

Modern Tendencies and Characteristics of Legal Writing in English for Specific Purposes

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Abstract

The article with the title “Modern tendencies and characteristics of Legal Writing in English for Specific Purposes” deals with the study of legal writing and its teaching in professional linguistic contexts, where writing is considered as a means of communication between two communities that have different languages, but share the same knowledge or expertise. The article describes some key features of legal writing as part of Writing for Specific Purposes. The historical background gives a hint on how the legal writing was considered at its beginnings, how it evolved and how it was taught through years. It also discusses the controversial issue whether writing should be taught together with the legal reasoning or not, taking into consideration the fact that the process of writing itself for most students is considered to be of a more complicated nature than the process of the legal reasoning. The characteristics of legal writing describe the specificities and the intricacies that the legal jargon implies, the archaic words, wordiness and the awkward sentence structure. Modern tendencies place emphasis on another aspect of legal writing nowadays; that of writing in Plain English which implies a breaking of the cycle of the complicated writing toward a simplified way of writing, through a tiring and long process of writing where the reader is at the center of it. This means that every writing has been produced having the reader in mind implying that the general public that does not have a legal background should be able to understand it.

Keywords: Legal writing, professional context, Plain English, Legalese, Writing for Specific Purposes

Introduction

Writing is an important part in the professional life of a lawyer. It is a very complicated productive skill in which the lawyer or the paralegal has to practice a lot. Writing in a professional context doesn't make the life of the writer easy and it becomes even more difficult when this writing occurs in a second language, since while writing the writer has to take into consideration the social and the cultural context or aspect in which it occurs. The reasons might be different starting from the fact that the mother tongue and the second language do not have the same structures.

Legal writing as one of the types of ESP writing is one of the most complicated ones, since the writing process here doesn't imply only the physical aspect of it but also the legal reasoning that is behind it. A good piece of writing in Legal English means a lot of practice in learning how to write it, after the writer has gathered the information done the reasoning and at the putting everything into black on white.

Legal writing has undergone through a long way to become what is now, in the sense that it has changed through time, since different approaches have been used. One of the problematic matter related to it is the legal jargon or differently known as the legalese in which words of different old languages are still used in the everyday practices, where wordiness and long sentences do not stay behind.

On the other side, the modern tendencies toward legal writing might be considered as revolutionary, since at the very foundation of these modern tendencies stays the Plain English that differently from the previous practices bases on simple, precise and understandable writing for the average citizen.

1. Writing for Specific Purposes

Writing, once a privilege of a particular social class, has become a very important communication tool for people working in various professional fields in the community today. Regardless where and how writing is used; if used to report the analysis of the events of the day, in the newspapers, in an essay in the academic world, reports or letters closely related with business, law, medical, and the military field, the ability to write effectively allows individuals of different cultures to communicate among them. (Pakir & Punessvary, 1999) discuss the importance and the necessity of the English language and writing in all the professions. (Flanegin & Rudd, 2000) emphasize the “importance of the English language as a means of communication between people of different nationalities who share the same profession.”

In addition, it is widely known that writing plays an important role not only in communicating the message or information but also in the transformation of knowledge to create something new. This makes writing a vital aspect for students in an academic environment, students in a program of learning a second language, and especially professionals in various fields. While the writing history goes back over the years, writing for professional purposes itself remains a challenge or a problematic area in the workplace communication. This may be partly caused by the large variety of purposes, styles and genres of writing used in professional contexts.

(Shkurtaj, 2009) in his book mentions that the specific language is a professional terminology closely linked to the environment where it is used and that the written discourse of an institution expresses and symbolizes the political and social authority. (Gunarsson & Nordberg, 1994) state that:

“Writers of different professional writings address their articles to individuals with the same cultural knowledge and responsibility that they have, individuals that are knowledgeable of what is written on paper. Moreover these professional environments have; their own language, features and characteristics that should be taken into consideration.”

