

CLARITY VERSUS ACCURACY AND OBJECTIVITY IN WRITTEN LEGAL ENGLISH

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This paper is an attempt to analyse the most important grammatical and, specifically, syntactic features and to point out some prominent lexical ones, which aim at accuracy and objectivity of a written legal document, and to discuss how these features influence clarity and transparency of the legal documents. The study covers the analysis of some EU, UK, US legislative acts alongside with some extracts from contract samples. The analysis reveals that written legal English is distinguished by long compound sentences, often with inverted word order and numerous embeddings, passive constructions and nominalisations, specific use of personal pronouns and collocations of synonyms (doublets and triplets), etc. These means allow to achieve the most possible accuracy and objectivity in legal texts but make them complicated and difficult to comprehend at once. Formality, achieved by the mentioned means, makes legal English distant from everyday language and often becomes a reason for criticism. Plain English supporters encourage simplifying legal language; however, long traditions of legal English make changes slow and difficult. Therefore, comprehension and usage of legal English still requires special knowledge of its lexical and grammatical features.

Keywords: written legal English, grammatical and lexical features, textual clarity, accuracy and objectivity.

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Introduction

In any professional language writing the three major virtues – clarity, accuracy and objectivity – are highly prized. Clarity is defined as “the quality of being clear and easy to understand” as in “*There has been a call for greater clarity in this area of the law*” (Cambridge Dictionary Online, below CDO). Accuracy means “being exact or correct” as could be seen in the following example “*We can predict changes with a surprising degree of accuracy*” (CDO). Accuracy, in its own turn, is closely linked with objectivity, the latter meaning “based on real facts and not influenced by personal beliefs or feelings”, an example of its usage being “*an objective and impartial report*” (CDO).

It is a well-known fact that while clarity in any writing involves clarity of argument at a deeper level, clarity at a surface level involves clarity of diction and sentence structure. All the manuals on good writing highlight that the main means for achieving clarity is to avoid pretentious language, needlessly complex sentences and the passive voice wherever possible. Though it may be a straightforward attempt in general English, these desirable qualities of clarity are perceived differently in legal language. Legal writing in English has developed over hundreds of years and is characterized by particular lexical, grammatical and, specifically, syntactic features.

Common features which distinctly characterize the modern legal English, in general, are referred to by the term *legalese* which is “the specialized language of the legal profession” (*Merriam Webster Dictionary*), and more specifically, “the language of legal documents” (Harper 2001–2010). A more detailed definition of *legalese* points out that it is “legal terms combined in long-winded sentences, or varied or with permutations, with the initial design of legal or drafting precision but which otherwise add unnecessary complexity or inadvertently resulting in confusion” (*Duhaime’s Legal Dictionary*). Therefore, it was considered important to discuss the most prominent caveats for legal English learners and translators.

The object of our research. Though the English legal language of today includes many different legal discourses (the language of statutes or Acts of Parliament and legal documents, also judicial discourse, courtroom discourse and discourse of legal consultation being the most important ones), the research for this article is limited to the written legal English of statutes and legal documents as it still constitutes considerable difficulties to master for teaching/learning and translation. The article covers the analysis of some EU, UK, US legislative acts alongside with some extracts from contract samples (see the *References* list).

The aim of research. Legal English plays a central role in international communication between states and businesses. Most legal documents are negotiated and drafted in English, therefore, its knowledge is of vital importance for successful cooperation. International legal English takes over its features from traditional legal English which is prominent for its special stylistics. This paper attempts to give a general overview of the most important grammatical and, specifically, syntactic features and to point out some prominent lexical ones, given less coverage in previously conducted researches, of a legal text, which aim at accuracy and objectivity of a written legal document. The other goal is to analyse how these features influence clarity and transparency of the legal documents.

The applied research methods. The analysis was performed using a descriptive method which allowed to analyse the linguistic features of the chosen extracts from the legal texts and to evaluate them from the point of view of clarity, accuracy and objectivity.

The intended outcome of research. Although there are comprehensive studies on various aspects of legal English (Maley 1994; Tiersma 1999; Haigh 2004; Neumann 2004; Ingels 2006), only few works give the general outline on peculiarities of a written legal English text. It was considered important to group the most general features of a written legal English text and analyse their impact on its clarity, accuracy and objectivity.

