A Three-Step Strategy for Teaching Contract Drafting

A Study Based on US and UK[1] Sale and Purchase Agreements

Elisabeth Staels, Natasha Costello, Anton Osminkin[2]

Abstract: The main purpose of this article is to provide a three-step strategy for teaching contract drafting. The first step focuses on the negotiation of a business deal and on understanding the needs and objectives of the contracting parties. The second step deals with the practical process of drafting a contract, looking at contract structure and types of contract clauses. Finally, the third step describes the jurilinguistic key features, which provide a linguistic frame to the agreement.

Such a multifaceted approach enables teachers and students to picture the teaching process from a legal and jurilinguistic perspectives, as well as to consider contract drafting from the initial business deal and its negotiations to a range of details and specific text needed to be included in the written agreement.

The set of legal documents selected for this paper is a corpus of five UK and five US sale and purchase agreements the subjects of which represent goods and services as well as share capital.

Each step of the strategy includes a number of exercises that teachers can use with students for them to gain a better understanding of legal and linguistic aspects of contract drafting.

The students mentioned in the paper include law students from universities in Paris, France, studying legal English and legal translation courses as well as practising lawyers who have to deal with contract drafting in English.

Keywords: three-step strategy, contract drafting, contract structure, contract negotiations, teaching, legal English, jurilinguistics, linguistic frame, legalese, Plain English Movement, modals, SHALL, discursive devices.

[1] We use the expression 'US' (United States of America) for ease of reference in this article. The contracts in our corpus are governed by laws of different States. Similarly we use the expression 'UK' (United Kingdom) for ease of reference, but we are referring to contracts made under the law of England, or of England and Wales. The titles of all of the contracts in our corpus include the word 'Agreement', We use the expressions 'agreement' and 'contract' interchangeably in this article, but we recognise that the expression 'agreement' can have a wider meaning than 'contract'. A contract is an agreement which is binding on the parties and enforceable by law.

[2] Elisabeth Staels, eslegalenglish@gmail.com; Natasha Costello, nclegalenglish@gmail.com; Anton Osminkin, osminkin.anton@isitparis.eu.

1. *Introduction*

When teaching contract drafting, legal English teachers tend to focus on different aspects, depending on their professional expertise. Legally-trained teachers are usually more deal-focused and look at the legal content of a contract, whereas linguists concentrate more on the legal language.

On occasion, though not often, groups of experts will teach contract drafting from a multifaceted perspective. We share this vision because we find such approach very effective and comprehensive. Thus, in this paper, combining our professional experience, we would like to describe a three-step strategy for teaching contract drafting. Our approach involves three elements:

- helping students understand how a business deal is negotiated and how this is reflected in the drafting of a contract;
- understanding how the content of a contract is organised and the types of clauses it contains;
- analysing features needed to provide a proper jurilinguistic frame to the contract.

In the second part of this paper, we will present the methodology of our study as well as a short description of our corpus of sale and purchase agreements.

The third part of the study will describe the process of negotiating a business deal and will include exercises to identify negotiated terms in sale and purchase agreements. This part has been written by Elisabeth Staels, a former member of the Brussels' Bar and former in-house counsel, the President of the European Legal English Teachers' Association (EULETA), who now teaches legal English to non-native English-speaking lawyers based in France.

The fourth part of the paper describes a method for teaching the organisation and content of sale and purchase agreements, with a number of classroom activities. This part has been written by Natasha Costello, solicitor (non-practising) and former senior lecturer on the Legal Practice Course at Manchester Metropolitan University. Natasha teaches legal English to students at the Université Paris Nanterre and also to non-native English-speaking lawyers based in France. Natasha is a member of the EULETA Board.

The fifth part of the paper provides an approach to teaching the jurilinguistic frame of the legal documents from our corpus. In addition, a number of exercises helpful at this stage of contract drafting will be mentioned. This part has been written by Anton Osminkin, a jurilinguist teaching legal translation from French into English to law students at the Institute of Intercultural Management and Communication (ISIT Paris) and working as a legal translator at the Court of Appeal of Paris. Anton is also a member of the EULETA Board.

Our study is not inscribed in a precise legal or linguistic theoretical framework, but it is nevertheless inspired by Common Law, Civil Law, Contract Law as well as by cognitive grammar, discourse analysis and corpus linguistics.

We hope that our study will be interesting and useful for lawyers, legal English teachers, and jurilinguists, as well as for legal translators and interpreters. In addition, this paper may be of interest for law students who are beginning or continuing their academic journeys in university and wish to gain more knowledge of legal drafting and its jurilinguistic aspects.

2. *Methodology*

The corpus collected for this study is comprised of five UK and five US agreements, drafted over the period 2000-2023, with a total of 191,959 words. This has allowed us to notice a certain number of features specific to British and American contract drafting.

The US agreements have been gathered from the database Onecle https://www.onecle.com/. This is a free e-platform which stores agreements executed in the US with domestic and overseas partners. The documents are organised in two specific manners: by agreement types and by American states in which these agreements were executed.

The UK agreements are available on the Internet, and can be read and consulted either online or in downloadable formats.

Our corpus is not large, but it is balanced and condensed. It can also be defined as a compact specialised corpus. A. O'Keeffe[3] confirms the advantages of this type of corpus since specialised corpora are carefully targeted. Even with relatively small amounts of data, specialised lexis and structures are likely to occur with more regular patterning and distribution than in a large, general corpus.

Although the main concept of all the agreements is selling and purchasing, the subject matters of the agreements, i.e. items and objects to be sold and purchased, are different. They include goods (nutraceutical supplements), securities, industrial products (polysilicon), semiconductors, shares, and share capital. Hence, these agreements reveal a junction of different branches of law.

The corpus of the legal texts has been studied from a legal and jurilinguistic perspective. In other words, each of us, i.e. the authors of this paper, refer to the corpus in a different manner, which depends on our teaching and professional approach. In terms of the quantitative analysis, we have collected the legal patterns provided in the documents, i.e. different types of legal provisions. Meanwhile, we have gathered the jurilinguistic aspects and forms of the documents, such as the use of grammatical tenses, the Plain English Movement or legalese style of drafting, using modals, textual devices, and connectors. The qualitative analysis has enabled us to distinguish legal and jurilinguistic features common and specific to each document in our corpus. This, in turn, lead us to the conclusions which have shaped our three-step strategy for teaching contract drafting.

In addition, it should be noted that this study is based on our experience of teaching legal English and drafting in various institutions and law firms in Paris, which includes lectures, seminars, workshops and individual online and offline classes.

In this paper, when referring to our learners, we use the term ‘students’ to represent both professional lawyers and law students at universities.

For our quantitative analysis, we used Word, Excel, as well as certain tools provided by British National Corpus and SketchEngine. Moreover, in order to make it easier to extracts modal verbs and contextual connectors, such as herein, thereof, wherein, etc., we have used the free software l Parts-of-speech.Info as shown in the following picture:

[3] A. O’KEEFFE, *From Corpus to Classroom: Language Use and Language Teaching*, Cambridge, 2007, p. 98.

3. Contract Negotiation

When teaching contract negotiation and contract drafting, We should always tell students at the beginning of the course: “Choose your words carefully”.

One word can jeopardise a deal. For example, choosing the word « shall » instead of « should » can have important consequences.

