it does not teach the most essential skills for the practice of law, i.e. the efficient use of the legal language...legal linguistics addresses this deficiency and provides remedies for these shortcomings’. While this comment bears further investigation, at the same time it explicitly raises the issue, implicit at the end of the preceding paragraph, as to what differences exist between (legal) education and training and, assuming that such differences do exist, the further issue of allocation of responsibility for delivery of suitable programmes.

Turning now to replies to question 1.2, these were as follows:

1.2 Peripheral legal linguistic skills: presentation skills: meetings, negotiations; intercultural communication
1.2 Peripheral legal linguistic skills
Peripheral legal linguistic skills could include insights into the linguistic fields of genre, of pragmatic functions and of the sociology of knowledge as expressed in textual representations. From the legal field studies into legal cultures and deeper insights into philosophical backings of different approaches to statutory interpretation as well as deeper insights into the legal background of legal drafting are relevant.
1.2 Peripheral legal linguistic skills / Applying these to writing, constructing & revising legal texts
1.2 Peripheral legal linguistic skills: These skills mostly include qualities cherished by administrative bodies: ‘good’ grammar, correct spelling, using language that sounds formally and is perceived as presentable, editing skills and quick drafting. In all, being a perfect secretary. Legal linguistics includes also these skills as an incidental part of all legal linguistic operations.
1.2 Peripheral legal linguistic skills
Is always useful to get a good knowledge on history of the language of law of the own language in each case, about recent international trends in this field and on comparative matters, to understand better how it works in different languages
1.2 Peripheral legal linguistic skills: previous specialization in the legal or linguistic field.

Apart from presentation skills, meetings, negotiations, intercultural communication, which are clearly skills though not necessarily purely legal-linguistic skills, replies yielded studies of legal culture and legal (linguistic) history, in addition to ‘previous specialization in the legal or linguistic field’.

To sum up, replies to question 1.1, read in the light of parts of the theoretical section, do seem to help establish the spectrum and content of course and programme

components, though perhaps unsurprisingly the same seems not to be the case for replies to question 1.2. Perhaps most importantly, this section has already begun to bring out some of the practical applications of legal linguistics.

Practical Applications of Legal Linguistics

Only one reply was received to question 3:

3. What real-world tasks can the practical application of legal linguistics help to resolve?
• Tasks involving the interaction of more than one legal system and more than one legal language. It may the interpretation or drafting of multilingual contracts, counselling clients in such cases, investigating background knowledge for lawyers involved in multilingual and multilegal cases.

In terms of legal education, this reply suggests the need for comparative law studies in education of law professionals. Moreover, as Galdia notes, '[i]n its core, seen from the perspective of ... Legal Linguistics, comparative law is about comparing legal languages.' (2009: 272). This evokes earlier comments we have noted above from Husa, who endorses Mattila's solution of a comparative legal linguistic approach in legal education, resulting in 'a genuine amalgamation of skills in law and skills in...linguistics and translation' (Husa 2012: 180). This leads us to the final section.

Relevance of Legal Linguistics in the Curriculum for Future Law Professionals

4. Please state the practical benefit of legal linguistic knowledge and skills to the following:
4.1 Lawyers: better understanding of language, translation strategies, improved legal writing, contract drafting, editing 4.1 Lawyers: - Insights into the actual role that language plays in the emergence and development of legal meanings in intra- as well as interlingual cases - Analytical skills to be used when solving problems of interpretation of legal texts 4.1 Lawyers / Writing and interpreting legal texts better 4.1 Lawyers: When legal linguistics is perceived as a theory of law, the benefits for lawyers are obvious. First of all, a lawyer who reflects upon legal linguistic issues begins to understand the essence of the activities he/she performs, i.e. using language efficiently in legally relevant social contexts. Basically, all activities exercised by lawyers are covered by this broad description. Therefore, a lawyer who deals with legal linguistics understands the rules that govern his/her profession. 4.1 Lawyers For lawyers to improve their legal linguistic skills helps them to feel surer in expressing themselves when they write or speak in a formal legal context. If they use language in a more efficacious and convincing way, they become better and more respected and admired lawyers. For lawyers language is the second skill (the first is

obviously law) they need to know well to be successful in their job. 4.1 Lawyers: For scholars: To allow a more open-minded approach to legal theory. For practitioners: to better communicate with an everyday more multicultural and multilingual clientele. For both: to improve their capacity to understand, create and interpret legal notions.
4.2 Legal translators: better understanding of legal concepts and terminology; using specific translation tools 4.2 Legal translators - Insights into the actual role that language plays in the emergence and development of legal meanings in intra- as well as interlingual cases - Analytical skills to be used when solving problems of interpretation of legal texts 4.2 Legal translators / Better comparatists and translators 4.2 Legal translators: Legal translation without legal linguistics is blind; it is unsystematic and nebulous. Legal linguistics is able to describe the problems of legal translation and it shows why this profession is and will remain challenging. It prevents mechanistic approaches to legal translation and prepares the translator for creative work. Legal translators become professionals through legal linguistic education. Neither languages courses alone, nor separate legal education, nor both tracks completed one after the other can replace legal linguistic education. 4.2 Legal translators Often translators have a lot of difficulties in translating legal documents, because of terminology problems and misapprehension of legal concepts and documents. 4.2 Legal translators: be protagonists of the creation, understanding and interpretation of legal notions. It enhances the profession opening more job possibilities.
4.3 Others: e.g. teachers of foreign languages for lawyers can benefit from legal linguistics by learning more about law, legal terminology and specific characteristics of legal texts 4.3 Others 4.3 Others / Judges: writing reasons more clearly and simply (and shorter judgments). Legislators: writing better (i.e., clearer, simpler and shorter) laws, & better construction of statutes. 4.3 Others: Legal linguistics allows linguists, sociologists, philosophers and other representatives of arts and social sciences to approach law from a perspective that is understandable for them. It makes plain for them how law is created and how it is applied. When described in terms of legal linguistics law as a social phenomenon can be integrated into methodological approaches that dominate these branches of knowledge. This is a great progress because the methodology of the traditional subject 'law' is much too particular and hermetical to become accessible to other professions. Therefore, legal linguistics functions also as a bridge between law as an academic discipline and other social disciplines. This shows again how central this branch of knowledge actually is. 4.3 Others As lawyers, civil servants as a general rule need to use in a fit way legal language to

succeed in their job.

4.3 Others

These replies, taken in synthesis and with earlier evidence noted above, combine to suggest both the need for and the relevance of legal linguistics in the curriculum for future law professionals. Again, one reply stood out from the others:

When legal linguistics is perceived as a theory of law, the benefits for lawyers are obvious. First of all, a lawyer who reflects upon legal linguistic issues begins to understand the essence of the activities he/she performs, i.e. using language efficiently in legally relevant social contexts. *Basically, all activities exercised by lawyers are covered by this broad description.* (My italics)

In closing this section, the views of two legal linguistics specialists seem appropriate. The first is from Salmi-Tolonen, who avers that '[t]he first and foremost purpose of legal linguistics is to look forward and see how linguistic methods can help legal professionals at the various stages of their careers.' (2004: 1168) The second is from Galdia: '... Legal Linguistics has also a practical dimension... to contribute to the emergence of ... global law.' (2009: 271)

Conclusion

This paper has made a case for inclusion of legal linguistics in the academic curriculum and has also to some extent clarified the spectrum, content and components of programmes and courses, although much further work remains to be done in this respect. Clearly, too, allocation of institutional responsibility as between education and training is a matter that requires attention. This could be key in attracting patronage as one aspect of nurturing legal linguistics as an emerging discipline. Here, the practical applications of legal linguistics as embracing many, if not all activities by lawyers (not to mention other law professionals) would be crucial, as would evidence of the growing need for legal linguistics alongside globalisation and transnationalisation of the law. At the same time, research would be desirable to establish the extent to which law professionals do in fact operate between two or more legal systems and languages. In the same context, the feasibility of English as global legal language remains to be seen. However, there is no suggestion that English should necessarily be the language of legal linguistic education. Again in the same context, further research is required into the extent to which an international technical legal language is developing, as well as the (comparative) legal linguistic and other challenges to that development as noted above. Among other areas for further research in this respect, institutional and procedural differences between different legal orders would seem to be a fruitful area for legal linguistic research.

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Appendix

Invitation to Participate in a Research Paper focus group survey

I am currently writing a research paper addressing practical issues related to **legal linguistics** in academic programmes and in practical application in professional life. The questions below supplement the main part of the paper delivered on 19 June 2010 at the conference "The Language of Law: pulling together different strands and disciplines" at Seconda Università degli Studi di Napoli. The title of the paper is "Learning to fly: the prospects for legal linguistics in the academic curriculum... and beyond"

The aim of the paper is to clarify the focus that legal linguistics courses or programmes require so as to be seen by potential applicants, employers, and stakeholders as having clear practical professional relevance. This survey questionnaire is addressed to a focus group consisting of academics in the legal linguistics field. The survey is performed as partial fulfilment of the requirements for a doctoral degree in legal linguistics at the University of Lapland, where my supervisor is Professor Heikki Mattila.

Your participation in this survey will provide useful information on the topic. You have been selected to participate because of your involvement in legal linguistics. The total time required to fill out the survey should be no more than 60 minutes. All data from this survey are confidential and will be used for research purposes only. Data are anonymous. Names of participants will not be connected to information.

If you have any questions about the survey, I shall be happy to deal with them.

If you would like to receive a summary of the results of this research, please let me know.

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1. How would you define:
1.1 Core legal linguistic skills
1.2 Peripheral legal linguistic skills
1.3 [Space for additional comment]

2. The optimum means of delivering legal linguistic knowledge and skills is:
[On a band from strongly agree 10 to strongly disagree 0]
2.1 Courses integrated with programmes at bachelor level
2.2 Courses integrated with programmes at master level
2.3 Dedicated programmes at bachelor level
2.4 Dedicated programmes at master level
2.5 Other (please specify)
2.6 Single institution
2.7 Two or more institutions
2.8 Involving a distance learning component
2.9 [Space for additional comment]

3. What real-world tasks can the practical application of legal linguistics help to resolve?

4. Please state the practical benefit of legal linguistic knowledge and skills to the following:
4.1 Lawyers
4.2 Legal translators
4.3 Others

5. Please briefly describe your own language and law programme or link to home page

THE PRAGMATIC DIMENSION OF COMPETENCE IN ESP IN CROSS- CULTURAL LEGAL CONTEXTS

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Abstract

Individuals operating in cross-cultural contexts between two or more languages require pragmatic competence in order to ensure understanding of what utterances mean in context. Pragmatic competence involves awareness of what the context consists of, being equipped to study what factors or forces lie behind utterances, highlighting those that can be seen, unearthing and examining those that may remain unseen. For ESP professionals operating between two or more legal languages or systems, this research is one of the tasks of the discipline of legal linguistics. Law has no separate existence of its own: it is not sealed off from the rest of the world and does not operate in isolation from people, events and ideas. These will inevitably be reflected in the framing and content of laws, as well as in the way they are expressed in legal language. This chapter explores the literature with a view to identifying some of the unseen factors and forces that make legal language what it is, with the aim of opening avenues for further comparative legal linguistic research in the field of legal ESP, as well as in legal translation and comparative law.