Meanwhile, in Lithuania the focus of research is on the legal terminology. Mainly, there are some comparative diachronic studies of the legal Lithuanian (Umbrasas 2010) and comparative studies of the legal Lithuanian and other modern European languages (Janulevičienė, Rackevičienė 2009, 2010). So far, the research has been carried only on some fragments of grammatical structures (Akelaitis 2010) and there are no comprehensive studies on the legal Lithuanian grammatical structures. Therefore, another intended outcome of this paper is to raise the Lithuanian linguists’ awareness for the need of a thorough research on written legal Lithuanian texts, their grammatical and stylistic features.

The outcome of this paper is also to highlight that, apart from the traditional historic usage (which is quite difficult to change), the use of the analysed features obscuring immediate clarity of any legal text is justifiable to achieve accuracy and objectivity. We believe it to be important to the learners, teachers and translators of legal written English, as it is the predominant language for state and business cooperation in nowadays world.

The use of specific grammatical features in written legal English

In legal writing conventions differ from other types of writing mainly because it is more for-

mal. A. Enquist and L. C. Oates (2001: 1) are not alone in stating that lawyers tend to avoid first-person pronouns, contractions, abbreviations in text, idiomatic phrases and punctuation marks like dashes or exclamation points that may suggest informality. On the grammatical level there seems to be very distinctive features of the written legal English which are highly prized. These grammatical and, specifically, syntactic features/means may be grouped according to their purpose in the text. The analysis below deals with the above mentioned features/means which allow: (1) to achieve the most possible accuracy in the text; (2) to achieve the most possible objectivity in the text. The analysis reveals how these means influence clarity and transparency of the text.

1. Grammatical means which enable to achieve the most possible accuracy in the text

Various means are used to achieve the maximum accuracy and convey the most possible information in a single sentence. They include complex compound sentences, numerous embeddings, nominal groups with post-modifiers, adverbials and adverbial clauses in unusual positions, etc. Each of the mentioned means is discussed separately below.

Lengthy and complex sentences with unusual word order

Even the preliminary studies reveal that sentences in the English legal language are much longer than in other styles. Compound sentences tend to be of a much complex nature and include not just two or three, but more clauses, as in the following example:

329. *Upon a trial for the violation of any of the provisions of this chapter, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket*

or share, or pretended ticket or share, of any pretended lottery, nor that any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof (California Penal Code 2009: Section 319–329).

Such complex structures and unusual word order hinder immediate comprehension of the text. On the other hand, the long complex sentences of legal English, in contrast to the short ones of informal conversation, are capable of standing alone and do not lose their meaning even if taken out of context. Such sentences enable the writer to achieve the most possible accuracy and precision and diminish the role of context. Some researchers also point out that surface “crystal clear language would misrepresent a truly fuzzy reality” (Enquist, Oates 2001: 2) therefore, intentional vagueness is appropriate in drafting parts of legislation. Thus, clarity, as a bedrock principle of good professional writing, sometimes is overlooked deliberately in legal texts for the best interests.

Numerous embeddings

The complexity of long sentences in written legal English is often enhanced by yet another grammatical trait, namely, several embeddings of different syntactical nature, as in the following example:

Whereas it is necessary to strengthen the machinery for vacancy clearance, in particular by developing direct co-operation between the central employment services and also between the regional services, as well as by increasing and co-ordinating the exchange of information in order to ensure in a general way a clearer picture of the labour market ; whereas workers wishing to move should also be regularly informed

of living and working conditions ; whereas, furthermore, measures should be provided for the case where a Member State undergoes or foresees disturbances on its labour market which may seriously threaten the standard of living and level of employment in a region or an industry ; whereas for 1 OJ No 268, 6.11.1967, p. 9. 2 OJ No 298, 7.12.1967, p. 10. 3 OJ No 57, 26.8.1961, p. 1073/61. 4 OJ No 62, 17.4.1964, p. 965/64. this purpose the exchange of information, aimed at discouraging workers from moving to such a region or industry, constitutes the method to be applied in the first place but, where necessary, it should be possible to strengthen the results of such exchange of information by temporarily suspending the abovementioned machinery, any such decision to be taken at Community level (Regulation (EEC) No 1612/68).

This example clearly illustrates that embeddings serve the striving for stating the whole legal principle in a single sentence. A want to cover all possibly arising circumstances and to retain some flexibility, as well as to provide references to already existing legal acts creates vagueness for a layperson reader, but is highly valued for accuracy and precision by legal professionals.

