

ENGLISH FOR LAW

Michael S. BOYD

**ENGLISH
FOR LAW**
Theory and practice

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AUTHOR'S FOREWORD

The language of the law in English-speaking countries has long been a stumbling block for both native and foreign speakers. We merely have to look at a contract or licence, even for the most basic of services, to make us question our ability to understand English legal language in use. To help us to overcome the limits of understanding, we might profitably consider language from two complementary points of view: those of *form* and *function*. While *form* corresponds to the actual structure of words and phrases, *function* concerns the way that an example of language is used in context, or rather, language in use. In fact, it is not enough just to look at the way a specific word or expression is used in an example, but we also need to consider *how* such language is used in context: i.e. whether it is spoken, written, formal, informal, used in court, in written legislation, a contract and so on. These are just some of the issues we might consider when looking at legal language in use. For an example of a contract, let's take one of those software agreements (or licences) that we encounter when we decide to update our smartphone or laptop computer to the latest version. How often do we actually read such documents and, importantly, if we do, how much do we actually understand? Below we can see one short paragraph from a 12-page Software License Agreement for the computer used by the writer while composing the present work:

[...] A. The Apple software (including Boot ROM code), any third party software, documentation, interfaces, content, fonts and any data accompanying this License whether preinstalled on Apple-branded hardware, on disk, in read only memory, on any other media or in any other form (collectively the "Apple Software") are licensed, not sold, to you by Apple Inc. ("Apple") for use only under the terms of this License. Apple and/or Apple's licensors retain ownership of the Apple Software itself and reserve all rights not expressly granted to you. You agree that the terms of this License will apply to any Apple-branded application software product that may be preinstalled on your Apple-branded hardware, unless such product is accompanied by a separate license, in which case you agree that the terms of that license will govern your use of that product...¹

What first strikes the reader is probably the length of the first sentence (64 words). Yet it is not just the number of words in this sentence, but also the use of

¹ <http://images.apple.com/legal/sla/docs/macOS1012.pdf>

both **coordination** (*and, or*) and **subordination** (*whether*) which creates a rather complex syntactic structure. The words used are both legal and technical, which is not surprising as we are dealing with a legal agreement for computer software, and would probably not create many problems in comprehension for most readers. However, if we look at some of the words we might wonder what exactly the document is referring to. For example, what is meant by *documentation, interfaces* and *content*? If we look up the words in a dictionary the meanings are not difficult to understand, but what exactly is being referred to in this document and why has the author decided to use both *documentation* and *content*, when they appear very similar in meaning? In addition, although many scholars have noted that legal English is characterized by a lack of personal pronouns in private documents such as contracts, in this case we find *you/your* used six times. There appears to be a clear-cut attempt (by the writers of the document) to address directly, and also perhaps, engage the reader, or the person who is signing the agreement (i.e. the *licensee*).² Does this mean that this is not a typical example of legal English? Of course, it does not. On the contrary, it means there are many different types (**genres**) of legal texts that we encounter on a daily basis. While many of them are complex and may challenge the layperson, their complexity may vary greatly.

The goal of this book is to bring into focus both the complexity and the variety of legal English. In order to do this, however, we also need to look at some of the reasons for these peculiarities from a linguistic and historical point of view from a linguistic and historical point of view. Thus, to return to the excerpt from the license agreement above, the type of text we are dealing with is a specific area of private law: the law of contract, exemplified by the software agreement, is a contract between the seller and buyer (or user) of the software. Thus, what might appear to the average reader as useless repetition, is necessary due to the nature of contract law in the United States and other common law jurisdictions. In fact, such contracts demonstrate the overwhelming importance of case law (so-called **binding precedent** over written law (**statutory law**) in common law jurisdictions where there is

[n]o general legislation of any kind peremptory or auxiliary exists defining the legal situation of the parties to a contract. In consequence, the parties have to use the contract itself to address every possible situation that could take place in the future with the opportunity to refer to written law. (Mattila, 2006, p. 237)

² *license* is the American spelling, and *licence* is the British spelling, but *licensee* is used in both variants.