On the last day of negotiations at the UN Climate Change Conference in Paris (COP 21), US Secretary of State John Kerry spotted the word « shall » in the draft climate change agreement (the ‘Paris Agreement’)[4] and he immediately alerted the French diplomats. Mr Kerry stated that unless the word « shall » was replaced by « should », the US could not sign the Paris Agreement.

The wording of Article 4 paragraph 4 of the Annex to the Paris Agreement adopted at the UN Climate Change Conference (COP 21) reads as follows:

(Example 1) First version:
Developed country Parties **shall** continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances[5].

(Example 2) Final version:
Developed country Parties **should** continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances[6].

The example of the Paris Agreement shows us that it is of the utmost importance that the written agreement reflects exactly what the parties have negotiated.

But what does it mean to negotiate an agreement? Where do you start? How do you go about it?

[4] Framework Convention on Climate Change, Paris Agreement, United Nations, 12 December 2015.
[5] Framework Convention on Climate Change, Annex, Paris Agreement, Article 4, paragraph 4, the first version, United Nations, 12 December 2015.
[6] Framework Convention on Climate Change, Annex, Paris Agreement, Article 4, paragraph 4, the revised version, United Nations, 12 December 2015.

Students should understand that a lawyer cannot draft an agreement without a thorough understanding of the needs and objectives of the parties to the agreement. In a business environment dealing with the sale and purchase of goods, services, or shares, this means that a lawyer has to understand the client's business and company structure, specific sector and environment the business operates in, and the product or service they want to sell or purchase. In the discussions with their client and counterpart, a lawyer should raise the following questions and listen carefully to the answers:

- What?
- Where?
- When?
- How?
- Why?

For example: What exactly does the client want? How much are they willing to pay? What is the timeline? What about risk allocation? Who will be liable for what? Can liability be limited? How can this be done? A lawyer should not only understand their client's goals but also the client's counterpart's goals and limits.

Without a thorough understanding of the business deal, a lawyer cannot draft the agreement.

For teaching negotiation and contract drafting to students, we can use the following 3-step approach:

1. Ask the students to choose an everyday product or service to sell: (i) a product, for instance: a set of books, furniture, a bicycle, a car, (ii) a service, for instance: guitar classes, mathematics or French lessons, and to negotiate the sale of this product or service.

It is important that the students choose an everyday, straightforward product or service they know well[7].

2. Ask the students to list different types of commercial contracts for the sale of goods or services (for instance: sale of goods, services agreement, share purchase agreement) and to determine under which category of contract the sale of their product or service falls.

3. Give the students access to a corpus of signed commercial contracts for the sale of goods and services. Ask the students to identify in the signed contracts the several aspects the parties to the contracts have negotiated.

To better understand each stage of the activity, here is a detailed description of the 3-step exercise:

Exercise I: Choose an everyday product to sell

The suggested time for this exercise is 45 minutes.

Divide the class in groups of 4 students. In each group there is a seller, a buyer, and two lawyers. One lawyer assists the buyer, the other lawyer assists the seller.

Ask the students to choose an everyday product or service they would like to sell or buy. At the end of several rounds of questioning and discussion, both parties should have a thorough understanding of the

[7] T. L. STARK, *Thinking like a lawyer – to come to an agreement,* 2004, p. 223.

product or service, the state it is in or the conditions under which it will be sold, at what price, payment terms (instalments or one payment), and the delivery place and terms. Parties should have also discussed the risks of the deal, who bears these risks, and whether it is possible to limit the risks. Is it possible to put an end to this agreement? If so, how?

The exercise of negotiating the selling and buying of an everyday product will show the students that it is important to cover all the aspects of the deal and to be very clear about what you want and under which terms and conditions.

Exercise II: Identify types of commercial sale and purchase contracts

The suggested time for this exercise is 30 minutes.

Ask the students to brainstorm and come up with as many types of sale and purchase contracts as they can think of. The most probable answers are: sale of goods, supply of services, sale of shares of a company, sale of a building or land. Ask them which type of contract their sale of product or service would fit into.

The students should now have a good understanding of the complexity and difficulty of negotiations of goods or services. They can now understand that to negotiate well and reach your business objectives, you have to know what your priorities are, what are the important aspects of the deal, which aspects are less important and on which points you can lower your requirements.

It might take several rounds of questioning and discussions before the seller and the buyer agree on all aspects of the deal.

The seller and the buyer now have a business deal which reflects each party's objectives. However, they do not yet have a written contract or an agreement[8].

It is the lawyers' job to write the facts of the deal into a proper sale and purchase contract or agreement, with specific clauses and contract concepts. It is in the parties' interests to draft the agreement as clearly as possible, reflecting precisely the parties' negotiations. Clear and precise wording will avoid misunderstandings, different interpretations of the contract, and possible litigation.

All this can be a bit vague and theoretical for students. They can easily underestimate the complexity and difficulty of the negotiation and drafting process. If you would like them to see how the terms of the negotiations are worded in commercial sale and purchase contracts and agreements, you can compile a corpus of signed sale and purchase agreements and let your students work with these "real world" contracts.

Exercise III : Give access to a corpus of signed sale and purchase agreements – ask the students to identify the terms of the negotiations in the sale and purchase agreements.

The suggested time for this exercise depends on the length and complexity of the corpus - probably between 45 minutes and 1h30.

Give the students access to a corpus of signed commercial agreements of different types of goods and services and give them the following tasks:

- identify the different types of agreements in the corpus;
- explain what the parties have negotiated regarding the product, the price, and the delivery terms;

[8] In UK and US contract negotiations it is common for the business deal to be recorded in heads of terms which are then forwarded to a lawyer to record in a written contract.

- more advanced task will be finding an indemnity clause and explaining why the parties have included this.

Identify different types of contracts

When we look at our corpus, we can identify several types of contracts, for instance:

- Sale of goods agreement:
  - Equinox Neutraceuticals and Stacked Digital LLC;
  - Semiconductor purchase agreement – Motorola inc and Freescale Conductor Inc.
- Sale of goods and services agreement:
  - Standard purchase agreement between Tekelec and Arbinet Thexchange Inc.;
  - General purchase agreement Egenera Inc and Goldman, Sachs and Co.
- Share purchase agreement:
  - ValueAct Capital Master Fund LP and Valeant Pharmaceuticals International Inc.;
  - Galliford Tly PLC, Goldfinch Ltd and Bovis Homes Group Plc.;
  - Agreement for the sale and purchase of Sky Plc.

From looking at a corpus of signed sale and purchase contracts, students can understand that it is important for the parties to have a thorough understanding of the business deal and to negotiate your business deal in detail so that each party's role, goal, rights and obligations are clearly reflected in the contract.

We give you below some examples from our corpus where the students can see that the terms of the negotiations are reflected in the wording of the contract or agreement.

Some clauses are short and drafted in a straightforward language. Other clauses are lengthy with a detailed description of a procedure or process to follow.

The example clauses we use below for that purpose are:

- A contract clause defining the product which is the object of the sale and purchase agreement;
- A contract clause explaining the delivery terms of the product or service;
- A contract clause defining the conditions and payment of an indemnity.