1. Introduction

Pragmatics is a subfield of linguistics that studies how context contributes to meaning. Put differently, “[p]ragmatics is the study of the relations between language and context that are basic to an account of language understanding” (Levinson 1983: 21). In pragmatics, transmitting meaning requires that those involved possess the following: structural and linguistic knowledge, such as grammar and lexicon; familiarity with the context of the utterance; pre-existing knowledge about each other; and awareness of the inferred intent of the speaker. Thus meaning relies on the manner, place, time and other factors of an utterance.

Pragmatic competence plays an important role in legal language, even within a single language and legal system. For example, lawyers operating in a narrow practice area may have difficulty in understanding a narrative about a different practice area, especially as regards procedural matters. To illustrate, a lawyer who deals solely or mainly with real estate might feel like a foreigner on hearing details from a colleague operating in the same language and legal system of a case involving arbitration or litigation in the field of shipping, and vice-versa.

It is thus not hard to see that such difficulties are compounded in an exchange between two law professionals from different legal systems, whether or not they share the same language. The same challenge is surely faced by translators and, by inference, as this paper initially seeks to show, teachers and learners of legal ESP (ELP) as well. As far as the latter group is concerned, the challenge would apply not only to English language in its 'home' common-law context but also, indeed especially, where English is the medium for expressing legal language from, or in, a non-common-law legal system associated with a language other than English.

In the following section, I will first identify what ELP teachers and learners need in order to acquire a degree of pragmatic competence in legal language. For the sake of brevity, I will, where appropriate, refer to all members of this diverse group as "ELP researchers".

I will then examine two knowledge areas with which ELP researchers need to be familiar in order to achieve pragmatic competence in legal language, i.e. knowledge relating to law and legal systems and knowledge relating to legal language.

The hypothesis is that different attitudes and perceptions towards law in different legal systems may be reflected in legal language, in particular in concepts and terminology.

The main innovation of this paper consists in bringing together strands from law, translation, linguistics and education, using a comparative law approach to mimic cross-cultural triangulation by providing a three-dimensional study of law, legal systems and legal language in an ELP context. The results may be of relevance in designing a course in the pragmatics of legal language for ELP researchers, either as a stand-alone course or as part of a wider programme such as legal drafting in English, legal translation, or law and language.

2. What pragmatic competence in legal language means for ELP researchers

As Boyne (2014: 133) notes, "[o]nly by shifting and sorting through the knowledge of how law operates on the ground level and building a thick description of practice can translators and researchers build the foundation for a real understanding of a foreign legal system". Additionally, any understanding of law necessarily involves an understanding of how law is expressed. This requires legal linguistic skills which, according to Galdia (2009: 84), include "legal logic, such as analysis of legal reasoning and argumentation, interpretation and justification".

According to Cao on modelling translation competence, pragmatic competence in legal language requires illocutionary competence and sociolinguistic competence in both source and target languages. For example, this would include an understanding of the importance of performative verbs, which may differ from one language to another (Cao 2007: 42-44). While Cao is writing in the field of legal translation, I would argue that the same would apply to the field of ELP. This is very much a linguist's approach and invites comparison with most of the authors cited in this chapter, who seem to adopt a more legal approach.

Perhaps more to the point and in line with the approach taken in this chapter is the view expressed by the Finnish comparatist and legal linguist Husa (2012: 166) according to which "reliable legal translation needs [...] an understanding of the deeper level of

legal language". In his work, Husa refers to "the legal-epistemic level of language" which "places concepts, doctrines and institutions in a legally conceivable order" (*ibid.*). He suggests examining "the hermeneutical significance of the *inner* world of law" (*ibid.* 177; emphasis original) and recommends "looking for explanations in trade methods, business practices" (*ibid.*: 222) as well as "history, economy, politics, culture, even geography" (*ibid.*: 224). Again, my contention is that the same principles would apply to teaching and learning ELP.

Also more on target with the aims of this paper is Boyne (2014: 124) for whom "[t]he translation of legal terminology [...] entails a transfer between two different legal systems, each with its own unique system of referencing". Words are "embedded in a particular structure of meaning" so that "the researcher cannot understand the meaning that particular key legal words carry without understanding the underlying normative assumptions of that legal structure" (*ibid.*: 126). And those normative assumptions "may be lost in translation" because they may be reflected in "ways of knowing and meaning" that are "[h]idden in the web of legal practice" (*ibid.*) so that "legal translation cannot be done in isolation, divorced from the practice of law" (*ibid.*). Again, I would argue that the same can be inferred as applying to teachers and learners of ELP.

Šarčević's profile of the legal translator begins by noting that, due to its interdisciplinary nature, legal translation requires practitioners to possess subject expertise as well as translation skills, while the need for legal-linguistic decisions requires those same practitioners to possess competence not only in translation but also in law (2000: 113). She adds that legal competence presumes "in-depth knowledge of legal terminology, and a thorough understanding of legal reasoning and the ability to solve legal problems, to analyze legal texts, and to foresee how the courts will interpret and apply a legal text" (*ibid.*) and that "[a]dditionally to these basic legal skills, translators need extensive knowledge of the target legal system and preferably the source legal system, along with drafting skills and a basic knowledge of comparative law and comparative methods" (*ibid.*: 114).

I would also assert that "extensive knowledge" of the legal systems concerned would include familiarity with how the relevant communities served by those legal systems see law in the sense of attitudes and approaches to law and its purpose within those communities, the values of those communities and the role and functions of law (and other mechanisms) within them, for example, in organizing the community, as described in more detail below. This assumes that legal systems differ: a different situation arises when all texts derive their meaning from the same legal system (Šarčević 2000: 68), as occurs, for example, when laws are translated in Switzerland, with three official languages, and Finland, with two.

Two implications appear clearly to follow from the above. Firstly, for ELP teachers and learners, no less than for lawyers and translators operating in two or more languages between two or more legal systems, "[l]earning about each other's legal mentalities [. . .] and ways of solving concrete legal problems, is [. . .] of crucial importance" (Van Gerven 2004: 123). Secondly, this process, if done also from a comparative legal linguistic standpoint, as illustrated in this chapter, might explain conceptual and terminological differences, with a view to reconciling them at least within the EU, where a shift in terminology (and therefore in conceptual approach?) is discernible, for example, from the common law 'tort' and the civil law 'delict', especially

in the field of public liability towards ‘non-contractual liability’ or, simply, ‘liability’ (Aalto 2010: note 46).

A good example of the necessity to learn about each other’s legal mentalities is the issue of attitudes to crime and punishment. The EU has emphasized the fight-against-crime approach in criminal justice policy whereas, for example, Finnish objectives are more nuanced and formulated as follows: (1) to regulate or minimize the sum total of the social cost (including human suffering) caused by crime and by society’s response to crime; and (2) to distribute these social costs fairly among the parties involved, i.e. offenders, crime victims and taxpayers (Törnudd 1996: 15).

The Finnish example seems to reflect a legal system geared towards social problem solving, more likely based on ideas of (re)conciliation and reward compared with a legal system geared towards social control, which would more likely be based on ideas of coercion and sanctions¹. These differences might well be “embedded in the language of the law” (Boyne 2014: 124).

From the viewpoint of ELP researchers, what is needed is deeper and broader comparative legal linguistic research that examines the aspects mentioned above in different communities, in order to give them the pragmatic competence they need. In short, this would involve studying how the characteristics, elements and functions of a legal system develop over time so as to influence development of associated legal language: put differently, why the legal system – and the legal language – of a community is as it is. Clearly, this kind of indirect familiarity with legal systems increases pragmatic competence among ELP researchers.

This paper aims to give examples of what this kind of research could mean in practice. It highlights factors that indirectly shape legal language, in particular the hidden influences that lie behind the concepts on which terminology is based. In this way it aims to prepare the ground for further comparative legal linguistic research into reasons for similarities and differences between legal systems and, especially, legal languages.

From the point of view of the pragmatic knowledge of ELP researchers, two knowledge wholes are of specific importance: on the one hand, knowledge relating to law and legal systems and, on the other, knowledge relating to legal language. The next part of this paper (Section 3) focuses on law and legal systems and the following part (Section 4) on legal language.

3. Knowledge relating to law and legal systems

This section begins by examining law as the body of rules forming a system with a purpose, a purpose that may differ from one community to another, each with its own attitude to law, an attitude that may be reflected in legal language that in turn develops over time along with development of the particular legal system, its characteristics and functions. In the second part, this section takes a look at developments in the classification of legal systems.

¹ See also section 3.1 below.

3.1. *Law and legal systems*

Law itself is a contested concept beyond the scope of discussion here. However, for the purposes of this study, we shall consider law as a rule or body of rules forming a system that governs or guides social and other aspects of life within a particular cohesive entity or grouping ('community'), and which members of that community are required to observe, on pain of sanction. This definition, which assumes some interpenetration between social and legal rules, also covers rules in other fields since while "[l]aw is certainly unusual in being system-bound [it] is not unique in this respect: religion and political science, which are historically related to law, are inseparable from the notion of systems" (Harvey 2002: 180). Again, this would suggest the rules of a particular community, as opposed to the rules of the exact sciences such as mathematics, physics and chemistry, with their universal concepts and terminology. It is clear, though, that law does not exist in a vacuum.

Digging deeper into what law is, the supposition arises that, assuming a body of rules governs or guides aspects of life within a particular community, these presumably serve some purpose. As Somek (2010: 712-713) puts it:

[l]egal science needs to [...] confront the question of what we actually mean by "law" [...]. Do we think that the law is a means of social control? If we do, we may have reason to distinguish law from other forms of control. Alternatively, the law might be conceived of as one method of social problem solving among others, which is continuous with other forms of human co-ordination.

Somek's analysis resonates with the observations above on criminal law in Finland and gives a further clue as to the existence of different attitudes or approaches to law, in the sense of what law is and what it is for. That in turn suggests that different attitudes and approaches to law and its functions may influence the language of law, for it is a reasonable supposition that language associated with the function of control might well differ from language associated with the function of problem solving. In other words, a legal system geared towards social control would likely be based on ideas of coercion and sanctions, whereas a legal system geared towards social problem solving would more likely be based on ideas of (re)conciliation and reward, each with its own language thesaurus in the shape of concepts and terminology. As Boyne (2014: 124) puts it, "[b]ecause a legal culture represents a distinct way of viewing the role that law plays in organizing society, these ways of understanding the law are embedded in the language of the law". The role of law is also reflected in other ways.