It is therefore the particular aspects of Anglo-American common law that provide the bedrock to defining the language and style of a text such as a software agreement. Consequently, in order to understand such documents we need to look at the linguistic, stylistic and even historical aspects of legal language.

This book aims to introduce Italian students of law, legal practitioners and learners interested in legal English to some of the most important features of the English and American legal systems, and the language they use through an approach that is both theoretical and practical. As we have seen from the short example above, we also need to understand what makes legal English special and, to a certain extent, how such features came about. This book, therefore, takes an innovative approach to the subject. In Part I, we begin with a theoretical explanation of the reasons for the complexities of modern legal English and some of its most pertinent features, focusing on both linguistic aspects and stylistic ones. The aim is to provide learners with a sort of toolbox that will be of assistance when facing any unfamiliar legal text. In Chapter 1 we examine the status of legal English as a linguistic variety and consider the importance of different genres in legal English by introducing some categorizations of different legal text typologies. In doing so, the book also embraces a number of important ideas from the field of corpus linguistics, which allow us, through the use of specially developed software, to examine large quantities of text (a **corpus**) in order to test the real-world use of a language and discover patterns of use of language. In Chapter 2 we introduce some legal language corpora, discuss how they can be used in the study of legal English and provide a corpus-assisted case study regarding the portrayal of Italian criminal law in the British and American press. Chapter 3 provides a compendium of the main features of legal English. We look at specific examples of legal language and try to make sense of their distribution. The chapter also focuses on some of the most important aspects of common law in comparison to continental civil law, some pertinent differences between legal Italian and English, various features of EU legal language and a linguistic summary of two important genres: trials and contracts.

The second part of the book is marked by a practical approach to legal issues in the Anglo-American tradition. Each of these units is based on a specific aspect of the Anglo-American system, which can be studied alongside the various language skills (reading, vocabulary, grammar, text cohesion, listening) necessary for the modern language learner. To this effect, there are reading comprehension activities based on authentic texts regarding the issues raised and their applications, as well as grammar explanations and exercises, vocabulary building activities that can serve as the basis for further development of speaking and

writing. The units in Part II contain different types of exercises so that learners can practice the new vocabulary and grammar that had been studied. This practical section should be used in tandem with Part I of the book, which should also be used as a reference for the grammar and vocabulary points that are introduced in the practical units. The main legal terms are defined, translated and provided with examples in the Glossary.

This volume is the fruit of many years of working and collaborating with legal practitioners in Italy and in Europe. I have had the pleasure of working with judges, prosecutors, lawyers and law students, who have introduced me to and illuminated me in the intricacies and complexities of the law and have also helped me to focus my interests in language and linguistics within the various areas of law. Firstly, I would like to express my gratitude to all of my former and present students of legal English for their patience, intelligence and openness in embracing whatever type of exercise and activity that I threw at them. Secondly, I express sincere gratitude to the many colleagues working in the legal professions I have had the pleasure of working with in Italy and abroad. I am especially indebted to Antonella Ciriello, Carmen Domuta, Calogero Ferrara, Giovanna Ichino, Luca Perilli, Raffaele Sabato, Rebecca Spitzmiller, Isabel Walbaum Robinson, Noah Vardi and many others, who are too numerous to name here. I thank them all for the many hours they have spent patiently and intelligently illustrating to me the finer points of law and the important differences in the language and legal systems of Italy and of England and the United States. The preparation of this volume would not have been possible without the rigorous input and fine-tuned editing skills of Peter Douglas, Cherryll Harrison and Rebecca Spitzmiller, who spent hours reading over the manuscript in its various forms over the last few months. Their comments and criticisms helped to make this volume what it is, but any mistakes or shortcomings that remain are of course my own. Finally, a special word of thanks goes out to those who supported me and pushed me to finish this work even through the most difficult times, my friends and family, and especially Paola Buoncristiano and Vera Mitiurich-Khlebnikova, who have always been there for me, and, last but not least, Massimiliano Tommaso Rezza, who has always stood beside me and lent me his care, support and intelligence in all of my endeavours and without whom this work would never have seen the light.