Two examples of contract clauses defining the product

1). In the Equinox Neutraceuticals and Stacked Digital LLC agreement from our corpus the definition of the product is straightforward: the objects clause of the agreement reads as follows:

(Example 3)Sale of Goods

1. The Seller will sell, transfer and deliver to the Purchaser based on individual future orders the following goods (the 'Goods'):

2. Nutraceutical supplements.

2). In the ValueAct Capital Master Fund LP and Valeant Pharmaceuticals International Inc agreement from our corpus the definition of the goods to be sold, defined as *Purchased Securities and any and all rights and benefits incident to the ownership thereof,* and the Purchase price are drafted in the same clause as they are

linked and the Purchased Securities cannot be identified without a price definition mechanism. We can imagine that the price definition mechanism is the result of a negotiation between seller and buyer.

(Example 4) 1.1 Subject to the terms and conditions of this Agreement, at the Closing (as defined below), the Seller shall sell, convey, assign and deliver to the Company, and the Company shall purchase from the Seller, the Purchased Securities and any and all rights and benefits incident to the ownership thereof, at the per share amount equal to the Purchase Price (as defined below). The number of shares of the Purchased Securities shall be determined by dividing (a) $275,000,000 (the "Gross Amount") by (b) the per share price equal to 94.23% of the 20-day average closing price of the Common Shares on the New York Stock Exchange for the 20 consecutive trading days up to and including February 24, 2011 (the "Purchase Price").

A contract clause explaining the delivery terms of the product or service

In the Semiconductor purchase agreement – Motorola Inc and Freescale Conductor Inc from our corpus the delivery clause reads as follows:

(Example 5) 3.4 Delivery. Freescale will use commercially reasonable efforts to deliver Products pursuant to a mutually agreeable schedule. Notwithstanding anything to the contrary in this Agreement, if Freescale is required to allocate Product under 2-615 of the Uniform Commercial Code, Freescale may adopt an equitable plan of allocation, taking into consideration the percentage of volume purchased by Motorola for specific Products affected by the plan, and adjust delivery schedules accordingly. Except as otherwise expressly provided, Motorola will not be entitled to any price reduction or other remedy under this Agreement or otherwise as a result of any plan of allocation or adjusted delivery schedule adopted by Freescale as a result of such Product allocation.

It is clear from the delivery clause that this part of the business deal has been negotiated in detail.

The wording of the clause is rather complex. The words *reasonable efforts, mutually agreed schedule and an equitable plan of allocation* show that parties made an effort to reflect the complexity of the delivery of the product respecting each other's requirements and constraints:

- *Freescale will use commercially reasonable efforts to deliver the products;*
- *The delivery follows a mutually agreed schedule;*
- *Delivery schedules can be adjusted according to an equitable plan of allocation.*

A contract clause defining the conditions and payment of an indemnity

Black's Law Dictionary defines an indemnity as 'A duty to make good any loss, damage, or liability incurred by another'. By reading the indemnity clause in the Standard purchase agreement between Tekelec and Arbinet Thexchange, Inc., from our corpus (clause copied below) we understand that the parties want to be very careful about liability and which party may indemnify the other party and under which circumstances. The indemnity clause takes almost an entire page and sets out the several steps of the indemnity process. The clause is drafted in detailed, nuanced language. For instance:

- The words "promptly" and "first" in the following sentence:

(Example 6) Buyer shall notify TEKELEC in writing of any such suit or proceeding promptly upon Buyer's first learning of such suit or proceeding.

- The words « sole » « the right to settle ….on any terms ….deems desirable »

(Example 7) TEKELEC shall have sole control over any such suit or proceeding, including, without limitation, the right to settle on behalf of Buyer on any terms TEKELEC deems desirable in the sole exercise of its discretion.

Indemnity clause in full:

(Example 8) 10. INDEMNITY. Subject to Buyer's fulfillment of all Its obligations under this Agreement, TEKELEC will defend any suit or proceeding brought against Buyer insofar as such suit or proceeding shall be based upon a claim that the unmodified Software owned by TEKELEC infringes any United States patent or copyright (a U.S. Proprietary Right). Buyer shall notify TEKELEC in writing of any such suit or proceeding promptly upon Buyer's first learning of such suit or proceeding, and shall provide TEKELEC at no cost with such assistance and cooperation as TEKELEC may reasonably request in the defense thereof. TEKELEC shall have sole control over any such suit or proceeding, including, without limitation, the right to settle on behalf of Buyer on any terms TEKELEC deems desirable in the sole exercise of its discretion. Subject to Buyer's fulfillment of its obligations under this Section 10, TEKELEC shall pay all damages and costs finally awarded against Buyer (or payable by Buyer pursuant to a settlement agreement) in connection with any such suit or proceeding, provided, however, that TEKELEC's obligations to pay such damages and costs on behalf of Buyer shall not exceed the amounts paid by Buyer hereunder for such Equipment or Software.

TEKELEC shall not enter into any settlement agreement pursuant to this Section 10 in excess of such amount without the prior consent of Buyer, which approval will not be unreasonably withheld. In the event that the Equipment or such Software becomes, or in TEKELEC's opinion is likely to become, the subject of a claim of infringement of a U.S. Proprietary Right, Buyer shall, upon receipt of written instructions from TEKELEC, cease to use such Equipment or Software and TEKELEC may at its option (i) modify the infringing Equipment or Software so that the use thereof by Buyer ceases to be infringing; or (ii) procure for Buyer the right to continue using the Equipment or Software as permitted hereunder; or (iii) if, neither (i) nor (ii) is commercially reasonable, demand the return of all units of the Equipment or Software and upon receipt thereof, refund to Buyer the depreciated value of said units of such Equipment or Software, based on a five (5) year straight line depreciation, and this Agreement shall terminate with respect to such Equipment or Software.

TEKELEC shall have no liability to Buyer whatsoever for any loss or damage resulting from a claim of infringement or wrongful use of a U.S. Proprietary Right based upon and arising from (i) TEKELEC's compliance with Buyer's designs, specifications or instructions, (ii) the use of the Equipment or Software in combination with any equipment, products, software or data not manufactured, designed or assembled by TEKELEC, or (iii) any unauthorized alteration or modification of any Equipment or Software. The parties both agree to indemnify and hold harmless each other against any suit, claim or proceeding brought against the other party for direct damages that result from death, bodily injury or damage to personal, tangible personal property, to the extent the damages are proven to be the result of the indemnifying party's actions or inactions.

It is clear from the examples above that "translating" the business deal into a legal document, the written contract, is a complex task which requires several skills. The process requires from the lawyer a thorough understanding of the business deal and of the legal concepts to give effect to that deal, and a fine mastering of the English language, whether the contract or agreement is written in Plain English or legalese.

4. Contract Content

When it comes to transposing the facts of the deal into a formal contract or agreement, lawyers rarely start with a blank sheet of paper. Instead they will usually look for a template of a similar type of contract to the one they wish to draft. One of the advantages of this is that it saves time: a lawyer does not have to start from scratch but can simply adapt the template to their client's deal. But a lawyer needs to be careful with this approach. They need to check that the content and language of the template contract accurately reflect what their client has agreed. And they should avoid a copy-paste approach of mixing content from different contracts since this could lead to inconsistencies.