The case for law being essentially a cultural construct has been repeatedly made by a number of legal theorists. Well-known writers have been rehearsing this claim for decades and have also made this argument (e.g. Cotterrell 1992, 2006; Nelken 1997, 2002a, 2002b), along with legal academics (e.g. Kahn 1999; Chase 2005; Tamanaha 2008), not to mention a host of comparatists (e.g. Riles 2001; Legrand 2011; Ruskola 2009). My contribution to the discussion is to offer a specific focus on language by grounding this study in a specifically language perspective. In particular, the reader is taken through a series of practical, mainly language-focused examples, chosen to illustrate some of the main points discussed in this paper.

Laws, and systems of laws – or legal systems – do not exist in a vacuum: moreover, they are also not set in stone. The autonomy of law is relative and the legal system is in

constant interaction with the other normative, economic and political systems of a society. As a result, the picture of a legal system at any point in time is a snapshot of that system at a stage in a journey that started at some earlier point, a journey as yet unfinished and whose future course and destination remain unknown. It is a picture of a legal system at a given moment, the result of social, political, economic, and other factors. All or some of those factors, perhaps together with or substituted by others, can be expected to exercise a continuing influence on the development of that system and, presumably, on the language employed by that system.

Among the basic values that lie behind legislation are general principles of public policy, protection of morality, human dignity, and privacy concerns. Moreover, these may be closely tied to the communal cultural, moral and religious context. However, the extent to which these values are protected may vary between communities. To illustrate, freedom of speech and privacy may enjoy significantly different levels and degrees of protection from one community to another, while morality can be perceived behind tax judgments and attitudes to what amounts to tax optimization, tax planning, tax avoidance, tax evasion and tax fraud (Sage-Fuller and Lippe 2014: 173-207).

Thus one community would see a certain level and degree of regulation as an excessive restriction on freedom of communication, while another would see the same regulation as acceptable. Even a slight difference in approach may result in significant differences. For example, different communities might share agreement in principle on protecting consumers in dealing with businesses or children from pornography (see Kohl 2007: 262-265). However, differences might exist in areas of detail such as levels of protection or means of implementation. Moreover, unwillingness or inability to see a matter as a social issue requiring legal measures might be mutely manifest in an “inherent resistance to making an external legal commitment” and lie behind ultimate failure to achieve mutual accord (*ibid.*: 265).

Here we have, in somewhat over-simplified form, the basic context of differently functioning legal systems in which legal language operates. However, other factors are likely to affect the context in which rules are to be understood, even changing that context over time. According to Maduro and Azulai (2010: xiv-xv), “[a] rule only makes sense in its context, the context of the legal system to which it belongs but also [...] [t]he economic, social and political context are necessary to understand how the rule was adopted and compare its intended effects with the effects that its different possible interpretations may generate in the present context”. The words “the present context” suggest that the economic or social situation may have changed by the time a rule is interpreted, in which case “the rule should be set into the economic and social situation, the context, at the time of its interpretation, as opposed to the situation at the time of its adoption” (Kutscher 1976: I-1-I-50). To that extent economic, social and political (and other) factors could be said to be situational variables within the basic context, neutral until activated.

To add spice to the pot, in each community exists a host of social issues and values (and again presumably economic, political and other issues and values), with opinions about them differing, open to debate and changing with time (Galdia 2009: 57-58). These, too, are variables, though of a different kind in that they are independent, active variables. It is easy to imagine that active, independent variables could influence (activate) neutral, situational variables and, individually or in combination, the basic context, in this case the legal system of a given community, which thus becomes

dynamic. The same influences may, by extrapolation, be likely to influence the legal language of that community's legal system – and its development. Moreover, if law aims at organizing society in a specific way, then presumably adjudication also functions on the basis of a particular understanding of how that society should be organized. This understanding would consequently influence judges' reasoning (Van Hoecke 2002: 61, 126).

By now, not one but several pictures are emerging of how different legal systems and their associated languages may develop over time. To draw an analogy from the art world, the development of a single legal system can be compared with Paul Cézanne's many paintings of the Montagne Sainte-Victoire²: the same subject painted from different views at different seasons, times of day and weather conditions. In contrast, other legal systems would present different landscapes even if some of their features were similar. From this analogy, the challenges facing ELP researchers begin to show themselves, like clouds gathering on the horizon. Before going on to examine these linguistic aspects, to complete the picture of legal systems I will now look at them in more detail: their characteristics, elements, functions and classification.

Features of a legal system reflect how the law addresses social, political, economic, and other issues that arise within the system's frame of reference. In research into a specific legal system, this statement might be framed as a question: 'How does the law address social, political, economic, and other issues that arise within the frame of the legal system?' (Örücü 2004: 25). However, in comparative legal research between two or more legal systems, answers based on the same question tend to produce a flat, one-dimensional view, a review rather than an analysis. To obtain a truly comparative analysis, an in-depth multi-dimensional view, one would have to widen the focus of the question and change the angle of approach: 'How does this community (society or other grouping) use law or other means to address social, political, economic, and other institutions within its framework and social, political, economic, and other issues that arise within that community?'³ This approach goes beyond the merely legal, to include matters that might constitute a legal issue (and therefore an object of law) in one grouping but not in another. It is that kind of information that I suggest helps form the pragmatic awareness required by ELP researchers. The view thus obtained of a legal system would better be understood in proper perspective by comparative studies involving two or more legal systems and languages.

Characteristics of a legal system are a set of substantive and procedural rules with a frame of reference, or jurisdiction, operated by a community, typically represented as a society within the borders of a country or state. However, that need not be the case. For example, the frame of reference might equally be an interest group, such as traders (law "merchants"), professional athletes (International Olympic Committee; *Fédération Internationale de Football Association* – 'FIFA'), creators and innovators (World Intellectual Property Organization), Internet coordination (Internet Corporation for Assigned Names and Numbers – 'ICANN') or groups of states (the European Union, the

² Known throughout the art world as "Mont Sainte-Victoire".

³ According to Esin Örücü (2007: 51-52), an alternative to or variation of the 'functional-institutional' approach is the 'sociological' approach, which asks how a specific social or legal problem encountered in the societies concerned is resolved by their respective systems, legal or otherwise.

United Nations). These specific frames of reference are also relevant when it comes to classifying legal systems.

Elements of a complete legal system typically include a legislative or rule-making body, an executive, administrative and judicial bodies, such as tribunals, to oversee and ensure member compliance with rules or laws, and means of enforcement, not forgetting membership, whether states or other groupings, down to individuals. A brief look at how the legal systems of Finland, Bulgaria, France and England (Holdsworth 2006) present themselves at once reveals similarities and differences. For example, England has no formal written constitution, whereas the other three countries do; Finland has a constitution but no constitutional court, and so on.

These differences are largely, though not entirely, the result of social, political, economic, and other forces that lie behind the history of law, which in turn helps to explain why laws, and legal language, are as they are today. While this study does not suggest “the possibility of identifying a full correspondence between the languages of law and economics” (Legrand 2014: 212), this is not to say that economic (and other elements) are not reflected in the language of law.

As pointed out in the introduction, knowledge about these differences constitutes an important element in the totality of pragmatic competence. However, it must necessarily be completed with knowledge about the communicational vehicle of law, i.e. legal language.

Functions of a legal system (its aims) may have little to do with its functioning (how it operates) or its objectives. Typically, the functions of a legal system include resolving disputes (to maintain and restore social order); facilitating planning (to project consequences of actions); educating (to instil and reflect values of society); ‘legitimizing’ (to reflect lack of other social institutions). Objectives may include justice, speed, economy, flexibility, stability and predictability. However, if law fulfils certain functions, then presumably the way in which these functions are met not only develops over time but may also differ from one place to another. If this assumption is correct, then it would follow that law may only be one of two or more ways to achieve a specific societal goal or a desire of private actors, as implied by Somek’s comment cited above on distinguishing ‘law from other forms of social control’. Similarities and differences between the functions of different legal systems would again be of interest to ELP researchers.

3.2. Classification of legal systems

Conventionally, classification of legal systems involves arranging the legal systems of the countries of the globe into major legal families. This is mainly a matter of convenience for teaching purposes and as a quick reference for ELP researchers who need information on ‘comparative law’, itself a comparison between legal systems. The classic works on comparative law, originally written in German (Zweigert and Kötz 1998) and French (David and Brierley 1985), differ in some respects but both stress the dominance of two legal families: law based on the English tradition (‘common law’) and law based on the Roman tradition (‘civil law’ or ‘Continental law’ or ‘Romano-Germanic law’). History of law is an essential component of detailed comparative law studies, as it can explain the comparative development of legal systems over time.

The conventional classification of legal systems has been challenged on the basis that it overly stresses Western law or that other methods of classification are available (e.g.

Örücü 2008: 3; Mattei, Ruskola and Gidi 2009). At the same time, it is undeniable that over the last few centuries Western law has exercised an overwhelming influence on legal systems throughout the world, so that all modern legal orders are strongly based on it. As a result, the common law-civil law distinction remains valid, at least for the time being⁴.

However, as already noted, national legal systems are not the only legal systems. In particular, systems of law that are not tied to the nation state are gaining momentum, in the shape of EU law, international law and legal systems of other interest groups, as we have seen. Additionally, the rise of Asia, in particular China, may impact on classification of legal systems, or even on existing dominant legal systems. Moreover, as Teubner (1998: 16) puts it: "Globalising processes have created one world-wide network of legal communications which downgrades the laws of nation-states to mere regional parts of this network which are in close communication with each other".

In addition to the decline of State sovereignty and the emergence of new sites of authority and forms of law-making, existing divisions within legal systems are also evolving. For example, the division of public and private law⁵ can be seen as a remnant from establishment of the nation State as a modern reference point but now under challenge. This suggests a need to re-define ideas of community or communities through legal pluralist lenses (Cotterrell 1997: 12, 75). Other examples include the rise of new practice areas of law to respond to need, such as the concept of access to justice, as we shall see. Another example is environmental protection, which Paunio (2011: 104-105) explains as follows: "development of environmental protection in the EU serves as an interesting example because it highlights the existence of a connection between a system of beliefs and law." If all this amounts to legal hybridity, then perhaps the need arises to step outside the box linked to state-sovereignism and traditional distinctions and to reconceptualize, to resystematize approaches to law (Tuori 2012: 73). This process would be of interest to individuals operating between two or more legal systems and languages, as well as to LSP researchers. The background or contextual information thus obtained would be of use in understanding how law is expressed in language.