Long nominal groups with post-modifiers

Another syntactical feature of written legal English – the heavy nominal constituents in legal English sentences – also makes those sentences appear quite complex and lacking immediate clarity. There are numerous examples of such long nominal groups in various legal documents; they may include two, three or even more post-modifiers. Furthermore, one nominal constituent with post-modifiers may include several other nominal constituents with their own post-modifiers:

... on the payment to the Owner of the total amount of any installments then remaining unpaid of the rent hereinbefore reserved and agreed to be paid during the term... (Hire Purchase Agreement).

Structures of this kind enable to convey the most possible information in one sentence, but, at the same time, they make the sentence complicated and reduce its immediate comprehension.

Adverbials and adverbial clauses inserted in unusual positions

In legal texts adverbials and adverbial clauses are frequently used in unusual positions. Long and complex adverbials and adverbial clauses are often inserted between the modal auxiliary verb and the main verb splitting the verb complex or intervene in various other unusual positions as seen in the following extracts:

Other examples of inserted adverbials and adverbial clauses:

The Lord Chancellor may, with the concurrence of the Lord Chief Justice, by order made by statutory instrument designate any county court as a patents county court and confer on it jurisdiction (its “special jurisdiction”) to hear and determine such descriptions of proceedings... (Copyright, Designs and Patents Act 1988, Section 287(1)).

The Lord Mayor and aldermen of the City of London shall by virtue of the charter granted by His late Majesty King George II dated 25th August 1741 continue to be justices of the peace for the City but any of them may be excluded by the Lord Chancellor from the exercise of his functions as a justice (Justices of the Peace Act 1997, Section 21(1)).

... the prosecutor, if dissatisfied with the granting of bail or with the amount fixed or that such person has been ordained to appear, may appeal... (Criminal Procedure (Scotland) Act 1975, Section 300(1))

Adverbials and adverbial clauses thus positioned separate the subject from the predicate inserting a lot of information between them. Such use of adverbials and adverbial clauses enable to ensure the exactness of meaning and avoid possible ambiguities, but at the same time hinder immediate comprehension of the information in the sentence.

2. The means which enable to achieve objectivity in the text

In addition to accuracy and precision, legal texts are notable for their objectivity – presentation of information in the most possible generalized and impersonal manner. Legal statements often refer to a generalized actor who may be any person; therefore, various means are used to achieve maximum objectivity and impersonality in the text. The most usual of them are passive constructions, nominalisations and specific use of personal pronouns.

The use of passives

Although in general writing attempts to avoid the use of the passive voice wherever possible is considered a virtue, the most glaring feature of written legal English is, perhaps, the use of passive constructions that are extremely common in legal texts. Passive sentences allow the speaker or writer to omit reference to the actor, as in the following often used phrases: *...victims were killed, twenty-four more were injured, many of them quite seriously... or All assets shall be distributed...* One reason lawyers use passives is for strategic reasons: to deliberately de-emphasize or obscure who the actor is. But, very often, the passive constructions (together with the specific words used by lawyers) create convoluted constructions as in *...the above captioned appeal is maintained by the defendant as a direct result of...* (Kentucky Legislative Research Commission). It could be said instead quite simply *...the defendant appeals because...*, but the phrase would sound colloquial. Passives are more impersonal, giving the legal texts an aura of objectivity and authoritativeness. However, the passive voice is often far more verbose, thus adding to a more complex sentence structure in written legal English and obscuring the immediate clarity of the statements.

The use of nominalisations

Another feature which allows to reach generality and objectivity in legal texts is the use of nominalisations – nouns derived from verbs. Like passives, they can be used to obscure the actor and to put the stress on the action, as in “*The injury occurred at 2:15*” (instead of *X was injured at 2:15*). Therefore, nominalisations allow the law and reports on crimes/violations to be stated as generally, accurately and objectively as possible. In any legal writing accurate representation of the law and the facts is crucial. Misstatements, even small ones, can have severe consequences.

However, in many cases the only purpose of nominalisations is to increase the formality of the text, as in the following examples: *enter into agreement (=agree), make the argument that (=argue), make the assumption (=assume), give consideration (=consider), make a determination (=determine)*. Such nominalisations are much wordier than the verb itself and add to a more complicated syntax of the legal texts.

Specific use of personal pronouns

One more particular feature of written legal English is the specific use of personal pronouns.