One way to start a course on contract drafting is by looking at some example contracts with students, to help them understand how the content of an English-language commercial contract is usually organised.

Students from civil law jurisdictions might find English-language contracts overwhelming because they are often very long:

> One well-known practical matter in relation to contracts in the common law, and in particular in relation to negotiated commercial contracts, is the custom of drafting lengthy, detailed documents.[9]

But while UK and US commercial contracts might be long, they usually follow a similar structure. Being familiar with this structure will help students navigate their way around these contracts and understand how the component parts of a contract can be organised.

A study of our corpus shows that UK and US commercial contracts contain the following parts. As a preliminary exercise, we can ask students to try to place these parts in the order that they appear in a contract (see **Exercise IV**)[10].

Exercise IV: The parts of a contract

The suggested time for this exercise, including discussion of the different parts of the example contracts, is 45 minutes, although it could take longer, depending on the number of example contracts used.

Give students - on a slide or on pieces of paper - the following **parts of a contract** and ask them to place these parts in the order that they would appear in a contract. In other words, ask students which part would

[9] J. CARTWRIGHT, *Contract Law: An Introduction to the English Law of Contract for the Civil Lawyer*, 2016, p. 71. Cartwright explains that a lawyer from a civil law system 'may draft a much shorter contract, saying that he need not include in the document all the details of the terms which [their civil] code will necessarily import into a contract of this kind', J. Cartwright, *op. cit.*, p. 217.

[10] A similar, alternative exercise, which includes a listening activity, can be found in Chapter 8: Contract drafting and review in N. Costello and L. Kulbicki, *Practical English Language Skills for Lawyers: Improving Your Legal English*, 2023.

come first in the contract, which part would come second, and so on (allow 5 minutes for this preliminary task)[11].

Parts of a contract

SIGNATURE BLOCKS	APPENDICES	DEFINITIONS
RECITALS - background to the contract	**INTRODUCTORY PARAGRAPH** - name of the contract, date of the contract, names and addresses of the parties	**OTHER CORE PROVISIONS** - other terms of the contract. For example: other obligations, warranties, termination.
BOILERPLATE - also called 'miscellaneous provisions'	**MAIN PROVISIONS** - the most important terms of the contract, for example: the obligation to pay the price.	**WORDS OF AGREEMENT** - words to show that what follows are the terms that the parties have agreed.

Next, ask students to identify the parts of a contract, and their order, in some example contracts (for example, the contracts in our corpus). From a study of our corpus we can see that the following order is usual[12]:

1. An introductory paragraph

All of the contracts in our corpus contain an introductory paragraph[13] which in most cases includes the name of the contract (for example, 'Semiconductor purchase agreement'), the date of the contract, and the names and addresses of the parties to the contract.

2. Recitals

The recitals set out the background to the contract. They are not strictly necessary but can help to explain why the parties have entered into the contract. Most of the contracts in our corpus have recitals and these are laid out in brief, lettered (A, B, C etc) paragraphs.

3. Words of agreement

The words of agreement make it clear that what follows are the terms that the parties have agreed. Some of the contracts in our corpus contain the simple sentence: 'It is agreed'. Two of the contracts use a sub-heading 'Agreement'.

4. Definitions

All of the contracts in our corpus relate to sales and purchases, and they all include definitions of the items being sold and purchased. Students could compare different ways of defining terms. For example:

(Example 9) "Products." The term "Products" shall mean those TEKELEC product[s] listed in the Quotation.'

[11] Some of the parts include additional explanation to help the students. This activity works well when students work together in small groups.
[12] See T. L. Stark, *Drafting Contracts: How and Why Lawyers Do What They Do*, 2013 and C.M. Adams, P.K. Cramer, *Drafting Contracts in Legal English*, 2013 for more detailed explanations of the different parts of a contract.
[13] Sometimes called the 'preamble' - see T. L. Stark, *op. cit.*

(Example 10) Freescale will sell to Motorola, and Motorola will buy from Freescale hardware, software, or a combination of hardware and software (collectively "Products").

In these examples, we see that there is a definition of 'Products', to avoid having to repeat throughout the contract a more lengthy description of the items being sold[14]. It is interesting that half of the contracts in our corpus contain definitions in a separate clause, like the first example here[15], and the other half give definitions in context, like in the second example. We could ask students which of these they find easier to read.

From a drafting perspective, it is also important to notice that a defined term has a capital letter (in this example: **P**roducts). Wherever the word 'Products' is written with a capital letter in the contract, it will have this defined meaning. However, the word 'products' with a lower case letter will be presumed to have its 'ordinary' meaning[16]

5. Main provisions and 6. Other core provisions

The rest of the contract contains the parties' expressly agreed terms. These start with what we could call the 'main provisions' – the most important terms of the contract - and are followed by 'other core provisions'[17]. Some lawyers refer to these parts of a contract together as the 'main body' of the contract[18].

The contracts in our corpus relate to sales and purchases, and we can see that the 'main provisions' are the clauses imposing obligations on the sellers to sell and on the buyers to buy (and pay the purchase price). An example of this is Example 4 above.

After the main provisions, the contracts in our corpus contain various other core provisions. There is no particular pattern in the content or order of the clauses, although most of the contracts have clauses relating to warranties, limitation of liability, and confidentiality. An indemnity, such as that described above in Example 8 would also be contained in the other core provisions.

7. Boilerplate

Boilerplate refers to the general terms found at the end of a contract, before the signature blocks. In our corpus, some of the contracts include these in a separate clause titled 'General provisions', or 'Miscellaneous provisions'. Lawyers often refer to these as being 'standard' clauses: The Legal Information Institute of Cornell Law School[19] defines 'boilerplate' as '*a colloquial term used to describe stock language in a legal*

[14] See T. L. STARK, *op. cit.*, for other reasons why we might use definitions in a contract.
[15] Some contracts, although none in our corpus, include definitions in a separate appendix at the end of the contract.
[16] Cambridge Dictionary defines a product as '*something that is made to be sold, usually something that is produced by an industrial process or, less commonly, something that is grown or obtained through farming'* https://dictionary.cambridge.org/dictionary/english/product. In the case of GB Building Solutions Limited (in administration) v SFS Fire Services Limited (t/a Central Fire Protection) [2017] EWHC 1289 (TCC), the court agreed with the Claimant that Practical Completion had a different meaning from practical completion. '*The claimant's fundamental argument is that there is no reason to treat the definition of "Practical Completion", as a capitalised phrase, as applying to clause 6.1, under which the definition of "Terminal Date" – which is itself another defined phrase – is defined as the date of practical completion (a non-capitalised phrase) of the subcontract as determined in accordance with clause 2.20.*'
[17] 'Main provisions' and 'other core provisions' are not technical or legal expressions. Other writers might use different terminology.
[18] The technical term for the parts of the contract which come after the words of agreement are the 'operative provisions'.
[19] https://www.law.cornell.edu/wex/boilerplate

document that appears in all instruments of that type; general, standardized language in a legal instrument'. However, our corpus shows that there is no 'standard' list of boilerplate clauses and these are not written in 'standardised' language. The most common boilerplate clauses in our corpus relate to entire agreement, governing law, severability, assignment, and variation.