Differences occur between legal systems, for example the French, German and English, in the role of rights, strict liability and liability for lawful acts (in particular of public bodies) in civil liability claims. To illustrate, even despite direct effect of the European Convention on Human Rights, the English courts, unlike their French and German counterparts, remain reluctant to acknowledge rights. This may require some mental gymnastics, such as interpreting a right to privacy as the equitable wrong of 'breach of confidence', thus presenting the right to privacy as a duty for others (Van Dam 2013: 142-144; 2007: 57-80). Again, over the last century strict liability has developed in France and Germany more than in England (Van Dam 2013: 139-141).

The same applies with liability of public bodies (*ibid.*: 530-583; Aalto 2010). Whereas France operates the principle of '*égalité devant les charges publiques*' (Van Dam 2013: 537) ('equality before public burdens': the equality principle, or the obligation of the state to make amends for harm caused by its activity or that of its agents) and Germany the

⁴ It is important here to point out that several countries have a mixed system, i.e. common law + civil law + customary law + religious law.

⁵ For more on this see e.g. M. Horwitz 1982. The history of the public/private distinction. *University of Pennsylvania Law Review* vol. 130: 1423-1428.

‘*Sonderopfer*’ (‘special victim’) rule (*ibid.*: 540) (the obligation of the state to make amends for a special burden to which the claimant is subjected through a measure taken for the public good), England, with its insistence on duties rather than rights, in addition to its reluctance towards strict liability, operates a system of *ex gratia* payments through compensation schemes, implying a moral duty of the public body rather than a right of the suffering citizen (Fairgrieve 2003: 244-251). The explanation for the English attitude may perhaps be found in an aversion to general rules and principles and a strong preference for a pragmatic approach in the shape of case law and precedent (Van Dam 2006: 607). This could affect relevant concepts and terminology and thus be of interest to ELP researchers.

4. Knowledge relating to legal language

This section looks beyond law as language in the form of terminology and concepts to examine the influences that shape development of legal language in the communities and their respective legal systems in which legal language is used (4.1). It then (4.2) discusses specific examples of how different attitudes to law can affect legal language in different communities and continues with a brief study of judicial influences (4.3), in particular judicial treatment of social issues and values.

4.1. Overview

With some exceptions (Mattila 2013: 43), law is expressed through language: law is language. Others put it in much the same way: “[l]anguage is the medium through which law acts” (Bix 1993: 1); “[l]anguage is the form that law – one’s own as well as foreign – takes” (Husa 2011: 217). We might also say that legal language is the principal means of communication between interlocutors in legal contexts, where “[l]egal language means ‘legally relevant aspects of language use’” (Galdia 2009: 138).

Additionally, according to Galdia (*ibid.*: 52): “[l]aw is predominantly a linguistic phenomenon because it is created and applied in linguistic operations”. Boyne (2014: 124), for her part, observes that “[l]egal language conveys meaning beyond the words on a page. It is a highly structured system of language that reflects the legal culture in which it has been born”. According to Rubel and Rosman (2003: 1), “in its broadest sense, translation means cross-cultural understanding”. This makes sense and is coherent with the discussion above under the section on law and legal systems if we understand legal culture broadly as the way law is used within a community to reflect and support the values of that community in addressing social and other issues and the attitude and approach of that community towards law and its functions. This proviso is necessary bearing in mind problems with using the term ‘legal culture’ due to multiple definitions (Nelken 1997: 2; Goddard 2011: 124-127).

While noting that “[l]egal language is much more than terminology” (2009: 138), Galdia (*ibid.*: 329) observes that “linguistic operations in law developed around legal speech acts” form the focus of legal linguistic studies, qualifying legal speech acts as “qualitatively different in that they reach from simple utterances like a promise to complex argumentative and interpretive structures”, adding that “[l]egal terms that represent legal concepts function as focal points for these complex structures”. This paper underlines the need to look behind terminology and concepts for a more general

view of the development of legal systems and, consequently, for a better understanding of the language they employ and the contexts in which they do so. Such a study helps forge pragmatic competence in use of legal language.

4.2. *Illustrations concerning legal language*

Visitors to Germany may be surprised, impressed, amused or irritated if reproached by local inhabitants for minor administrative infractions⁶. The legendary respect for the law among Germans appears to have some basis in fact. According to Rueschemeyer (1973: 275), “[t]here is little question that the value placed on law-abiding behaviour in German normative culture is very high indeed”. One explanation for this is the intermediation between state, people of the church and civil organizations in “Germany, where a limited number of major federations and the churches with high memberships gather a large share of the population under their wings. Through their cooperation with the state in preparing and implementing legislation, they use their influence to bind the state to the interests of their members, and their members to the laws of the state. One outcome of this model is the proverbial law-abidingness of the Germans” (Münsch 1993: 517).

From the legal-theoretical aspect, this appears to correlate with H.L.A Hart’s (1994: 55-61) comment on individuals who accept and cooperate in maintaining legal rules (‘internalizing’) as opposed to those who do so for the sake of form but reject them (‘externalizing’).

Compare this with the strong Finnish tradition of legalism, a respect for proper legal forms characteristic both of the role of the authorities and of the behaviour of citizens. The attitude that the law binds the authorities as well as the people traces its roots to the ‘Russification’ period (1899-1905), when Finns used their own legal order to maintain their autonomous position (Nousiainen 2007). Thus the tempting conclusion – that respect for the law in one legal system has the same explanation in another – would be misleading.

At the same time, it seems plausible that different attitudes and approaches to law could be generated by the values of the community, that is, what the community shares in common that prompts them to unite in the first place and subsequently to remain united. In turn, community values could be linked to what the community sees as social (or other) issues to be addressed by law (or other means). Might these, too, play a role in influencing the language of law? According to Galdia (2009: 53, 239), “[l]egal language [...] is value-laden and transports convictions and views about the social practice [...] fundamental for the society in which it [is] emerged [...] values manifest themselves in legal language as an inherent part of it”.

In an article on differences in basic concepts and terminology between English and German, Sack (1987: 63) notes “It is ironic that English, the language of the common law, with its emphasis on judicial precedent, should have adopted the word ‘law’, in the sense of rule, to denote the entire field of law, whereas German, as one of the languages of codified civil law, uses the word ‘*Recht*’ in the sense of right, for the same purpose”. Interestingly, Cao (2007: 57) points to the different conceptual and semantic field covered by the French ‘*droit*’ and the English ‘law’. Legal history may play an important

⁶ German-speaking Switzerland is exactly the same.

contextual role here. As Teubner (1998: 20) notes: “it is inconceivable that British ‘good faith’ will be the same as *Treu und Glauben* German style which has developed in a rather special historical and cultural constellation”.

A contrast appears between German (and Germanic) key words in the legal sphere and the Latin-derived words that prevail in common law. This is especially so, again bearing in mind the historical context, which refers to Roman law being received in Germany (Sack 1987: 64). Could this imply a legal-linguistic gap of historical causes and effects in approaches to interrelationships between law, government and the state? As Sack (*ibid.*: 66; emphasis original) points out: “The ‘rule of law’ ideal, which fits the English language like a glove, goes against the grain of German. ‘Law’ in the sense of ‘right’ *cannot* rule; ‘*Recht*’ can never be a form of government; the holy trinity of the English legal system – ‘law’, ‘rule’ and ‘order’ – is linguistically unavailable in German”. The reader may be interested to see how the European Commission for Democracy Through Law (Venice Commission) dealt with the challenge of equivalence between ‘rule of law’, *État de droit* and *Rechtsstaat* (European Commission for Democracy Through Law (Venice Commission): 2011).

A picture seems to be emerging of the relevance of the social facts that lie behind the law (*Rechtstatsachenforschung*) or, broadly speaking, sociology of law (e.g. Ehrlich 1936; Lotmar 1941; Friedman 1975; Luhmann 1985; Cotterrell 1992, 2006; Coutu 2006: 173). Moreover, “the relation between society and law and the role of law in societies as an organised way to solve certain societal needs of human communities (e.g. administration, economy, inheritance)” falls within the remit of comparative law (Kahn-Freund 1965: 31; Bogdan 1994: 66-77). It seems reasonable to suppose, too, that community values would be reflected not only in legal language but in morality and other standards. These would likely feature among the hidden influences on law, and thence themselves on legal language as well.

The way that factors of this kind influence legal language can be illustrated by examples from various fields of law. One could mention, for example, legal treatment of gifts (Hyland 2009) and security rights in movable property (Juutilainen 2007). Another example is the field of patent law, where differences in attitude survive even in the EU, as we shall now see.

Despite the introduction of Art. 69 European Patent Convention (EPC) regulating the scope of patent protection in the EU context, differences persist between the German and UK patent systems due to historically different philosophical approaches to the role of patents. In Germany, patents are seen more as a tool to reward the patentee. On the other hand, in the UK a patent is seen as an exception to the general prohibition on monopoly. This results in a broader interpretation in Germany and a narrower interpretation in the UK.

This difference in philosophical approach has been reflected in other areas. For example, in Germany patent applications had to conform to specific language and form prescribed by the Patent Office. In contrast, the freer choice of language employed by UK patent claim drafters reflects their concern to prevent design around the invention and maximize the scope of protection by manipulating the intrinsic scope of the patent. However, the narrow requirements of the German Patent Office may be reflected in wider interpretation of claims by German courts, whereas the more relaxed requirements of the UK Patent Office as to the form of claims were curbed by courts’ narrower interpretations (Fisher 2007: 226).

Comparative legal linguistics asks the following question: to what extent are these differences reflected in legal language? The question is interesting both from the point of view of legislative language and from that of judicial language: unfortunately, space limits do not allow detailed text analysis in this study.

4.3. Illustrations concerning judicial language

As Boyne (2014: 125) points out: “[a]lthough we may think we know what a ‘judge’ is, our understanding of how a judge operates in another legal system is filtered through our knowledge of the role that judges play in our legal home”. Again, as Boyne (*ibid.*: 134-136) observes, the different approaches of adversarial and inquisitorial systems in establishing the truth in criminal cases affect the self-perception of those involved, such as prosecutors. While the former sees the process as essentially a contest, with lawyers as feudal-style champions, the latter sees the process as an objective investigation, with lawyers (at least, prosecutors) as objective investigators. This might explain the comment in *The Economist* on investigations into former German president Christian Wulff: “Overzealous prosecutors ready to do anything for victory are usually seen as an American phenomenon” (20 April 2013: 35).