Roccasecca, February 2018

Michael S. BOYD

TABLE OF CONTENTS

PART I THEORY

Introduction.	3
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CHAPTER I A TOOLBOX FOR THE STUDY OF LEGAL ENGLISH

Introduction.	6
1. What is legal English?	9
2. Genres in legal English.	13

CHAPTER II UNDERSTANDING LEGAL ENGLISH THROUGH CORPORA

1. What is Corpus Linguistics?	24
2. Corpora for the study of legal English.	29
3. Case study: Representing Italian criminal procedure in the Anglo-American press.	33

CHAPTER III FEATURES OF LEGAL ENGLISH

Introduction.	39
1. Lexical features of legal English.	40
Legal homonyms.	41
Technical legal lexis.	51
Legal Latinisms.	56
Short forms, proper names and jargon.	60
2. Other features of legal English.	65
Binomials and trinomials.	66
Pronominal adverbs.	70
Pronouns in legal English.	71
Verbs.	73
Suffix pairs: Lessee vs. lessor.	79
Syntactic and discourse features of legal English.	82

3.	Some difference between US and English legal use.	85
4.	Some aspects of EU legal English.	89
5.	False friends.	93
6.	The language of common law and the courtroom.	96
7.	Some features of private law documents.	99

**PART II
PRACTICAL UNITS**

UNIT I		
TALKING ABOUT THE LAW		105
UNIT II		
STUDYING THE LAW		114
UNIT III		
WORKING WITH THE LAW		129
UNIT IV		
SOURCES OF LAW		145
UNIT V		
THE STRUCTURE OF THE COURT SYSTEMS		160
UNIT VI		
PUBLIC AND PRIVATE LAW		175
UNIT VII		
CRIMINAL JUSTICE AND PROCEEDINGS		186
UNIT VIII		
CIVIL PROCEDURE		197
UNIT IX		
TORTS		207
UNIT X		
CONTRACT LAW		217

UNIT XI JUDGES, PROSECUTORS AND THE LANGUAGE OF THE COURTROOM	230
UNIT XII EU LAW	241
ANSWER KEY	255
GLOSSARY	275
REFERENCES	301
INDEX	306



PART I
THEORY

INTRODUCTION

Language is medium, process and product in the various arenas of the law where legal texts, spoken or written, are generated in the service of regulating social behaviour. (Maley, 1994)

The first question one might ask is why do we need a new book about legal English? There are many books already available on the market, so why do we need another, and what makes this book different? Crucially, this volume aims to focus on both the theoretical *and* practical aspects of legal English, based on the assumption that both aspects are integral to learning. First, we need to focus on certain features of a language – or in this case the variety of legal English, which as noted in the quote above is “medium, process and product” of the law and legal texts – by focusing on its linguistic, stylistic, historical and societal characteristics. Furthermore, we embrace the view in this book that language is not only a product of society and its history, but that it also plays a role in shaping the world we live in. This is especially true of legal English, which in many ways is different from standard English.

Take, for example, the setting of the courtroom in England and the United States¹. It is quite clear from the outset that we are dealing with ‘special’ circumstances from the way that the judge is dressed (wearing a gown or robe and, in England and Wales, also a wig), to the way that the room is set up, with the judge at the front and the various parties arranged on different sides of the room to stress the fact that in the Anglo-American system a trial is **adversarial** in nature. The jury, if present, also has a special place to sit, usually at the side so they can follow the proceedings from all perspectives. Yet, the scene is also characterized by special uses of language. As noted by Tiersma (1999, p. 100), in a courtroom “verbal formulas and ritualistic words put the audience on notice that this is a proceeding with important consequences,” going so far as to compare such practices to a religious service. We will look at the language of trials and courtrooms in more detail in Chapter 3, but what is important to stress here is that both the participants and those watching the proceedings understand the significance of both the non-verbal and verbal elements that comprise a trial.