8. Signature blocks

The precise requirements for signing a contract will depend on the jurisdiction in which a contract is made. All of the contracts in our corpus contain signature blocks at the end of the contract (although followed in some cases by appendices - see below). And in most cases the signature blocks are preceded by a sentence - called a 'testimonium clause' – beginning 'In witness whereof…'.

9. Appendices

To make a contract easier to read, some information can be moved to a separate place at the end of the contract. Most of the contracts in our corpus contain this and in most cases it comes after the signature blocks. However, there seems to be no consistency in how to label these parts of an English-language contract. Students could be asked to compare the language used in the contracts in our corpus. They will find the words: 'Attachment', 'Appendix', 'Addendum', and 'Schedule' ('Schedule being more common in the UK contracts)[20].

After this preliminary exercise, students should have a better understanding of the typical structure of an English-language commercial contract and the types of provisions that it might contain[21].

Being familiar with the structure of a contract can provide a framework for the content of a contract but a lawyer still needs to draft specific provisions to reflect their client's own deal[22]. So how can we transform the business deal, as discussed above in the third part of this paper , into contract clauses?

Tina Stark refers to this process as '*translating the business deal into contract concepts*'[23] . Her method involves taking each part of a deal and translating it into one of seven different contract concepts: *Representations, Warranties, Covenants, Rights, Conditions, Discretionary authority, Declarations*.

[20] Mark Anderson states "*Sometimes the Schedules are called Annexes, Annexures, Appendices, Attachments or other names. Some drafters make a distinction between Schedules (which set out provisions affecting the parties' rights and obligations under the present agreement); and attachments (which are not part of the present agreement but have been included for some good reasons, e.g. to show the format of a licence which the parties will sign if certain conditions are met). This is a matter of personal preference, the important point being to identify clearly within the main part of the agreement the status of any documents attached to the main agreement (i.e. whether the provisions in such documents are to form part of the agreement).*" M. ANDERSON, V. WORONER, *Drafting and Negotiating Commercial Contracts*, p. 57.

[21] This is the typical structure of an English-language commercial contract but it is not the only way to organise the content of a contract. For example, the ICC Model International Sale Contract contains a part A: Specific Conditions (terms specific to that deal) and a part B: General Conditions (see https://iccwbo.org/business-solutions/model-contracts-clauses/icc-model-international-sale-contract/). And in her book, '*Secrets of Productive Contracts: How to think digitally and write paperless contracts for a faster future*' Checklist Legal, 2017, Verity White proposes a 'Reverse Sandwich Contract' which contains a key details table at the front of the contract.

[22] It is a fact that many UK and US commercial contracts are long, but we are not suggesting that long is better. We agree with Alex Hamilton that "*Contracts should be short, clear, reasonable, and relevant*" A. Hamilton, 'GenAI and commercial contracting: what's the point?', November 2023, https://www.radiantlaw.com/resources/genai-and-commercial-contracting-whats-the-point.

[23] T. L. STARK, *op. cit*. p. 10.

Cynthia Adams and Peter Cramer, in their book, '*Drafting Contracts in Legal English*'[24], follow a similar approach:

> As a contract drafter, you will decide how each agreed term will be expressed as a contract provision.

They use eight 'categories of contract provisions': Obligations and corresponding rights, discretionary powers, procedural statements, conditions, declarations, express warranties, performatives, exceptions.

Essentially, these methods involve a lawyer thinking about the purpose behind their drafting. For example, taking a few of these concepts[25], a lawyer can ask: is the purpose to impose an **obligation** on one of the parties to the contract, for which remedies will be available for breach? Is the intention to give a party a **discretion,** a choice whether or not to do something? Is the purpose simply to record something that the parties have agreed, in other words a **statement of fact**?

Exercise V: identifying contract concepts

The suggested time for this exercise is 10 minutes, although it could take longer if more examples are used.

Ask students to look at some contract clauses and identify different types of concepts which are being used. Teachers could use these two examples cited earlier in this paper :

(Example 11) Subject to the terms and conditions of this Agreement, at the Closing (as defined below), the Seller shall sell, convey, assign and deliver to the Company, and the Company shall purchase from the Seller, the Purchased Securities and any and all rights and benefits incident to the ownership thereof, at the per share amount equal to the Purchase Price (as defined below). The number of shares of the Purchased Securities shall be determined by dividing (a) $275,000,000 (the "Gross Amount") by (b) the per share price equal to 94.23% of the 20-day average closing price of the Common Shares on the New York Stock Exchange for the 20 consecutive trading days up to and including February 24, 2011 (the "Purchase Price").

Here we can see that there are **obligations** on the Seller to sell and the Buyer to buy: 'the Seller shall sell, convey, assign and deliver to the Company, and the Company shall purchase from the Seller, the Purchased Securities'

The final part of this clause 'The number of shares of the Purchased Securities shall be determined…' is simply **a statement of fact** about how the number will be calculated.

(Example 12) Delivery. Freescale will use commercially reasonable efforts to deliver Products pursuant to a mutually agreeable schedule. Notwithstanding anything to the contrary in this Agreement, if Freescale is required to allocate Product under 2-615 of the Uniform Commercial Code, Freescale may adopt an equitable plan of allocation, taking into consideration the percentage of volume purchased by Motorola for specific Products affected by the plan, and adjust delivery schedules accordingly.

[24] C. ADAMS and P. CRAMER, *op. cit.*, p. 79.
[25] For more details on these different concepts and provisions, see T. L. STARK, *op. cit.*, and C.M. ADAMS and P.K. CRAMER, *op. cit*.

The first sentence of this clause, 'Freescale will use commercially reasonable efforts to deliver Products pursuant to a mutually agreeable schedule' imposes an **obligation** on Freescale to deliver the goods. The words 'Freescale may adopt an equitable plan of allocation' show that Freescale has a **discretion.** It has the choice to adopt an equitable plan of allocation and adjust the delivery schedules.[26]

Students could also be encouraged to think about the original negotiation exercise in Exercise I above . What was the purpose behind each part of their deal and how could they translate that into contract clauses, using different contract concepts?

Exercise VI: contract language.

The suggested time for this exercise is 5 minutes, although it could take longer if more examples are used.

Taking this one step further, students can start to examine the language which is used to express each type of contract concept. Using Examples 11 and 12 above:

In Example 11, **obligations** are expressed by the word 'shall': 'the Seller **shall** sell, convey, assign and deliver to the Company, and the Company **shall** purchase from the Seller, the Purchased Securities'[27]

However, in Example 12, the obligation is expressed by the word 'will': 'Freescale **will** use commercially reasonable efforts to deliver Products'[28].

Tina Stark prefers to use **shall** to impose an obligation on a party to a contract[29], but plain English advocates might prefer other words.[30] In the next part of this paper, we will examine some of these linguistic differences in more detail. Whichever word is chosen, contract drafters should be consistent throughout the contract in the language they use to express an obligation.

In Example 12, the **discretion** is expressed by the word 'may': 'Freescale **may** adopt an equitable plan of allocation'. Tina Stark also recommends using **may** to express a discretionary authority.[31]

The **statement of fact** in Example 11 uses the word 'shall': 'The number of shares of the Purchased Securities shall be determined…' This is confusing, as students can see that 'shall' is also used to express obligations. Tina Stark suggests using the **present tense** for statements of fact (she calls these 'declarations')[32]. For example: 'The number of shares of the Purchased Securities **is** to be determined…'.