Avoiding “I” and “you” personal pronouns

The use of first and second person expression (“I” and “you”) is avoided at all costs. It can be illustrated with a sentence from contract examples on-line: *Subject to the Client complying with its obligations under these general terms, XXX agrees to complete and deliver the work to the Client in accordance with the timetable* (Contract examples). Using the third person in statutes and contracts is predominantly common.

Avoiding use of pronouns altogether

Another difference from the general English texts is avoiding use of pronouns for anaphoric functions, i.e. nouns are repeated constantly rather than using a pronoun after a person or thing is introduced, as in previous example the word *Client* is repeated instead of the pronoun *him*. As pronouns can sometimes have ambiguous refe-

rence, this technique can indeed enhance precision, but it makes the text “heavier”. Avoiding pronouns does have, however, an unintended benefit: it reduces the use of sexist language.

Avoiding sexist wording

Verbosity and more complex sentence structure in legal English texts are also caused by the determination to avoid sexist wording. Since there does not exist a pronoun in English that means “any person”, regardless of sex, very often “the ritual incantations *he or she, his or her* and *him or her* are used which is wordy and may become tedious” (Neumann 2004: 224). Some legal documents overtly declare that the masculine includes the feminine and the singular includes the plural, as in the following example from Kentucky state legislation:

446.020 Singular includes plural – Masculine includes feminine.

(1) A word importing the singular number only may extend and be applied to several persons or things, as well as to one (1) person or thing, and a word importing the plural number only may extend and be applied to one (1) person or thing as well as to several persons or things.

(2) A word importing the masculine gender only may extend and be applied to females as well as males (Kentucky Legislative Research Commission).

However, these efforts to achieve objectivity and generality can undermine precise communication, plain syntactical structures and transparency of a legal text.

The use of specific lexical features (synonyms) in written legal English

Variety in writing, particularly variety in vocabulary, is the typical virtue in many genres of writing. However, this is not the case in legal English writing. Indeed, when it comes to key terms, using the same term over and over again is expected. The reason for repetition of the same terms is to avoid confusion. As A. Enquist and L. C. Oates state “a different term for the same idea suggests to legal readers

that the writer of the legal text intended a difference in meaning” (Enquist, Oates 2001: 3). In the following example from standard contracts consistency of the repetitive use of the term “warranty” may seem boring, but legal readers – and, most importantly, writers – prefer accuracy over the confusing variety:

*Each of the **Warranties** shall be construed as a separate **Warranty**, and (unless expressly provided to the contrary) shall not be limited by the terms of any of the other **Warranties** or by any other term of this agreement (Share Purchase Agreement).*

However, sometimes a specific sort of synonyms is used in legal English writing and these are set doublets and triplets. Latin and French were used as legal languages in England for several centuries. The contacts with these two languages have had a big impact on the formation of the English legal terminology the bigger part of which is of Latin and French origin. The usage of vocabulary of various origin resulted in a specific feature of legal English – collocations involving synonyms or near synonyms which are called doublets and triplets. Most of such collocations include words of different origin (inheritances from Old English and loanwords from Anglo-French, Old French or Latin) though doublets and triplets of words of the same origin are also used in the legal documents:

Doublets and triplets including inheritances and loanwords:

***last will and testament** (last, will<O.E.; testament<L.), **able and willing** (able<O.Fr.; willing<O.E.), **goods and chattels** (goods<O.E.; chattels<O.Fr.), **lands and tenements** (land<O.E.; tenement<Anglo-Fr.), **breaking and entering** (break<O.E.; enter<O.F.), **right, title and interest** (right<O.E., title<O.Fr., interest<Anglo-Fr.) (etymologists according to etymologists according to Harper 2001–2010).*

Doublets and triplets including only loanwords:

***terms and conditions** (term, condition<O.Fr.), **perform and discharge** (perform<Anglo-Fr., discharge<O.Fr.), **null and void** (null<M.*

Fr., *void*<Anglo-Fr., O.Fr.), **peace and quiet** (*peace*<Anglo-French, *quiet*<O.Fr.), **force and effect** (*force*, *effect*<O.Fr.), **promise, agree and covenant** (*promise*<L., *agree*<O.Fr., *covenant*<O.Fr.) (etymologies according to etymologists according to Harper 2001–2010).

Doublets including only inheritances:

let and hindrance (*let*, *hinder*<O.E.), **have and hold** (*have*, *hold*<O.E.) (etymologies according to etymologists according to Harper 2001–2010).