Examples are legion of court decisions that, according to different viewpoints, reflect changing social and other values or stand as examples of judicial activism. In the EU context, the cases of *Van Gend en Loos* [1963] and *Costa v. ENEL* [1964] are early examples of landmark cases from the European Court of Justice (now the Court of Justice of the European Union). In the latter case, for ELP researchers a point of interest would be to know who was responsible for the contested rendering of the French *primauté* into English as ‘supremacy’ (Avbelj 2011: 744-763).

Indeed, the Court has played a prominent role in developing (some might prefer ‘clarifying’) certain areas of EU law, not least the concept of European citizenship, converting it from mere words into a set of rights, covering such areas as free movement and equal treatment, in numerous cases (e.g. *Martínez Sala* [1998], *Baumbast* [2003], *Bidar* [2005], *Grzelczyk* [2001], *Rottmann* [2010], *Boukhalfa* [1996], *Zhu & Chen* [2004], *Garcia Avello* [2003]). Another instance of contested translation could be in the rendering of ‘*a vocation à être*’ as applied to EU citizenship as ‘destined to be’ in some cases and in others as ‘intended to be’ as study of the cases shows e.g. *Grzelczyk* (para. 31), *Baumbast* (para. 82) and *Rottmann* (para. 43). The French original has remained unchanged, which suggests the difficulty lies with the court’s translation services. These cases illustrate the role that the Court has played in treatment of social issues and values.

In a narrower national context, though with strong international implications, the landmark English case of *Lubbe v. Cape* (2000)⁷ was a fierce battle in which the House of Lords (now the Supreme Court of the United Kingdom) employed the relatively new concepts of ‘access to justice’ and ‘piercing the corporate veil’ to oust the long established principle of *forum non conveniens*, enabling claimants in South Africa to proceed in

⁷ *Lubbe v. Cape PLC* involved claims by multiple claimants (all but one citizens and residents of South Africa and almost all of modest means) for personal injuries or death caused by exposure to asbestos while working in South Africa for the South African subsidiaries of Cape PLC, a UK-registered company. At first instance, the judge concluded that South Africa was clearly and distinctly the more appropriate forum for trial of the group action. The Court of Appeal agreed, as indeed did the House of Lords which, however, allowed the claimants to proceed in England, on the basis that justice would not be done in South Africa due to the claimants’ lack of means.

England against the mother company of a South African subsidiary which the claimants alleged had caused injury or death. The case illustrates a growing awareness of human rights considerations and a developing culture of human rights law enforcement which seeks to hold multinationals legally accountable for the health and safety of their foreign employees and their environment. Although the English court declared that public interest and public policy concerns were not taken into account, none the less human rights considerations, access to justice and piercing the corporate veil are arguably matters of public interest as well as factors that contribute to the making of public policy. In any event, this case reflects a change in public attitudes, as illustrated by the concepts of access to justice and denial of justice, so that the decision is at least coherent with current principles and policies.

Conclusion

The aim of this chapter was to discuss factors that mould legal language, especially influences that lie unseen behind legal concepts and their face in the shape of legal terminology. The goal was to determine whether familiarity with these factors might enhance the legal linguistic awareness and thus the pragmatic competence of individuals such as ELP researchers. The specific undertaking was to evaluate whether these factors could help pave the way for further comparative legal linguistic research into reasons for similarities and differences between legal systems and legal languages, the hypothesis being that different attitudes and perceptions towards law in different legal systems may be reflected in legal language, in particular in concepts and terminology.

At this stage, the author can claim no more than that, from the viewpoint of ELP researchers, what is needed is deeper and broader comparative legal linguistic research which examines the aspects mentioned above in different communities. To summarize, these are:

- approaches and attitudes to law (e.g. law as social control);
- the functions of law in the community (e.g. to solve problems);
- situational/contextual factors (e.g. economic, social, political (dependent variables));
- community values (e.g. morality, privacy);
- social or other issues (active, independent variables);
- how the community deals with social or other issues by law or other means along with their influence both on each other and on the language of law.

This would involve more detailed studies on how the features, characteristics, elements and functions of a legal system develop over time so as to influence development of associated legal language: put differently, why the legal system – and the legal language – of a community is as it is.

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LEGAL TERMINOLOGY IN ENGLISH: THE CHALLENGES OF INTERNATIONAL CONTEXTS

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Abstract

With English dominant in global trade, individuals communicating in legal English as a genre of ESP in cross-border settings require an assortment of skills and competences to ensure they are equipped to meet professional standards. Being equipped requires awareness of legal-linguistic, cross-cultural and comparative legal factors involved in using legal English terminology and underlying concepts in cross-border contexts. It also requires an ability to ensure that meaning and legal effect are mutually comprehensible between the parties and in line with the governing law. For ESP professionals operating cross-border between two or more legal languages or systems, research in this field is a task of the discipline of legal linguistics. Law and legal systems, along with their related concepts framed in legal language, do not exist in a vacuum, nor does legal language itself: all are shaped by surrounding events and ideas so that each legal system is specific to its own jurisdiction. These factors are reflected in laws and legal instruments, and their expression in legal language. This chapter explores a selection of specialist literature in a field where English dominates, by reviewing and analysing five academic texts, synthesizing them by identifying overlapping common themes, potential pitfalls, and solutions for practitioners. The overall aim is to uncover skills needed by lawyers, to open avenues that may lead towards approaches to teaching, learning, and using legal terminology and drafting legal texts in 'cross-system' contexts and further comparative legal linguistic research in the field of legal ESP.

1. Introduction

This chapter continues an investigation into the author's hypothesis in the context of doctoral research¹, namely that (comparative) legal linguistics should form an integral part of modern legal education and training (see, e.g., Goddard 2009, 2010, 2013, 2016, 2018). What is unclear is the nature of legal and linguistic skills that tomorrow's

* The author appreciates input from the two anonymous peer reviewers and the series editors, which has greatly improved the quality of this chapter.

¹ This paper forms part of the author's ongoing PhD research in legal linguistics at the University of Lapland.

lawyers need to learn and how best to ensure it. This, in turn, would involve establishing key (i.e. central ‘must-do’) teaching components, what methods to apply, and what teachers need to know in order to promote learning.

This interdisciplinary research in a fledgling field takes place at the interface between law, language, education, and training. With that in mind, the research question in this chapter is narrow: can we use the results of several distinct but overlapping studies about legal terminology to develop something resembling a general approach to teaching and learning such terminology and drafting legal documents in cross-system contexts? Further questions that track the content of this chapter are: (1) Can qualitative research such as the kind here reviewed help to develop approaches to teaching, learning, and using legal terminology and drafting legal texts in ‘cross-system’ contexts? (2) Does the research reviewed in this chapter point the way toward developing such approaches for legal terminology and legal texts in ‘cross-system’ contexts?

Section 2 begins by illustrating the challenges and complexities of achieving agreement on the content of legal terminology of international significance.

Section 3 briefly reviews and analyses five high-scoring master’s theses defended under the legal linguistics master’s programme at the Riga Graduate School of Law (RGSL), each focusing on English in international legal contexts and chosen for their overlapping legal and linguistic themes and their novel subject-matter to form a corpus in its own right from a specialist programme². Only two other theses might have met these criteria³ but they were reluctantly discarded due to length limitations in this article. This section first considers two theses on maritime legal English, their novel subject-matter not found in any publication to the best of my knowledge, then two on contracts in international contexts, and finally one on share and asset purchase agreements, again with novel subject-matter not found elsewhere. Following a concise review summary of each of the five texts, the analysis consists in comparing their salient points with a view to identifying common themes as a basis for discussion.

The notion of ‘plain English’, especially in legal contexts, has been extensively discussed in the literature. For those unfamiliar with this notion, a wide bibliography is available (e.g. Mellinkoff 1963, 1982; Kimble 1992; Garner 2009, 2013; Adams and Scherr 2015; Bain Butler 2013; Johnson 2015; Plain Language Association International n.d.; Williams 2004, 2011, 2015; Riera 2015; US Government n.d.; Loranger 2017; Schriver 2017; Burton 2018; Zödi 2019; Cutts 2020; Torrez 2020; Azuelos-Atias and Plato-Shinar 2021; Singh 2022). In addition, Ingersone (2014: 5-9) in this chapter defines plain legal English. Section 4 discusses the results from Section 3 in greater detail. Section 5 concludes by answering the research questions.

² All RGSL programmes are interdisciplinary, with all instruction in English and students drawn from Latvia and abroad. Many former students operate in English in international, cross-jurisdictional contexts. The master’s degree in legal linguistics, launched in the academic year 2007-2008, continued until the end of the academic year 2015-2016. So far as is known, RGSL is the only institution to have run such a programme (see also Goddard 2018: 39-42).

³ *Is there a case for the abolition of ‘shall’ from EU legislation?* (Paul Cooper) and *Arbitrability: problem issues of the legal term* (Natalja Freimane).

2. Defining a common meaning in legal terminology: ‘rule of law’

An important first step is to see how the meaning of seemingly incompatible, mutually irreconcilable terms – a recurring theme in the theses under review and analysis – is negotiable due to the importance of finding a common understanding. This would especially apply to key terms used internationally.

Establishing meaning of legal terms in English that is acceptable in multiple legal systems requires discussion and negotiation. A practical example is the Venice Commission Rule of Law Checklist on establishing a common understanding of the concept of ‘rule of law’. This needed very considerable discussion and was tentatively drafted twice, in 2011 (‘VC Report 1’ in European Commission for Democracy through Law (Venice Commission) 2011) and 2016 (‘VC Report 2’ in European Commission for Democracy through Law (Venice Commission) 2016).

VC Report 1 highlights (European Commission for Democracy through Law (Venice Commission) 2011: 3 (Introduction, para. 4) [footnote omitted]) that:

[a]lthough the terminology is similar, it is important to note [...] that the notion of ‘Rule of law’ is not always synonymous with that of ‘Rechtsstaat’, ‘Estado de Direito’ or ‘Etat de droit’ (or the term employed by the Council of Europe: ‘prééminence du droit’). Nor is it synonymous with the Russian notion of ‘Rule of the laws/of the statutes’, (*verkhovenstvo zakona*), nor with the term ‘pravovoe gosudarstvo’ (‘law governed state’).

VC Report 1 (European Commission for Democracy through Law (Venice Commission) 2011: 9 (In Search of a definition, para. 34) justifies and explains the need to define a common meaning of the concept of ‘rule of law’: “it needs to be understood and therefore be defined, both because it appears in many legal texts, and because the rule of law is accepted as a fundamental ingredient of any democratic society.”

VC Report 1 (European Commission for Democracy through Law (Venice Commission) 2011: 10 (In Search of a definition, para. 41)) presents six elements that comprise the essential components of the rule of law. Additionally, its annex presents a checklist to establish whether a state complies with those components ((European Commission for Democracy through Law (Venice Commission) 2011: 15-16. Annex: Checklist for evaluating the state of the rule of law in single states).

