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А 43 **Актуальні проблеми навчання іноземних мов для спеціальних цілей:** Збірник наукових статей / Укладач: І.Ю. Сковронська. Львів: ЛьвДУВС, 2022. 173 с.

До збірника увійшли методичні напрацювання, що стосуються виховання мовної культури як забезпечення лінгвістичної безпеки держави, формування іншомої компетентності правоохоронців України зокрема, та міжкультурної іншомовної компетентності загалом, організації самостійної роботи здобувачів, інноваційних форм та методів навчання мов, психолінгвістичних можливостей людини при вивченні та використанні іноземних мов, здійснення освітнього процесу у сучасних умовах з використанням онлайн-навчання як альтернативної форми традиційного навчання. Закцентовано увагу на викликах та можливостях навчання мов у сучасних умовах, мультикультурному аспекті цієї проблеми.

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RELATIONSHIP BETWEEN LAW AND LANGUAGE

Abstract. The function of language is twofold, to communicate emotions and to give information. Reading, writing as well as thinking involve the similar process of organization, development, logical analysis, and expression. In every field of life, effective communication brings knowledge, improvement, and success. Moreover, this is particularly true in the case of the legal profession where the words in themselves are the tools of the trade.

Therefore, legal theorists have tried to construct theories of the meaning of legal language, and theories of legal interpretation, based on specific features of law, legal systems, and the use of language in making law.

***Keywords**: pragmatics, legal writing, legal terms, skills, understanding, interpretation, analysis.*

ВЗАЄМОЗВ'ЯЗОК ПРАВА І МОВИ

Анотація. Функція мови є подвійною: передавати емоції та передавати інформацію. Читання, письмо, а також мислення передбачають відповідний процес організації, розвитку, логічного аналізу та вираження. У кожній сфері життя ефективне спілкування сприяє знанням, вдосконаленню та успіху. Більше того, це особливо актуально в юридичної професії, де слова самі по собі є робочим інструментом.

Тому теоретики права намагалися побудувати теорії значення юридичної мови та теорії тлумачення права на основі специфічних особливостей права, правових систем та використання мови в правотворенні.

***Ключові слова:** прагматика, юридичне письмо, юридичні терміни, навички, розуміння, тлумачення, аналіз.*

Words are the essential tools of the law. In the study of law, language has great importance; cases turn on the meaning that judges ascribe to words, and lawyers must use the right words to enact the wishes of their clients. It has been said that you will be learning a new language when you study law, but it is a bit more complicated. There are at least four ways in which you encounter the vocabulary of law.

First, and most obviously, you will be learning new words that you probably have not encountered before. These words and phrases have meaning only as legal terms. Words or phrases such as res judicata, impleader, executory interest and, oblige students to acquire some new vocabulary. Learning the meaning of these words is essential to understand any case or discussion, which uses them.

Second, and a bit more difficult, some recognizable words take on different or new meanings when used in the law. Malice, for example, when used in the law of defamation, does not mean hatred or meanness; it means "with reckless disregard for the truth". Similarly, "consideration" in contract law, has nothing to do with thoughtfulness; it means something of value given by a party to an agreement. When a party is "prejudiced" in the law it usually means that the party was put at some disadvantage, not that the party is bigoted. "Fixtures" in property law are much more than bathroom and kitchen equipment. There are many words like this in the law, and students must shake loose their ordinary understanding of a word to absorb its legal meaning. Words that have distinct or specialized meanings in the law are sometimes called "terms of art" [4].

Third, there are words whose meaning expands, contracts, or changes, depending on the context or the place in which it is used. In one context (divorce, for example), a person may be considered a "resident" of a state if she has lived there for 6 months. In another context (getting a driver's license), a person may be considered a "resident" after just a few days. In one state, a person may be said to "possess" a firearm if it is within his/her reach in an auto. In another state, that person might have to be in control of the firearm to be considered in possession of it. Thus, the same word can have a different meaning depending on what question is being asked, and where it is being asked.

Fourth, some words have come to signify large bodies of law or legal doctrine, and act as shorthand terms for complex concepts. The terms “unfair competition,” “due process of law,” “foreseeable,” and “cruel and unusual punishment” are a few examples [4]. These terms have been subject to interpretation by judges in many cases over long periods, and there is little hope of finding a clear and concise definition that can serve in all contexts.

Law is a profession of words. It involves direct interaction with people and their intricate relationships. Therefore, perfection in the language is necessary for a lawyer. A lawyer needs two skills to be successful in his profession. Firstly, he should be able to write and express himself well. His writing should be clear, precise and to the point, to make his intention clear without any doubt or ambiguity. His writing must help him to get his ideas across effectively and to get the results he wants. Apart from his writing skills, he must also be efficient in oral advocacy. His speech must be simple and clear enough for others to understand and should have the capacity to convene others. The second skill necessary for the successful practice of law is knowledge of use the tools of the profession, namely, law books and other reference material [3]. A lawyer must know how and where to find the law. He must also develop a sufficient reading ability to spot useful references with minimum waste of time and effort. All these require that a lawyer should have a good command of language.