¹ In this book for the most part we will be referring to the English rather than the British system, as both the Scottish and Northern Irish legal systems are quite different from the one used in England and Wales. Similarly, the United States legal system actually differs from state to state, although these differences are beyond the scope of the present volume.

Furthermore, the language used in the courtroom is defined by many (external) factors – historical, societal, cultural, to name a few – and has been forged over hundreds of years both in England and subsequently in places that were originally British colonies, such as the United States, Australia, New Zealand, India, Canada, etc.

Second, many of the textbooks of legal English available in Italy limit their focus to reading and translating vocabulary, and yet it is well known that learning a language means that learners must become competent not just in reading and translating. Any approach to learning (legal) English should also include the other skills of speaking, listening and writing, while focusing on authentic, real-world texts and language use. This book, therefore, attempts to address many of the skills in language learning: grammar and vocabulary skills, reading comprehension, listening comprehension, which are all based on authentic materials coming from both the United Kingdom and the United States. Furthermore, as we shall see, although legal English has a number of distinctive features it is based on general English. As noted by Tiersma (1999, p. 142) “modern legal English is a set of linguistic features that are superimposed on everyday speech.” Thus, while the book focuses on legal English texts and the features that make them look and sound more *legalese*, this book will also review some of the main features of English grammar and vocabulary as legal English cannot be learnt without knowing the rules of general English.

Third, in light of the fact that legal English needs to be studied in its wider context, this book develops a corpus-assisted approach to its study. Corpus linguistics is a branch of linguistics that is interested in the study of large bodies of text that comprise a **corpus** (plural: **corpora**) with the aid of computer software. Such software can help us to understand the patterns of co-occurrence in language through so-called frequency lists, key word lists, concordances and collocations. Although we will look at what these terms mean in detail in Chapter 2 together with some specific examples of the applications of corpus linguistics to legal English, here we should stress the fact the corpus software enables the teacher, student or researcher to move beyond single texts when studying the language and to address the expectations and preconceptions they may already have about the way legal language should behave.

Finally, it is this complex and, we could say, peculiar nature of legal English that has led to the decision to divide the book into two different, but complementary parts, one theoretical and one practical. The book is based on the notion that we cannot truly understand the distinctive aspects that make up the vast field of legal English without studying some theoretical issues. The first part of the book, then,

introduces the history and theory behind legal English and attempts to answer some of the following questions:

- What is it about legal English that makes it different from ordinary, standard English and what is the extent to these differences?
- What are the specific features of legal English that make it distinct? The words (lexis), the different types of texts (genres), the ways words are formed (morphology), the ways sentences are formed (syntax)?
- What tend to be the main problems for Italians who are learning legal English?
- What is the best way to approach the study of legal English and which skills should a learner focus on?
- What can techniques about Corpus Linguistics tell us about the nature and use of legal English?

Part II of the book is devoted to practical issues about the (practice of) law mainly in the United States and England, two of the most important *common law* countries. The units in this part address important issues such as what the law is and what the sources of law are, including the origins of the *common law* and *equity*; a comparison of the different legal traditions and systems in Italy and the Anglo-American world; working in/with the law; the legal system of the US vs. the UK; the structure of the courts; public and private law; aspects of civil and criminal law; and aspects of EU law. These chapters include reading comprehension texts, questions for comprehension and discussion, grammatical explanations and exercises, as well as listening comprehension activities. Moreover, there is a glossary at the end of the book where the most important vocabulary items are defined in English and a translation provided in Italian.

It should be noted, however, that the book is also divided in such a way so that the learner can follow the activities in whichever way he/she feels necessary. Some learners may decide to read the theoretical and background information in Part I first and then proceed to the practical activities in Part II. Others may decide to do the practical activities in Part II and refer back to Part I for more information about certain uses and structures of legal English.