By understanding the structure of an English-language contract, students will more easily be able to navigate the content of contract templates. But to draft a contract, students must then consider the purpose of each

[26] There is also a condition to that exercise of discretion. Freescale only has that discretion 'if Freescale is required to allocate Product under 2-615 of the Uniform Commercial Code…'
[27] In Example 11 , the statement of fact also uses the word 'shall'. See below and also see the next part of this paper where we discuss the use of modal verbs in contract drafting.
[28] We can also see that Freescale's obligation has been limited by the words '*use commercially reasonable efforts to'.* A detailed discussion of language used to qualify obligations in a contract is beyond the scope of this article.
[29] '*To obligate a party to perform, use **shall**'* T. L. STARK, *op. cit.*, p. 151.
[30] See for example Text 8.1, N. COSTELLO and L. KULBICKI, *op. cit.*, p. 136
[31] T. L. STARK, *op. cit.*, p. 174
[32] *Ibidem*, p. 178

part of their client's deal and use an appropriate type of contract concept and appropriate language to reflect this.

5. Jurilinguistic Aspects of Contract Drafting

For law students from the Université Paris Panthéon-Assas and Université Paris-Saclay, the juriste-linguiste programme course at ISIT Paris has become an obligatory part of their double degree in Law and Linguistics since 2021. This means that students have to do the course of legal translation, from French into English and vice versa. Previously only students who voluntarily chose the course attended the classes. Since 2021, it has been different. At the very beginning of the course, my colleagues and we must now respond to students questioning why a lawyer has to be a linguist. Would it not be more than enough to simply translate from one legal language to another? The same reaction comes from practising lawyers taking legal English classes. Surprisingly, the answer is the same for both groups of students: future and practising lawyers should master linguistic, more precisely jurilingistic, subtleties of legal drafting. It not only gives a deeper insight into the way in which a legal text should be written, but also a clearer understanding of what jurilinguistic frame should be adopted, depending on the legal environment in which the text will be treated as well as on its recipient.

For example, would it be preferable for a lawyer to apply the legalese or the Plain English Movement's style of drafting? Why must they use only the present simple and not the present continuous? Should they use the 'stigmatized' *shall* [33] or not? In which situations must they have recourse to different modals and how can they choose them in order to express obligations and permissions? What jurilingistic explanations should a lawyer provide to their manager or business partner who does not understand the difference between the use of *may* and *can* in legal text? The list could go on endlessly.

In the previous parts of this paper, we have analysed and described the teaching of identifying the business deal, negotiation process, and legal framework of the sale and purchase agreements from our corpus. This part will cover the main jurilingistic aspects that students should take into consideration when drafting such a contract or translating it into legal English.

Once the content of a contract has been determined, a jurilingisitic form should be chosen. In the second part of the paper, it has already been mentioned that a drafter has to deal with contracts written either in plain language or in legalese. In other words, this consists of selecting either the traditional style for drafting (i.e. the legalese style)[34] or the mode of writing legal documents in plain English (i.e. the Plain English Movement's style)[35]. This first choice is crucial as it determines the whole structure of a legal text: syntax, textual devices, modal verbs and expressions, terminology, etc.

---

[33] There has been much discussion about use of *shall* in legal drafting. Those lawyers who prefer tradition style of legal writing keep using *shall* in legal texts. The proponents of plain language in legal writing insist on the fact that the use of *shall* is a relic of the past. According to them, *shall* should be avoided in legal drafting except for the cases in which *shall* occurs with a collective noun (such as the Company, the Buyer, the Board, etc.). Such collective nouns must have socio-physical capacity of acting and the obligation expressed by *shall* must imply 'have a duty to do something'. (R. FOLEY, *Going out in style? Shall in EU legal English*, in Law, Linguistics, 2001, p. 185; Ch. WILLIAMS, *Tradition and Change in Legal English*, in Linguistic insights : studies in language and communication, 2007; Kenneth Adams, Shall means Shall ?, personal blog https://www.adamsdrafting.com/shall-means-shall/

[34] Legalese informally refers to specialised terminology and phrasing used by legal drafters within legal documents. Legalese is notoriously difficult for the public to understand. Key features of classic legalese include long, wordy, complicated sentence structures, use of passive voice and Latin. Although there has been movement towards the use of plain or simple English, legalese persists in the legal field. Proponents of legalese hold that it allows for greater precision in legal writing (Cornell Law School, https://www.law.cornell.edu/wex/legalese).

[35] The plain English movement is the name given to the first effective effort to write legal documents, particularly those used by consumers, in a manner that can be understood, not just by the legal technicians who draft them, but by

At the beginning of the course of legal translation, we always describe the current situation regarding English speaking countries and European institutions advocating for either the Plain English Movement (PLM) or traditional legal drafting (legalese).

The situation in the Southern hemisphere is rather clear. Australia, New Zealand, and South Africa have manifested their intention to follow the PLM recommendations for a long time. It firstly concerns the efforts made by the proponents of PLM to call for the elimination of *shall* from legal texts[36]. One of the finest examples is the 1994 version of the Interim Constitution of South Africa, which was subsequently amended in 1997:

(Example 13) (11a) 1994: Every person **shall have** the right to life,

1997: Everyone **has** the right to…

(Example 14) (11b) 1994: Every person **shall have** the right to freedom and security of the person, which **shall include** the right not to be detained without trial,

1997: Everyone **has** the right to freedom and security of the person, which **includes** the right (a) not to be deprived of freedom arbitrarily or without just cause; (b) not to be detained without trial…[37]

Changes to legal texts, initiated by the PLM, imply not only the elimination of *shall* but also include reducing the use of the passive, nominalization, and sentence length, as well as removing unnecessary words and expressions.[38]

By contrast, in the English versions of texts issued by international organizations, such as the European Union and the United Nations, one can see that these institutions appear to be conservative. They prefer to use the legalese style of legal drafting, and seem reluctant to follow the PLM recommendations as in the following example:

(Example 15) The European Parliament **shall be** composed of representatives of the Union's citizens. They **shall not** exceed seven hundred and fifty in number, plus the President. Representation of citizens **shall be** degressively proportional, with a minimum threshold of six members per Member State. No Member State **shall be** allocated more than ninety-six seats[39].

In the Northern hemisphere, the situation is ambiguous. In Canada and in the US (both adopters of the PLM principles), as well as in the UK, legal drafters have already made many efforts to integrate plain language into legal writing. However, there are those lawyers who still prefer traditional legal drafting in these three countries. Another interesting point is that there are legal texts which represent a mix of plain writing and legalese. This is confirmed by our corpus of UK and US agreements. For example, the US

the consumers who are bound by their terms. The followers of this movement insist on eliminating archaic and Latin expressions, removing all unnecessary words, reducing the use of the passive, nominalisation, and the use of *shall* to express obligations.

[36] Ch. WILLIAMS, *Is legal English "going European"? The case of the simple present, Verbal constructions in prescriptive texts*, 2013, pp.105–126.

[37] I. RICHARD, *L'évolution de l'emploi de shall, de must et du présent simple dans le discours juridique normative dans le cadre du Plain Language Movement*, 2006, p. 143.