Anyone related to the legal field, such as a lawyer, a judge, a legislator, or any other person who may be involved in the process of drafting, enacting, and administering laws, must have a good command of the language for efficiency in the work. To succeed in the profession of law, therefore, one must realize the importance of language to the legal profession and must make every effort to acquire knowledge, skills, and proficiency in verbal ability.

However, it should be noted that the legal profession is mostly concerned with practical and factual writing, which is different from imaginative and creative writing. Legal writing always has a purpose; it aims at achieving practical results.

The use of language is crucial to any legal system, not only in the same way that it is crucial to politics in general but also in two special respects. Lawmakers

characteristically use language to make law, and law must provide for the authoritative resolution of disputes over the effects of that use of language. Political philosophers are not generally preoccupied with questions in the philosophy of language. However, legal philosophers are political philosophers with a specialization that gives language (and philosophy of language) special importance [1].

What is the relationship between the language that is used to make legal standards, and the law itself? If the law provides that a form of words determines the content of a standard (such as a term of a contract, a criminal offence, or a duty of the executor of a will), what is the effect of the use of the words? The question seems to demand general theories of the meaning of language and the interpretation of communicative acts. If there are no general theories to be had, then there is no general answer to the question. A theory of meaning and interpretation of legal language would not be very much less general than a theory of meaning and interpretation of language [2].

The dependence of the effect of legal language on context is an instance of a general feature of communication, which some philosophers of language have approached by distinguishing semantics from pragmatics. The distinction is, roughly, between the meaning of a word or phrase or another linguistic expression, and the effect that is to be ascribed to the use of the expression in a particular way, by a particular user of the language, in a particular context. The pragmatics of legal language is a vast field because the term ‘pragmatics’ could be used as a heading for much of what modern legal scholars and theorists have described as grounds for interpretation. In fact, ‘pragmatics’ could also be used as a heading for much that they have described as the theory of interpretation – since ‘pragmatics’ is a term not only for effects of communication but also for the study of those effects.

It is controversial whether legal pragmatics is simply a part of the pragmatics of language use in general. It stands to reason that if the pragmatics of language use depends on the context of an utterance, the legal context of a lawmaking use of language will have implications for the meaning conveyed and, therefore, for the law that is made.

Discussions of the pragmatics of legal language are expressly or implicitly premised on a view of the relation between a lawmaking use of language, and the law that is made. It is the view that if an agency or a person is authorized to make law, it makes the law that it communicates by its use of language. That 'communication model' must be qualified in at least four ways, because the law itself regulates the making of law:

1. the law that is made will be limited by any legal limit on the power of the lawmaker (as to the substance of the law that it can make, or as to the process by which it can lawfully make law)

2. rules of law may qualify the law that is made in a variety of ways that are not susceptible to any general characterization

3. courts may need to resolve indeterminacies in the effect of an act of lawmaking, and where they do so, their decisions may have conclusive legal effect (for the parties, and also for the future if the decision is treated as a precedent)

4. if a court departs from the law that the lawmaker communicated (for good reasons or bad), the decision of the court may still have conclusive legal effect (for the parties, and also for the future if the decision is treated as a precedent) [2].

Even with those qualifications, some theorists reject the communication model. They argue that the identification of legal rights and duties cannot be based merely on facts such as the fact that the authority has communicated this or that.

Legal writing is a substantial part of legal language. In many legal settings, specialized forms of written communication are required. In many others, writing is the medium in which a lawyer must express their analysis of an issue and seek to persuade others on their client's behalf. Any legal document must be concise, clear, and conform to the objective standards that have evolved in the legal profession.

There are generally two types of legal writing. The first type requires a balanced analysis of a legal problem or issue. Examples of the first type are inter-office memoranda and letters to clients. To be effective in this form of writing, the lawyer must be sensitive to the needs, level of interest, and background of the parties to whom it is addressed. A memorandum to a partner in the same firm that details definitions of

basic legal concepts would be inefficient and an annoyance. In contrast, their absence from a letter to a client with no legal background could serve to confuse and complicate a simple situation.

The second type of legal writing is persuasive. Examples of this type are appellate briefs and negotiation letters written on a client's behalf. The lawyer must persuade his or her audience without provoking a hostile response through disrespect or by wasting the recipient's time with unnecessary information. In presenting documents to a court or administrative agency, he or she must conform to the required document style.

The drafting of legal documents, such as contracts and wills, is yet another type of legal writing. Guides are available to aid a lawyer in preparing the documents but a unique application of the "form" to the facts of the situation is often required. Poor drafting can lead to unnecessary litigation and otherwise injure the interests of a client.