VC Report 2 builds on the results of VC Report 1 to develop benchmarks (European Commission for Democracy through Law (Venice Commission) 2016: 11-33) to test whether the criteria for essential components are met. A second step to the test sets certain defined standards (European Commission for Democracy through Law (Venice Commission) 2016: 34-46).

Given the time and expense involved, could this rule-of-law model be applied to other legal terms? This is a question to bear in mind concerning the five texts examined in this chapter. However, the significant input into negotiating the meaning of ‘rule of law’ suggests that a terminological item of international importance requires more than a mere brief dictionary definition. This factor, too, should be kept in mind in analysing the texts in Section 3, which begins with highlights of the main themes followed by a concise review summary of the focus, analysis, and recommendations of each thesis, explored further in the discussion in Section 4, with further details of certain terminological items in the Appendix.

3. The five theses considered

Three key themes of these theses are (1) maritime legal English, with one thesis on legal English as used in contracts of carriage of goods by sea and another on the terms *seafarer* and *shipowner*; (2) commercial contracts, covering two theses, on (a) civil-law and common-law approaches and on (b) legal English in international commercial contracts; and (3) plain English, covering not only a thesis on plain English in Latvian asset purchase agreements but also the plain English concerns raised in some of the other theses. These themes are developed further in Sections 3 and 4, with further detail in the Appendix on ‘problem terminology’ between the civil-law and common-law legal systems.

3.1. *Legal and linguistic characteristics of maritime legal English*

Prikule’s (2014) study devoted to maritime English (ME) as an international language used at sea and to one of its subsystems – maritime legal English (MLE) – undertook a legal-linguistic analysis of MLE in a contract of carriage of goods by sea: a time charter party⁴, in the light of plain English principles. After explaining why and how English became the international language used at sea and its relation to MLE, an example of English for Specific Purposes (ESP), Prikule examines the origin, usage and reflection of ME standards in legal instruments issued by the International Maritime Organization. Against that contextual background, she analyses the notion of MLE as a subsystem of ME, examines contracts of carriage of goods by sea, narrows the view to time charter parties, and discusses MLE terms encountered in a time charter⁵. These include *ship*, *delivery*, *hire*, *seaworthiness*, and *suitable port* (*ibid.*: 29-38), though none of these are suggested as impeding comprehension of a time charter party and thus do not fall within the focus of this chapter. However, Prikule’s detailed legal and linguistic analysis of time charter ExxonMobil Time 2005 (‘Charter’) identifies the following lexical and syntactic characteristics of MLE that influence – i.e. are factors likely to impede – comprehension of a time charter party by a non-lawyer:

(a) Use of archaisms (e.g. *hereinafter*, *thereof*, *whereof*, *said* and *aforesaid*). As we shall see, this factor arises again in the thesis by Jakubane.

(b) Compound constructions > Plain English equivalent, e.g.:

for a period of	for
have the option of	may
in the event that	if
prior to	before
in order to	to
in connection with/in relation to	about, concerning
in accordance with	by, under

⁴ A time charter party is a contract whereby the lessor places a fully equipped and crewed ship at the disposal of the lessee for a period for a consideration called hire. The lessor may be the shipowner and the time charterer will be the lessee.

⁵ Briefly put, a time charter involves leasing a vessel for a fixed period, on a per-day rate, where the charterer is free to use the vessel. The owner only looks after maintenance-related cost. Clauses are inserted to protect the charterer from having to pay for hours that were spent due to events that could not have been foreseen.

(c) Passive structures

Giving many examples, Prikule observes that “use of passive voice [...] reflects the drafter’s awareness of the ambiguity the passive voice can create. Therefore [...] the doers of the actions are mentioned. However, if the doers are known, then the active voice should be used so that sentences have the usual order of words”⁶ (*ibid.*: 49).

(d) Synonyms (doublets): e.g. *over and above*, *null and void*, *full and complete*.

(e) The deontic modal *shall* as used in its multiple meanings leads to confusion. Citing well-known authorities (e.g. Wydick 1998; Tiersma 1999), Prikule (2014) proposes avoiding *shall* as unsuitable to make legal language more precise and avoid ambiguity, and advises using other modal verbs (e.g. *must*, *may*, *will*), giving many examples of how this can be achieved.

Among many examples of ‘before and after’ the following will suffice (*ibid.*: 54):

Before	After
Charterer shall be entitled to deduct from hire payments [...].	Charterer is entitled to/may deduct from hire payments [...]

Prikule’s analysis shows that proper understanding of a charter party requires knowledge of the basic concepts of shipping law, a factor that would apply to the MLE terms examined, though it should not apply to items other than MLE terms. On that basis, Prikule suggests that, since non-lawyers might also need to read the Charter, the text should be redrafted according to the principles of plain English but retaining its legal and linguistic meaning.

3.2. *Concepts of seafarer and shipowner*

Lielbarde’s (2014) study examines the link between a legal concept and its eponymous legal term, in this case *seafarer* and *shipowner* – both key concepts in international maritime labour regulation codified by the Maritime Labour Convention 2006 (MLC), in force since 2013 and seen as an important international regulation in terms of securing seafarers’ rights. The MLC significantly affects a shipowner’s responsibility in respect of seafarers’ employment on board ship, in that it determines the scope of its own application. However, Lielbarde stresses that the meaning of both concepts is controversial and was intensely discussed during development of the draft MLC text, as well as after adoption and entry into force of the MLC. A clear and uniform understanding of these key concepts is essential for effective implementation and application of the MLC.

Lielbarde defines the goals of the research as follows: to address problems associated with a seafarer’s employment agreement in shipping practice; to perform a conceptual and linguistic comparative analysis of the concepts of *seafarer* and *shipowner* in international maritime labour regulation; to analyse the implementation of both concepts in

⁶ While the recommendation that the passive be avoided in cases where the doers are known is a standard one in discussions of plain English, it flies in the face of research into the pragmatic factors favouring use of the active or passive (e.g. Ward *et al.* 2002: 1443–1447) on which length limitations rule out discussion here.

national law; and, finally, to address the effect of the new MLC-guided concepts *seafarer* and *shipowner* on enforcing ship arrests for seafarers' claims.

These terms are the technical designation of concepts belonging to the conceptual system of a language for special purposes: maritime (legal) English, which we have already encountered in the thesis by Prikule. Lielbarde examines dictionary and other definitions of *seafarer*, in particular several International Labour Organisation (ILO) and other conventions, citing a summary of multiple *seafarer* legal definitions in existing maritime conventions.

A similar examination of the term *shipowner* reveals that the term can even apply to persons or organizations that are not actually shipowners and that some ILO conventions simply do not define the term at all (*ibid.*: 14).

The wording of the definition *seafarer*, while clear, is also very wide, covering not only categories of persons traditionally associated with the seafarer's profession such as master, engineer, first mate, officer, bosun, but also other categories which may be involved in work on board ship, such as cruise ship personnel (e.g. cleaners, entertainers, casino personnel, kitchen staff, fitness instructors), cadets, harbour pilots and port workers, ship inspectors, superintendents, repair technicians, and on-board armed security personnel (*ibid.*: 15).

An MLC resolution (*ibid.*: 35) provides member states – whose final decision it is – with guidelines to take into account in deciding whether to grant seafarer status to a specific occupational group. Factors to consider include:

- (i) duration of stay on board;
- (ii) frequency of working periods spent on board;
- (iii) location of the person's principal place of work;
- (iv) the purpose of the person's work on board;
- (v) protection normally available as to labour and social conditions to ensure comparability to the Convention (*ibid.*: 18).

Lielbarde (*ibid.*) concludes that there was a clear legislative intention to apply MLC standards to those working on board passenger ships in a capacity other than related to operating the ship to cover "persons employed in the cruise and passenger ship industry who are working on board for a considerable period of time but do not perform tasks that are normally regarded as maritime".

As with *rule of law*, achieving these definitions, according to Lielbarde, required a series of tripartite meetings involving the ILO and representatives of shipowners and seafarers, as well as governments. These meetings also defined the term *shipowner* to address current shipping practice involving diverse contractual arrangements and organizations involved in operating a ship. However, from a seafarer's perspective, Lielbarde finds that a direct answer is still lacking as to how to establish which of these can be considered a shipowner – the one with final responsibility.

Lielbarde notes that the shipping term *shipowner* and the general labour law term *employer* cannot be considered fully equivalent: the two can only be considered fully equivalent when they are one and the same. Importantly, only the shipowner has the asset – the ship – which can be arrested for enforcement of seafarers' maritime claims.

3.3. *Legal drafting of contracts in a comparative perspective. Civil law and common law approaches*

The aim of Jarkina's (2014) comparative analysis of different doctrinal approaches to contract law in civil-law and common-law legal systems is to explore the possibility of attaining equivalence in legal drafting between the terms of these two legal systems and to develop guidelines for legal contract drafting acceptable to both systems.

Jarkina observes that both systems retain significant differences stemming from fundamental legal concepts influencing legal terminology in contract drafting. These differences hinder attaining equivalence in legal contract drafting and legal thinking between the civil-law and common-law legal systems.

She adds that learning contract drafting technique requires at least a basic knowledge of the legal system from which that technique derives. From this she infers that, to achieve improved contract drafting, lawyers should be acquainted with general differences between civil-law and common-law legal systems as well as different approaches to some practical legal aspects (Jarkina 2014: 38).

Jarkina asserts that one of the clearest distinctions between civil-law and common-law systems is the existence of a codified law system in civil law, whereas common law is not created by means of legislation but remains based largely on case law⁷.

Jarkina goes on to summarize in great detail the problematic concepts and terms between the civil-law and common-law systems, with particular focus on common-law concepts and terms in light of the predominance of English in international contracts (see also Adams and Scherr 2015; Cilotta 2015; Boyd 2021). Many of these overlap with the concerns of Jakubane (see Section 3.4) and – because full focus on them here would interfere with the flow of the main text in this chapter – are referred to in Sections 3 and 4 with more detail in the Appendix.

Jarkina's (*ibid.*: 39-40) recommended practice for better contract drafting and choosing drafting technique would be that contracts should be originally drafted in the chosen language even if this is not the native language of the drafter(s). She notes that non-compliance with this rule may lead to a vague and poorly drafted contract and adds that this mostly relates to a contract where contracting parties are from different legal systems having different legal approaches and absence of some mutual legal concepts.