As a result writing is seen not only as the outcome of the knowledge that an individual possesses but also as an individual product in a specific social and cultural context. (Hamp-Lyons & Kroll, 1997) say that “Writing is an act that occurs in a context, achieves a specific purpose and that has a specific form for a certain audience.” Writing in a second language and in a professional context means that the writer should know and understand the culture of another country, and at the same time be able to write in a specific genre and a specialized vocabulary and terminology as well as a specific grammatical and stylistic structure. In this context the purpose of the writer is determined by the understanding of this professional context and the players involved. Another issue is that the relation that he/she has with the audience is of a particular nature. “The writer writes from an expert point of view and that the material he / she is producing is addressed to a reader with the same experience and knowledge that he/she has. (Fridrickson & Swales, 1996).

2. Historical background of Legal Writing in English for Specific Purposes

Legal writing in the English language in most law schools is taught together with the legal reasoning since a written piece in legal writing does not imply only the process of writing. It includes the stages of gathering the right information and also the legal reasoning made by the lawyer linking it to the right or the relevant judicial precedent. Related to this, there have been a lot of controversies whether to teach legal reasoning and legal writing together or separately.

According to Christopher Langdell at the end of the 19th century, the study of law is akin to science, law school educators have taken a decidedly theoretical approach to teaching law (McManis 1981), making his students have their own opinion and develop their writing through analytical reasoning. Up to the late ‘30s of the 20th century legal writing in ESP in most universities was taught mostly by lawyers and as a result students lacked what was called “finished legal writing” (Rombauer 1972), which they desperately needed. As a consequence of this, after the World War II, since it was clear that the law students, already lacking basic writing skills, needed being taught on how to write that analytical research in plain legal English, and how to make use of law books, it was considered the fact that they needed courses of “English grammar and composition” (Rombauer,1972). Hence, in order to change the situation certain law schools used to combine writing instruction made of English grammar and composition with the legal research, a method used nowadays.

On the other side, up to the mid 1980s because of a myriad of reasons students in law schools still had problems in reproducing conventional legal documents, such as opinion letters, memoranda, and briefs. Therefore the nature of teaching writing changed. Writing teachers started to teach legal writing in as a process, making students practice over and over again on the same writing task, making notes and correcting mistakes where relevant as well as consulting with the students after each draft. (Barnett, 2007)

Nowadays, the pedagogy or teaching of the legal writing is chiefly based on writing as a process which means a lot of practice, the legal bases and audience which implies the fact that it should have legal grounds in order to be addressed to a legal audience, and lastly on the writing generative aspect, although professors like Marjorie D. Rombauer are of the idea that the classes on legal writing should involve “the whole integrated sequence of thinking and developing legal arguments.” (Lawrence, 2003)

3. Characteristics of Legal Writing in ESP

The first thing that passes through the mind of everyone is that legal writing is intricate, insidious and unintelligible. Despite the fact that, some lawyers do tend to have that kind of style while writing, in most of the cases the majority of writers of legal English are very proficient at the use of the legal jargon. How is it possible that the perception of it is so destructive?

The importance of precision: Like all the types of writing a written material should be clear, to the point, accurate, simple as well as precise. On the other side sometimes as (Thornton 1996) states: “*The blind pursuit of precision will inevitably lead to complexity; and complexity is a definite step along the way to obscurity.*” Therefore, what counts is the fact that the reader and the writer should read the same word in the same way, and the meaning conveyed from both the sides should be the same in order not to have misunderstandings of any type.

The legal jargon or the Legalese: The archaic legal language or in other words expressions of old times, considered as bizarre in the modern English language, that are still in use in legal papers since their meaning is widely acknowledged in this environment. The core vocabulary of this distinguished jargon consists of Latin,

French and Old English words that are not in use in the everyday language and that are used only among lawyers, words like aforementioned or hereinafter are hardly ever used outside the context of the legal sentences or documents.

Wordiness or verbosity: This is another characteristic or derivation of the legalese, which means that for the same concept in the legal English are used two synonymic words together linked the conjunction “and” like *cease and desist, null and void*. These synonymic expressions were used to clarify the situation, since those words belonged to different languages.