These collocations appeared at the time when both English and French were used as law languages and, according to the researchers, “there was some concern as to whether the words for the same referent had the same meaning” (Beveridge 1998: 118). To avoid ambiguity the lawyers began to use collocations including two or three terms from different languages and thus to “rely on inclusiveness as a compensation for lack of precision” (Crystal, Davy. 1969: 208). Soon, doublets and triplets became a feature of legal English, and lawyers started using them not only for accuracy, but also as a stylistic element which helped to put greater emphasis on certain statements.

However, this stylistic feature is nowadays criticised by plain English supporters as it creates unnecessary confusion to the reader: “Using pairs of synonyms, or near synonyms, in legal writing suggests bloat, and using different words to convey the same meaning is a reliable sign of confusion. One is entitled to wonder whether drafters wouldn’t be better served by opting for one noun (and verb) and sticking with it” (Adams 2005). The means which historically helped to achieve accuracy now may become a reason for misunderstandings.

Conclusions

Modern legal English and its written form, in particular, have several distinctive features that make it stand apart from general English. These are most prominent in the sphere of terminology used and specific grammatical structures.

Most of the latter are used to achieve maximum accuracy and objectivity in the text.

Compound long sentences, often with inverted word order and numerous embeddings, are very characteristic of written legal English texts. Such long and complex constructions allow to define the whole legal principle in a single sentence which does not lose its meaning even if taken out of context. Efforts are taken to diminish the role of context in any legal English document.

In a written legal text attempts are also made to de-emphasize the actor and put the stress on actions, and thus to state the law as generally and objectively as possible. This is reached by means of extensive use of passive constructions and nominalisations.

Specific use of personal pronouns also contributes to objectivity and attempted generality of legal texts. There is a clear tendency to avoid first and second person pronouns and to use combinations of masculine and feminine pronouns when referring to the third person in legal texts.

Use of a specific sort of synonyms (doublets and triplets), though obscuring the clarity of the written legal text nowadays, used to contribute to the accuracy of legal written thought in the past. Most of doublets and triplets include synonyms/near synonyms from different languages which were originally used to cover distinct nuances of a legal concept and avoid possible ambiguity.

The extensive use of loanwords, specific syntactic constructions and other stylistic features make legal English formal and distant from everyday language. Some of this formality is necessary as legal English is used in official documents, but its extent is not always justified by the public which often considers legal English to be too opaque and incomprehensible. Its usage requires special knowledge of the lexical and syntactic structure of the legal language. Therefore, the offered outline is believed to be valuable in studying/using/translating legal English.

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AIŠKUMAS IR TIKSLUMO BEI OBJEKTYVUMO SIEKIS RAŠY TINĖJE TEISĖS ANGLŲ KALBOJE

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Straipsnio tikslas – išanalizuoti teisės anglų kalbos gramatikos (ypatingą dėmesį skiriant sintaksei) bei kai kurias leksikos ypatybes, kuriomis siekiama teksto tikslumo ir objektyvumo, taip pat aptarti, kaip šios ypatybės veikia teksto aiškumą. Straipsnyje nagrinėjamos ES, JK ir JAV įstatymų galios aktų ir sutarčių ištraukos.

Ištirta medžiaga rodo, kad teisės anglų kalbos tekstams būdingi ilgi, pasižymintys neįprasta žodžių tvarka sudėtiniai sujungiamieji ir prijungiamieji sakiniai, pasyvo ir nominalizacijos konstrukcijos, specifinė įvardžių vartoseną, ypatingi sinonimų junginiai ir kt. Šios priemonės padeda siekti tikslumo ir objektyvumo tekste, tačiau neretai padaro jį itin sudėtingą ir sunkiai suprantamą.

Teisės anglų kalba savo formalumu labai tolima nuo kasdienės anglų kalbos, todėl dažnai kritikuojama. Vis daugiau teisės tekstų autorių ir skaitytojų ragina ją paprastinti, tačiau teisės anglų kalba turi galias tradicijas ir jos vartosenos pokyčiai vyksta lėtai. Norint suprasti ir taisyklingai vartoti teisės anglų kalbą, būtina žinoti jai būdingas gramatines ir leksines stiliaus ypatybes.

Reikšminiai žodžiai: rašytinė teisės anglų kalba, gramatikos ir leksikos ypatybės, teksto aiškumas, tikslumas ir objektyvumas.

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