Jarkina suggests that general recommendations for civil-law and common-law drafting techniques could be a useful tool for minimizing the gap between drafters from different legal systems. For example, contracts should be drafted in plain language, in the chosen original drafting language, and in the style appropriate to the legal family to which that language belongs. While claiming that attaining equivalence in legal drafting between common-law and civil-law legal systems is impossible, Jarkina nevertheless suggests that further research and studies are needed on possibly harmonizing different legal approaches within common-law and civil-law systems in order to create a unified coherent contract drafting technique.

⁷ The view of the common law as based largely on case law has long been seen as an overstatement – in other words, nowadays the common-law world “largely operates through statutes enacted by a country’s democratic legislature” (Bennion 2001: 1; for similar views, see also e.g. Scalia 1997: 13).

3.4. *Use of legal English in international commercial contracts*

Jakubane (2011) analyses the use of legal English in international commercial contracts drafted by parties from different countries and often different legal systems: contracts governed either by common or civil law. Contracts written in common-law style where at least one party represents a civil law-system country require coordination between different legal traditions in order to interpret the contract. This implies the ability – vital in international practice – to communicate concepts across the legal-cultural divide (*ibid.*: 7).

Jakubane's goal is to identify the main legal English words, terms and phrases causing difficulties in contracts between non-native English contracting parties drawn by non-native English speakers. In addition to legal literature, research is based on eleven sample international commercial contracts chosen to illustrate mistakes due to English language use or misinterpretation of contractual terms. Underlining the requirement of a meeting of the minds⁸ between the parties, she stresses the need, so as to avoid unnecessary misunderstandings, to distinguish between routinely used specific common-law words, terms and phrases without meaning – or with a different meaning – in a civil-law system, and vice versa. The thesis examines specific common-law terms without meaning in the civil-law system such as *consideration*, *equity/equitable*, *estoppel*, *representations and warranties*, and *remedies*, potentially problematic interpretation clauses⁹ of agreements, and – like Prikule – legal archaisms, which are often suggested as best avoided even within domestic agreements drafted by native English speakers under the common-law system. Jakubane offers possible solutions to avoid problems arising due to use of legal English in international commercial contracts, as well as other recommendations.

Jakubane's concerns overlap with those of Prikule (archaisms), Jarkina (incompatibility of common-law terms in civil-law legal systems), and Ingersone (problems in drafting in legal English in civil-law jurisdictions and the advantages of using plain English in preference to 'legalese'¹⁰), and are referred to in Sections 3 and 4 with more detail in the Appendix.

Jakubane offers the following suggestions for legal practitioners:

- (a) Drafting international commercial contracts is a functional and purposeful art, not a systematic and dogmatic one.
- (b) Contract drafters should assess their choice of governing law and language clauses, which are of prime importance in international commercial contracts.
- (c) Standard interpretation clauses deserve more attention. Civil-law lawyers should be cautious when encountering them in draft agreements and discuss their application with their contracting partner before signing the document.
- (d) Avoid obsolete words, i.e. archaisms. Clearer language better reveals the parties' intention.

⁸ A common understanding or *consensus ad idem* (in common modern parlance 'reading from the same page') in the formation of the contract.

⁹ An interpretation clause is used to express the rules which the parties wish to apply to interpretation of their agreement.

¹⁰ Technical legal jargon and complex sentence forms beyond the comprehension of non-lawyers.

(e) Definitions may protect against misinterpretation; so include them when encountering an unfamiliar English legal term.

(f) Lawyers and legal linguists should collaborate in drafting important international commercial contracts. Misinterpreted terms may result in litigation possibly taking place outside the defendant's domicile.

(g) Invite common-law practitioners to lecture on application of specific common-law terms in contracts and to hold workshops for domestic lawyers involved in drafting international commercial contracts.

(h) Use of legal English in international commercial contracts requires further legal-linguistic analysis (research projects) to benefit practising contract lawyers.

3.5. *Plain English in Latvian contract drafting practice*

Ingersone (2015) explores the concept of plain legal English from theoretical and practical aspects, starting by defining the term, followed by its key principles illustrated by an overview to reflect the key elements of the concept, in terms of structure, choice of words, and so on. Noting inherent problems about drafting legal texts in English throughout civil-law jurisdictions relating to the entirely different legal system that English legal terms stem from, Ingersone analyses the benefits of legal drafting in plain English: efficiency, precision, impact on litigation, access to ordinary readers and drafting quality. This is supported by detailed rules and principles of plain-English contract drafting: no redundant wording, base verbs instead of nominalizations, verbs in the active voice rather than the passive, short sentences, clear layout, concrete and familiar words, careful punctuation, and finally uniformity of chosen terms throughout an entire document to avoid discrepancies and disputes.

Ingersone presents a long and detailed 'before/after' chart of recommended revisions with a view to discovering what impact applying the key principles of plain legal English would have on contract drafting practice. She avers that the original examples revised in the chart are taken from real-life drafting experience: contract clauses from share and asset purchase agreements. The revision applied all the principles illustrated in the theoretical part to practical examples, e.g.:

Before	After
The Parties are obliged to	The Parties must
The Purchaser will be bound by such obligations...	The Purchaser must fulfil such obligations...
The Parties have freely and expressly agreed...	The Parties agree...

These examples from the section 'General part' must suffice, due to space limitations. However, the chart also includes entries on 'Purchase price', 'Representations and warranties', 'Conditions precedent to closing/Due diligence', 'Closing procedure / Payment procedure', 'Confidentiality', and 'Termination'.

Ingersone asserts that use of plain English, as opposed to legalese, likely makes legal language legally more precise and certain, leading to less litigation. Her analysis shows that contract language can significantly benefit from applying the principles of plain legal English. The revised clauses, while retaining at least the same level of legal precision, become significantly shorter, clearer and easier to comprehend compared to the original. She maintains that an elaborate guideline for an audience of legal drafting practitioners would be of great benefit.

In conclusion, Ingersone suggests further research, in particular on linguistic inconsistency and inherent problems about legal drafting in English throughout civil-law legal systems as a major issue in legal drafting.

4. Discussion: overlap among the five theses and identifiable key areas

An analysis of the five theses suggests three broad areas of interest.

4.1. *The relationship between legal concepts and related terms*

This area is especially important for Prikule (2014) and Lielbarde (2014). Some of the concepts that these authors cover include those related to shipping such as *seafarer* and *shipowner*. Lielbarde (*ibid.*: 41) points to the difficulty in pinning down an internationally acceptable meaning of terms.

4.2. *Conceptual and terminological incongruity between common-law and civil-law legal systems*

Ingersone (2015) characterizes inter-systemic incongruity in terms of inherent problems about drafting legal texts in English throughout civil-law jurisdictions relating to the entirely different legal system that English legal terms stem from. This is covered in some of the other theses discussed, in particular Jarkina (2014) and Jakubane (2011). Jakubane mentions common-law terms without meaning in civil-law systems (echoed in Jarkina) and problems of drafting in legal English in civil-law jurisdictions.

In brief, these works discuss (1) the fact that common-law and civil-law terms often reflect either concepts that do not exist in the other system or have similar but not truly equivalent meanings in the other system (Jarkina 2014; Jakubane 2011; Ingersone 2015), e.g. *stare decisis*, *consideration*, *estoppel*, *equity*, *non-waiver*, *representations and warranties*, *remedies* (common law), *pacta sunt servanda*, *force majeure*, *good faith* (civil law) (for more detail, see Appendix); and (2) a consequent need to reconcile those differences for drafting contracts in 'cross-system' contexts, including through further research into harmonizing different approaches and creating a unified contract drafting technique for use in such contexts, e.g. the need to coordinate meaning between similar but not equivalent terms in different legal systems, e.g. *force majeure*, *frustration / impossibility of performance* (Jarkina 2014; Jakubane 2011). In this context, the assertion by Jarkina (2014: 45) – that attaining complete equivalence of legal meanings and terminology in contract drafting within civil- and common-law legal systems is impossible – sits ill in light of the clear legal-linguistic inferences to be drawn from the Venice Commission reports, namely that internationally important terminological items (a) may require extensive discussion between stakeholders leading to coordination of terms stemming from different legal systems, and (b) need more than a brief dictionary definition. This is partly supported by the process involved in defining *seafarer* and *shipowner* as described in Lielbarde (2014), though discussion here was as much between stakeholders as representatives of different legal systems.

4.3. *Poorly written legal English and the need for plain legal English*

This area covers, in particular, the use of archaisms and legalese, compound constructions, doublets, passive verbs and, finally, *shall* (Prikule 2014; Jakubane 2011).

This aspect is reflected by emphasis in three of the five theses on the need to avoid unnecessarily complex language to promote use of plain English in legal texts. Here, one suggestion was to redraft important texts, e.g. Exxon Mobil Time 2005 (Prikule 2014: 57), in line with plain English principles, but retaining the legal-linguistic meaning. According to one thesis, the use of plain legal language (cf. legalese) would likely be legally more efficient, precise and accessible to ordinary readers, thus leading to less litigation (Ingersone 2015: 22).

4.4. Some other needs raised in the five theses

This subsection covers further items to add to the 'basket' of skills and awarenesses that law students need as 'takeaways' for their future legal practice. These are:

- (a) Define key terms in specific fields of law (Lielbarde, Jakubane).
- (b) Drafters need to understand the basic concepts of (shipping) law in order to understand a charter party (Prikule).
- (c) The need for uniformity of terminology throughout a contract (Ingersone).
- (d) Develop guidelines for contract drafting acceptable to both systems (Ingersone).
- (e) Lawyers need to know the general differences between civil-law and common-law legal systems (Jarkina).
- (f) Lawyers/legal linguists need to collaborate on drafting important international commercial contracts (Jakubane).
- (g) Common-law practitioners need to lecture on use of common-law terms in contracts and hold workshops for lawyers involved in drafting international commercial contracts (Jakubane).

4.5. Implications for legal linguistics in modern legal education

The analysis above can itself be broken down between (a) the key components of legal and linguistic skills that tomorrow's lawyers need to learn or at least be aware of, and (b) other areas of concern that fall outside the scope of this chapter.

As to establishing key components that future lawyers need to acquire during education and training (i.e. the basics of (comparative) legal linguistics), two areas stand out as being realistically achievable.

Promote awareness of the general differences between the civil-law and common-law legal systems, in particular conceptual and terminological aspects.

This would include, for example:

- (a) the problematic use of common-law terms in civil-law contracts and vice-versa (Jarkina; Jakubane).
- (b) non-equivalence between terms in common law/civil law (Jarkina; Jakubane).
- (c) the relationship between concepts and eponymous legal terms both general and specific to a given field of law (Prikule; Lielbarde).
- (d) the need to understand the basic concepts of different fields of law in order to understand relevant legal texts (Prikule).