[38] Ch. WILLIAMS, *Legal English and Plain English, an* introduction, 2004, pp. 111-124.

[39] Consolidated version of the Treaty on European Union TITLE III - PROVISIONS ON THE INSTITUTIONS, Article 14.2.

Standard Purchase Agreement of 2003 and the UK Agreement for the Sale and Purchase of Share Capital of Sky P of 2018 appear to employ more legalese as we can see the frequent occurrence of *shall*, lengthy phrases, passive forms and the use of connectors on *here-*, *there-*, and *where-*, such as *hereof, thereto, whereof,* etc. By contrast, in the US Semiconductor Purchase Agreement - Motorola Inc. and Freescale Semiconductor Inc. of 2004 and in the Assets Sale and Purchase Agreement of 2014, we can find all the typical features of the PLM style: less complex syntax, a clear balance between passive and active structures, the use of *shall* only in those provisions in which the obligation expressed by the modal verb implies 'have a duty to do something', absence of connectors on *here-*, *there-* and *where-*.

The UK Sale and Purchase Agreement of 2008 from our corpus is a notable example of an agreement drafted in the legalese style, but one can find some PLM flavour in the document. For instance, in the section in which the terms of the agreement are stated, it is written *Data Room Documents means* instead of the wording 'shall mean' which would be typical for legalese.

For students, such a short introduction serves as a road map to the distribution of the PLM and legalese in legal world. It also represents a guideline for the course that students are going to have. Moreover, we always tell our students that mastering both legal drafting styles can be an important advantage for them as a job applicant since it gives students unique expertise and transferrable skills.

As a practical activity **[Exercise VII]** enabling students to better understand the difference between PLM and legalese, we usually propose that, under supervision, students analyse extracts drafted on the basis of both styles (use of tenses, active and passive forms, use of modals, etc.) as in the following examples from our corpus:

(Example 16) The Parties may mutually establish commercially reasonable minimums for orders and deliveries under this Agreement. The minimum order size for Products sold in reels is one reel. The minimum order/minimum delivery will be in multiples of MPQ (Multiple Package Quantity) or one POQ (Preferred Order Quantity) (PLM style of writing)[40].

(Example 17) NOW, THEREFORE, in consideration of the premises and mutual benefits representations, warranties, conditions, covenants and agreements contained herein, the parties hereto hereby agree as set forth below (legalese style of writing)[41].

The suggested time for this exercise depends on the number of students but it should not exceed 20-25 minutes as it enables us to briefly test law students' knowledge of the difference between the two styles. In any case, their nodding acquaintance with these styles will be developed during the course since we always ask them to draft in English or translate different parts of a document, using both the Plain English style and legalese.

To help students get familiar with the difference between the two styles, we often do **Exercise VIII** in which we suggest that we rewrite together legalese provisions into PLM versions. The suggested time for Exercise VIII is about 25-30 min. We begin to work with simple cases from the introductory sections of contracts as in Example 17: Possible rewriting that can be elicited from students during the class is the following:

(Example 17)' ~~NOW, THEREFORE~~, ~~in consideration of the premises and mutual benefits representations, warranties, conditions, covenants and agreements contained herein~~, **In view of the above**, the parties **to this Agreement** ~~hereto hereby~~ agree **on the following** :~~as set forth below~~.

[40] Semiconductor Purchase Agreement - Motorola Inc. and Freescale Semiconductor Inc. (2004) from our corpus.
[41] Purchase Agreement - ValueAct Capital Master Fund LP and Valeant Pharmaceuticals International Inc. (Feb 24, 2011) from our corpus.

For homework, we usually ask students to find some typical extracts from agreements drafted in the PLM and legalese style. They also have to rewrite the PLM extracts into legalese contract provisions, and vice versa.

As mentioned above, this introduction becomes a guideline for considering topics during the courses from a PLM and legalese perspective, some of which we will describe below.

Terminology and Legal Expressions

In most cases, students associate the legalese style with the use of complex terms and Latin expressions as in the following examples:

> (Example 18) On March 30, 2016, Mr. (C) was granted, before the Paris Court of First Instance, **an exequatur** of (), on the basis of which he had executed multiple attachment orders, all of them had been unsuccessful[42].
>
> (Example 19) They conclude that the French Court has jurisdiction under the provisions of Article 7 of the Brussels I bis Regulation, by arguing that the contract of August 27, 2019 is a **sui generis** (of its own kind) contract which cannot be considered as a sales contract or a service contract[43].
>
> (Example 20) Within the framework thus defined, the arbitral tribunal considered, in its Procedural Order 26, that neither the ICC Rules of Arbitration nor the **lex arbitrii** (law of arbitration) precluded the taking of evidence by virtual means, noting in this respect that[44]…

We explain to students that PLM principles encourage drafters to use clear and transparent terms or, at least, provide descriptions of very specific terms like *exequatur* in Example 18, which can be defined as *an order for enforcement of the arbitral award*. The same advice concerns Latinisms in legal writing: drafters are recommended not to use them at all or to provide an English description in brackets, like *sui generis* (of its own kind) in Example 19 and *lex arbitrii* (the law of the place of arbitration) in Example 20.

As a practical activity **[Exercise IX]**, we ask students to study extracts with non-transparent terms and Latin expressions, and provide their explanations in brackets. The suggested time for this exercise is about 20-25 minutes and can be done in pairs or as teamwork with peer checking and subsequent open class feedback.

Syntax

If students are asked to draft legal documents, using the traditional style, they need to master complex syntax. One of the main textual devices here is the comma, which is an indispensable textual navigator for

[42] Decision RG 19-11413 of 12 July 2021 rendered by International Commercial Chamber at the Court of Appeal of Paris.
[43] Decision RG 22/20498 of 16 May 2023 rendered by International Commercial Chamber at the Court of Appeal of Paris.
[44] Decision RG 21-10727 of 14 February 2023 rendered by International Commercial Chamber at the Court of Appeal of Paris.

readers in lengthy legal narration. In this type of discourse, commas are used to effectively separate and match information units, ensuring coherence and cohesion in the text. Apart from classical punctuation rules related to the use of comma[45], there are the cases in which a comma performs a coordinating function, as in the following example:

> (Example 21) Buyer agrees that it will not at any time during or after the term of this Agreement assert or claim any interest in**,** or do anything which may adversely affect the validity or enforceability of**,** any trademark**,** trade name**,** copyright or logo belonging to or licensed to TEKELEC (including any act**,** or assistance to any act**,** which may infringe or lead to the infringement of any proprietary right in the Software, Software Copies or Related Materials).

The coordinating role of the comma in this extract will become even more evident if we leave out the brackets in [*including any act, or assistance to any act, which may infringe or lead to the infringement of any proprietary right in the Software, Software Copies or Related Materials]*, and add another comma before *including*.

In this regard, we should recall the nominative absolute participle construction, which is very typical for legalese syntax. It must always be separated with a comma from a main clause, as in the following example:

> (Example 22) All returned Equipment must be shipped to the facility specified by the TAC, freight prepaid, in the original carton or equivalent**,** with shipping label clearly specifying the assigned RMA number.