The legal profession has its unique system of citation. While it serves to provide the experienced reader with enough information to evaluate and retrieve the cited authorities, it may, at first, seem daunting to the lay reader. Court rules generally specify the citation format required for all memoranda or briefs filed with the court. These rules have not kept up with the changing technology of legal research. Within recent years, online and disk-based law collections have become primary research tools for many lawyers and judges. Because of these changes, there has been growing pressure on those ultimately responsible for citation norms, namely the courts, to establish new rules that no longer presuppose the publisher's print volume (created over a year after a decision is handed down) as the key reference.

Legal writing has several distinguishing features, such as authority, precedent, vocabulary, and formality.

1) Authority

Legal writing places heavy reliance on authority. In most legal writing, the writer must back up assertions and statements with citations of authority. This is accomplished by a unique and complicated citation system, unlike that used in any other genre of writing. For example, the standard methods for American legal citation are defined by two competing rulebooks: the ALWD Citation Manual: A Professional System of

Citation and The Bluebook: A Uniform System of Citation. Different methods may be used within the United States and in other nations.

2) Precedent

Legal writing values precedent, as distinct from authority. Precedent means the way things have been done before. For example, a lawyer who must prepare a contract and who has prepared a similar contract before will often re-use, with limited changes, the old contract for the new occasion. Or a lawyer who has filed a successful motion to dismiss a lawsuit may use the same or a very similar form of motion again in another case, and so on. Many lawyers use and re-use written documents in this way and call these reusable document templates or, less commonly, forms.

3) Vocabulary

Legal writing extensively uses technical terminology that can be categorized in four ways:

Specialized words and phrases unique to law, e.g., tort, fee simple, and novation.

Ordinary words have different meanings in law, e.g., action (lawsuit), consideration (support for a promise), execute (to sign to effect), and party (a principal in a lawsuit).

Archaic vocabulary: legal writing employs many old words and phrases that were formerly quotidian language, but today exist mostly or only in law, dating from the 16th century; English examples are herein, hereto, hereby, heretofore, herewith, whereby, and wherefore (pronominal adverbs); said and such (as adjectives).[citation needed]

Loan words and phrases from other languages: In English, this includes terms derived from French (estoppel, laches, and voir dire) and Latin (certiorari, habeas corpus, prima facie, inter alia, mens rea, sub judice) and are not italicized as English legal language, as would be foreign words in mainstream English writing.

4) Formality

These features tend to make legal writing formally. This formality can take the form of long sentences, complex constructions, archaic and hyper-formal vocabulary, and a focus on content to exclude reader needs. Some of this formality in legal writing is necessary and desirable, given the importance of some legal documents and the

seriousness of the circumstances in which some legal documents are used. Yet not all formality in legal writing is justified. To the extent, that formality produces opacity and imprecision, it is undesirable. To the extent that formality hinders reader comprehension, it is less desirable. In particular, when legal content must be conveyed to nonlawyers, formality should give way to clear communication.

What is crucial in setting the level of formality in any legal document is assessing the needs and expectations of the audience. For example, an appellate brief to the highest court in a jurisdiction calls for a formal style – this shows proper respect for the court and the legal matter at issue. An interoffice legal memorandum to a supervisor can probably be less formal – though not colloquial – because it is an in-house decision-making tool, not a court document. But an email message to a friend and client, updating the status of a legal matter, is appropriately informal.

Transaction documents – legal drafting – fall on a similar continuum. A 150-page merger agreement between two large corporations, in which both sides are represented by counsel, will be highly formal – and should be accurate, precise, and airtight (features not always compatible with high formality). A commercial lease for a small company using a small office space will likely be much shorter and will require less complexity, but may still be somewhat formal. But a proxy statement allowing the members of a neighborhood association to designate their voting preferences for the next board meeting ought to be as plain as can be. If informality aids that goal, it is justified.

Many U.S. law schools teach legal writing in a way that acknowledges the technical complexity inherent in law and the justified formality that complexity often requires, but with an emphasis on clarity, simplicity, and directness. Yet many practicing lawyers, busy as they are with deadlines and heavy workloads, often resort to a template-based, outdated, hyperformal writing style in both analytical and transactional documents. This is understandable, but it sometimes unfortunately perpetuates an unnecessarily formal legal writing style.

Recently, various tools have been produced to allow writers to automate core parts of legal writing. For example, transactional lawyers may use automated tools to check

certain formalities while writing and tools exist to help litigators verify citations and quotations to legal authorities for motions and briefs.

In conclusion, law is a profession of words. It involves direct interaction with people and their intricate relationships. Therefore, perfection in the language is necessary for a lawyer. A lawyer needs two skills to be successful in his profession. Firstly, he should be able to write and express himself well. Apart from writing skills, he must also be efficient in oral advocacy.

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