Promote use of plain (legal) English

This would involve introducing student/trainee lawyers first to legal language in general. Elements might include its purpose, functions, features and varieties, influ-

ences on development, the challenges of writing in international legal contexts, law in cross-cultural contexts, legal culture(s). This could be followed up by focusing on legal English within the frame of English as a global language, guidelines for better legal English, and finally a focus on good legal writing, with emphasis on plain language.

Other areas of legal-linguistic concern

These could provide a useful focus for research/projects/thesis writing, e.g.

(a) Defining key terms of international importance in specific fields of law. Certain terms need to be understood and therefore be defined, both because they appear in many legal texts, and because legal certainty is accepted as a fundamental ingredient of any democratic society. Meetings among stakeholders may be needed to achieve universal definitions of important terms and set interpretative guidelines. This was the case with *rule of law*¹¹, *seafarer* and *shipowner*, where meaning was negotiated by a series of high-level meetings. Involvement of practitioners and legal-linguistic scholarship would be advisable here.

(b) Seeking equivalence in legal drafting between common-law and civil-law systems. This might involve addressing legal-linguistic challenges impeding comprehension and coordinating important items of legal terminology between civil law and common law that are widely used in international commercial and other contracts, e.g. the civil-law concept of *force majeure*, which might be reconciled with the common-law concepts of *impossibility* and *frustration of purpose*; also the common-law concepts of *consideration*, *equity/equitable*, or the civil-law concept of *good faith*. These can be placed in much the same category as *seafarer* and *shipowner*, in that resolution would require discussion among stakeholders, with the aim of attaining equivalence of legal concepts and terminology in contract drafting between both legal systems.

(c) Research on harmonizing different legal approaches within common-law and civil-law systems towards the foundation of a unified coherent contract drafting technique. Collaborative effort might work on developing illustrative guidelines for contract drafting acceptable to both civil-law and common-law systems. The time and cost involved should be balanced against the benefits in terms of promoting comprehension of international contracts with concomitant savings of time and costs in dispute resolution.

(d) Collaboration between practitioners and legal linguists in redrafting important texts by coordinating terminology and meaning between similar terms in different legal systems, at the same time applying plain English principles to general language items that impede comprehension. Uniformity of terms could appear under this heading, as well as focus on interpretation and language clauses.

5. Conclusions

The research and analysis in this paper clearly suggest, in response to the main research question, that we can use the results of several distinct but overlapping studies about legal terminology to develop something resembling a general approach to teaching and learning such terminology and drafting legal documents in cross-system

¹¹ The fundamental ingredient of any democratic society.

contexts. The answer to the follow-up questions – namely: (1) Can qualitative research such as the kind reviewed in this paper help to develop approaches to teaching, learning, and using legal terminology and drafting legal texts in cross-system contexts? (2) Does the research reviewed in this paper point the way toward the development of such approaches for legal terminology and legal texts in cross-system contexts? – seem to be partly in the affirmative. However, further research would be needed in other areas of law with a view to establishing whether achieving conceptual congruence and mutuality of comprehension between at least some domains of common-law and civil-law legal systems could be a reality.

Although this research tends to strengthen the argument that (comparative) legal linguistics should form an integral part of modern legal education, the precise model of teaching and what methods to apply, and indeed what teachers themselves need to know in order to promote learning, remain to be fully addressed elsewhere. However, it would not be unrealistic to suggest that some key legal-linguistic items – such as the use of plain English in legal contexts – could be taught at an introductory level and reinforced from time to time throughout legal education and training. In addition, items such as incongruity of concepts and terms between legal systems could be introduced at an introductory level and reinforced on courses in specific areas of law.

Other areas of legal-linguistic concern, as detailed above, might be approached through research projects, with high-level support, for example from stakeholders.

Overall, the five theses summarized and reviewed both individually but especially as a synthesized body arguably represent a valid contribution to legal-linguistic research. In addition, they have provided useful, apposite material for teaching legal English writing skills to law firms and law students.

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Appendix

Problem terminology as between civil-law and common-law legal systems

Stare Decisis (Binding Precedent): this doctrine is a key factor in causing language to play such a significant role in common law (Jarkina p. 9). In practice, the doctrine – unknown in civil law – means that lower courts should follow higher court decisions that establish legal standards and regulation for similar legal issues (Jarkina p. 12). This may result in inclusion of particular wording in contracts because of decisions of the court (Jarkina p. 12). However, in deciding any given legal issue in many civil-law jurisdictions, precedents serve a persuasive role. Civil-law courts are expected to take past decisions into account when there is a sufficient level of consistency in case law (see e.g. Fon and Parisi 2006).

Doctrine of consideration: under this doctrine a contract must be supported by something of commercially measurable value (Jarkina, p. 13). This is a common-law concept, whereas in civil law a contract has binding effect once the parties agree the essential elements of the contract with the goal of mutually binding each other. (Jakubane p. 14 (footnote omitted)). Note, however, that civil-law analogues of consideration have been recognized for decades (see e.g. von Mehren 1959).

Promissory (or Equitable) Estoppel: as with consideration, the doctrine of promissory estoppel is unknown in civil law. In legal theory, the definition of promissory estoppel is divided into five elements:

- (a) a promise or representation about future conduct;
- (b) the promisee relies on the promise or representation;
- (c) the promisor's duty not to waive the promise;
- (d) promissory estoppel does not remove the promisor's rights;
- (e) promissory estoppel should not be confused with a cause of action (Jarkina 17 (footnote omitted)).

Note: administrative law in both common-law and civil-law systems has the principle of legitimate expectations e.g. in Latvia (Republic of Latvia Supreme Court Senate). This can be seen as analagous to *estoppel*.

Equity: this doctrine is unique to common law, so that seemingly no equivalent or even similarity exists in the civil-law legal system. Equity is a specific common-law concept of justice and fairness that prevails over the law. From a legal perspective, equity is a sort of special remedy. However, this does not mean that equity is the same as a remedy in the context of legal means to recover a right, or compensation for infringement, as Jarkina stresses (p. 22 (footnote omitted); also Jakubane p. 4 (footnote omitted)). As suggested by Jakubane, the word *equity* in international commercial contracts should be replaced either by *reasonable commercial practice* or *natural justice* (p. 15 (footnote omitted)).

The closely related term *equitable* is generally found in the synonymous phrases *equitable remedy/equitable relief*. These refer, not to a reasonable and fair remedy, but to a system of redress developed in the common-law legal system. This generally

consists of court-ordered action or inaction, e.g. *specific performance* (Jakubane 15 (footnote omitted))¹² (Legal Dictionary).

Interpretation Clauses and Language clauses¹³: Jakubane finds these both useful and necessary.

Entire Agreement (Merger clause)¹⁴: this common-law notion means that a contract includes all terms within the parties' agreement, so that in the event of a dispute neither party can introduce oral evidence to say otherwise (Jakubane p. 21 (footnote omitted)). Lawyers drafting agreements under civil law should avoid this clause or re-draft it according to the circumstances (Jakubane p. 22 (footnote omitted)). This clause has been a reason for many court cases, decisions for which are not identical (Reed Smith client Alert Dec 2015; Lawgazette 2009-8).

Good Faith, Fair Dealing: in common law, the concept of parties' obligation to negotiate and act in good faith is not as strongly supported as it is in civil law (Jarkina p. 27 (footnote omitted)). However, in recent years common-law legal systems have become more open to this important international business concept (see e.g. *Yam Seng Pte Ltd v International Trade Corporation Ltd* [2013] EWHC 111; Principle I.1.1 - Good faith and fair dealing in international trade | Trans-Lex.org (uni-koeln.de))

Force Majeure: in the common-law system, where *force majeure* is not a fundamental concept, it often appears as a phrase in commercial contracts. Nevertheless, common-law system rules achieve similar results to *force majeure* through the doctrine of impossibility and frustration of purpose (Jarkina p. 32 (footnote omitted)). According to *Investopedia* (see also Gelowitz *et al.* 2020 for a practitioner's perspective):

The concept of force majeure originated in French civil law and is an accepted standard in many jurisdictions that derive their legal systems from the Napoleonic Code. In common-law systems, such as those of the United States and the United Kingdom, force majeure clauses are acceptable but must be more explicit about the events that would trigger the clause (see also Gelowitz *et al.* 2020 for a practitioner's perspective).

Pacta Sunt Servanda (sanctity of contracts): this, the most important principle of the classic law of obligations in civil-law systems, means that contracts are binding in any event. By contrast, under common law, profitability and a logical approach prevail over the bindingness of a contract (Jarkina p. 33)

Non-waiver: this common-law notion means that failure by a contracting party to protect its rights provided by the agreement does not mean surrender of those rights (Jakubane p. 22 (footnote omitted)). However, this conflicts with the principle of [*non*] *venire contra factum proprium*, of civil-law origin (Jakubane p. 22 (footnote omitted)) which prevents a party from changing their position to the detriment of others and

¹² But the whole idea behind "equitable relief" is achieving greater fairness between the parties (see e.g. HG.org. 2021. What are equitable, compensatory, and declaratory relief? At <https://www.hg.org/legal-articles/what-are-equitable-compensatory-and-declaratory-relief-35593>).

¹³ The language clause, used in international contracts drawn up in two or more languages, establishes which version prevails over the others. (See also International Contracts 2012; Adams & Scherr 2015; Cilotta, 2015)

¹⁴ An entire agreement clause aims to make clear that the agreement between the parties is solely what is stated in the written contract, and to prevent the parties to the contract from subsequently raising claims that statements or representations made during contractual negotiations, and prior to the signing of the written contract, form part of the contract itself.

sanctions a party who, by their contradictory behaviour, abuses the justifiable trust of their opponent. This comes close to the common-law principle of estoppel.

Representations and warranties: under common law, party A can rely on party B's *representations* (of fact) as being true and, if they prove to be false, to rely on the warranty given for securing the representations (Jakubane pp. 25-26 (footnote omitted)). By *warranty*, a party assumes responsibility for potential damage arising from a false statement of fact (Jakubane p. 26 (footnote omitted)). The term *warrants* can be replaced by the word *states* or *declares* (Adams 2015; Adams & Scherr 2015; Common-Law Drafting in Civil-Law Jurisdictions).

Remedies: these are the means for providing relief (Jakubane p. 32 (footnote omitted)) under the common-law system. Civil law did not recognize the term *remedies* until adoption of the UN Convention on Contracts for the International Sale of Goods. Now *remedies* forms part of most international commercial contracts, though this does not mean that drafters and interpreters of those contracts are fully aware of the real meaning of the term. The problematic point about using *remedies* in international commercial contracts, especially if governed by civil law, is that civil law's focus is more on rights and obligations, whereas common law focuses on courts' jurisdiction to grant the remedy sought (i.e. remedies trump rights) (Jakubane p. 33 (footnote omitted)) (see also van Dam 2006: 61).