Mentality: It has a strong effect in the legal environment since someone might have some expectations from a system that still uses the idea of the precedents like *stare decisis*. This emphasizes the fact that things go in the way they go because this is the manner they have occurred before. Therefore, it can be said that the legal writing makes use of the traditional terms and legalese as a natural practice paying no attention if it comprehended or not by the general public. Hence, a certain jargon understood by an educated lawyer is unclear to the people something that clearly undermines the image that they might have on the legalese. So “the objective of precision can be better achieved by rigorous and exact use of modern language than by reliance on anachronistic formulas.” (Richard Wydick 1998)

We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to explain, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. (Richard Wydick. 1998)

4. Modern tendencies in Legal English

Nowadays, in legal writing in ESP are the Plain English and its vast understanding which are highlighted. The plain Language deals with a simple and effective communication, as a result creating a new perspective and a drastic transformation from the previous tradition. (Garner, 1995) explains:

“It is the language of King James Version of the Bible, and it has a long literary tradition in the so-called Attic style of writing”

This means that the complex and compound-complex sentences of paragraph length, the legalese and its archaic jargon are no longer used. And in case of repetition, instead of using a group of synonymic expressions that have the same function is better using the one word available. There is no doubt that some terms of the legal jargon will still exist in order to give some legal flavor to the language the lawyers use. Notwithstanding, the paralegals and lawyers should stay away from redundancy, vagueness and sentence awkwardness of the legalese jargon. What characterizes the plain English is the fact that it is approached in different ways. The first is “text-based approach” (Penman, 1993) which is simply based on the language words and sentence structure. “The reader oriented approach”, (Penman, 1993), is based on the comprehension the reader has related to the text, in other words how well or how much the reader understands the written passage.

5. Legal Writing in ESP and its Teaching

Writing, along with the aspect of teaching writing in both mother tongue and second language contexts, is the actual subject of a significant number of studies and other educational efforts. Legal writing has undergone through a long process to be transformed in what is nowadays. Like all the other types of writing it requires a lot of effort and practice especially if it is conducted in a second language.

It is a long process and the first step toward improvement is admitting that writing in itself is not easy, and that everyone should be aware of the fact that no matter how well they think they write at the end what is important is the outcome. Most people especially those working in a professional environment, like doctors, military personnel or businessmen are not skillful writers, this is valid for lawyers, too.

The second stage of this process is the one in which people are made to write a piece in an insidious professional language full of technical words, or jargon that is not used in the everyday life, technical words that one might have difficulties in using in the first language, let alone another language that is not the mother tongue. This is even worse if you have to make a law student write in English with an extremely formal prose, one line after the other in an utterly boring process.

The third stage is that of making the law student or the lawyer write a piece of writing in which the student breaks the cycle of the insidious legal writing where the habits of the past are clearly left behind in order to achieve a good style in writing. Good style in legal writing means that the law students have to make every effort to attain it. Good style needs dedication. If one wants to enhance his/her writing style has to choose the difficult path and not the easy way out, so he /she has to commit him/her into it. Through teaching legal writing as a process in which the student has to write and rewrite the same assignment many times the student can manage to avoid producing a horrible piece of writing.

Conclusion

The purpose of teaching legal English writing or legal writing even in mother tongue, since the problem is found even here, is not to make these students get accustomed to the pompousness of the legal jargon or the legal English, the purpose is not to urge the students to be average legal writers with a wordy stuffy, artificial, and in most of the cases with an ungrammatical style of writing, but to make them learn the subtleties of legal writing in order not to be a mediocre writer that might be derided for the haughty writing he has produced.

At the end, what matters is the communication, what the writer and the written piece convey to the reader. This is something that shouldn't be forgotten having in mind that the following quote on legal writing and the lawyers by Abraham Lincoln should be present in the writer's thoughts to remind him or her that the aim of writing is to communicate.

As lawyers, what we do most is write—lawyers' time and advice are our stock in trade, but we express the advice in words. And we use our time in drafting, in communicating mostly by the written word. Sometimes, though, we fail to remember the first object of writing—to communicate (Lincoln).

In conclusion the language is a dynamic and direct reflection of the society. The faster a society moves, the more the language of that society changes and evolves. Along with the changes in language, the rules governing the writing - rules on style, use and form change as well. Despite the differences that might exist between two languages, contexts whether professional or not, the language and the rules governing its use, writing effectively and accurately remains among the priorities of this society. Those who read a written material the least that they can claim or require is a well written piece, which means written properly and correctly.

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