In Example 22, a comma helps not only to add an important and additional information unit (*freight prepaid*) but also distinguish an absolute participle construction 'with shipping label clearly specifying the assigned RMA number' from the main clause. Hence, readers understand that *all returned Equipment* must be shipped and *freight* must be prepaid before the shipment of the Equipment. In addition, *shipping label* must clearly specifies the assigned RMA number. If we leave out a comma before *with shipping*, the provision may be read as a cumulative list of items that should be shipped (all returned Equipment + label).

For comma usage in complex syntax structures, **[as Exercise X]**, we usually share with students lengthy legal provisions from contracts to which they have to correctly add commas. Alternatively, students should add additional information units into contract provisions so that the text is coherent and easy to follow. The suggested time for this exercise is about 15-20 minutes. It can be done individually, in pairs or as teamwork with peer checking and subsequent open class feedback.

Legalese syntax also reveals the frequent use of discursive connectors based on *here-*, *there, where-* as in the following examples:

> (Example 23) NOW, THEREFORE, in consideration of the premises and mutual benefits representations, warranties, conditions, covenants and agreements contained **herein**, the parties **hereto hereby** agree as set forth below.[46.]

[45] For example, a comma after linking words (In addition,…etc.) or after introducing information units (During the financial period, …).

[46] Purchase Agreement - ValueAct Capital Master Fund LP and Valeant Pharmaceuticals International Inc. (Feb 24, 2011) from our corpus.

(Example 24) IN WITNESS **whereof** this deed has been executed and delivered on the date stated at the beginning of it.[47]

(Example 25) "Shareholders' Agreement" means the shareholders agreement in respect of the Company dated 26 May 2005 made between The Company (1), the Initial Senior Lender Shareholders (as defined **therein**) (2), The Tier 1 Managers (as defined **therein**) (3), Precis (2517) Limited (4) and The ICG and Graphite Shareholders (as defined **therein**) (5).[48]

Advocates for legalese insist on the fact that connectors are not only a legal custom but also, and above all, a strong anaphoric[49] device. As a rule, most students, including native speakers, copy and paste these connectors without understanding their formation and exact principles of their use in legal text.

In order to make students feel comfortable using the connectors, we offer them some theoretical information based on my study of the connectors as well as practical exercises. The theoretical knowledge includes learning the linguistic concept of deixis[50], textual contrast between 'this/these' and 'that/those'. We also mention the discursive correlation between 'this/these', 'that/those', and the adverbs 'here' and 'there' in relation to the connectors on *here-* and *there-* accordingly. In the case of the connectors based on *where-*, the link between 'where' and 'which' should be studied during the classes[51].

The practical part includes **Exercise XI** in which students decode the connectors used in legal provisions in Examples 23, 24, 25, they should rewrite *here**in*** as ***in** this Agreement; here**to*** as ***to** this Agreement;* and *here**by*** as ***by** this Agreement*; *in witness where**of*** as *in witness **of** which*; *there**in*** as ***in** the shareholder agreement*. They also have to transform different word combinations into respective connectors based on *here-*, *there-*, and *where-*.

The suggested time for this exercise is about 25-30 minutes. Students should deal with a large number of extracts containing various connectors based on here-, there- and where-, in order to fully understand the differences between the connectors and their configurations with differents prepositions.

Not surprisingly, proponents of PLM insist on clear and light syntax. They propose dividing lengthy legal provisions into shorter phrases as in the following example:

(Example 26) 6. The Goods will be delivered to the Purchaser at Molding Box 2625 South 600 West Salt Lake City, UT 84115. The method of shipment will be within the discretion of the Purchaser. However, the Seller will only be responsible for the lesser of truck fright or rail freight to the Purchaser.

[47] Agreement for the Sale and Purchase of Share Capital of Sky p, 2018 from our corpus.
[48] Share Purchase Agreement relating to the sale and purchase of the entire issued share capital of HLG HOLDINGS LIMITED, 2011 from our corpus.
[49] From a linguistic perspective, anaphora is the use of an expression whose interpretation depends upon another expression in context (i.e. its antecedent). For example, The Parties sign **this agreement** (=its antecedent) in French and English (=antecedent). **It** (=the anaphoric referring tem or an anaphor) must be made in 2 copies.
[50] In a physical world, deixis or a deictic centre represents a starting point (a person –*I*, time – *Now*, and place – *HERE*). In text, deictic centre refers to a group of words/expressions or a word/an expression that metaphorically *implies I, NOW*, and *HERE* as opposed to *YOU, HE, SHE, THEN*, and *THERE*. In a legal context, the deictic centre implies the idea of 'this document', which can be 'this agreement', 'this letter', etc.
[51] A. Osminkin, *Pronominal Adverbs Based on Here-, There-, and Where- as Textual Connectors in Legal Discourse*, 2020, pp. 57-85.

In order to be able to provide short and clear syntactical structures, students should have a good knowledge of linking words. They must also develop a strong sense of coherence, cohesion, as well as anaphora and cataphora[52]. In this regard, as **Exercise XII** students should first fill in gaps in sentences, taken from legal and business context, with linking words (*hence, therefore, however, nevertheless, whereas, when, while*, etc.). This controlled practice enables us to check that students understand the meanings of linking words. Then in **Exercise XIII**, we share with students long legalese sentences that they have to split up and rewrite into shorter and clearer versions. The suggested time for Exercise XII and Exercise XIII is about 30-35 minutes. In addition, we would recommend doing them one after another, which enables students to better understand in practice the differences in meanings of linking words.

Modals

In the third part of this paper, it has already been mentioned that *shall* traditionally expresses obligations though the proponents of PLM prefer to use other modal markers. Indeed, legalese is associated with the extensive use of *shall*, which is sometimes unnecessary and seems redundant in constructions like 'shall be obliged to' or 'shall mean', or 'shall have the right to'…

On the contrary, proponents of PLM claim that *shall* should be banned and replaced with the present simple, or at least, with *must* and *will*.

In our opinion, irrespective of either style, the problem lies elsewhere. On the one hand, the excessive use of one or another form to the detriment of other modals impoverishes legal English; moreover, it causes the disappearance of shades of meanings. On the other hand, both approaches, PLM and legalese, remain silent on how exactly *shall*, *will*, *must*, and the present simple must be used in legal writing. Regarding the expression of permission, nothing is specifically said about whether it is possible to substitute *can* for *may* in its deontic[53] meaning. This leads to situations in which readers may wonder whether the present simple, *will*, *shall*, etc. in the same document imply the same or different obligations. Alternatively, the use of two different modals which seem, at first glance, to convey the same meaning (e.g. dynamic possibility) can also puzzle the recipient of the text as in the following example:

> (Example 27) 'Know-How' means all information and data reasonably useful for the development, process development, regulatory approval, manufacture, use, formulation or sale of Compound in the Field which (i) is in the possession of ELI LILLY as of the November 7, 1997 or is created by ELI LILLY after the November 7, 1997, (ii) ELI LILLY **can provide** using reasonable efforts and (iii) ELI LILLY is free to provide without obligation to any third party. Such Know-How **may include** information that is secret, whether or not patentable, relating to materials, methods […].

In this regard, we share the view of certain lawyers and jurilinguists[54] who claim that proponents of PLM and legalese could find a compromise and let all the flowers bloom. In other words, all modals, including the present simple, could be employed in legal writing, but in a logical and reasonable manner. For example,

[52] From a linguistic perspective, cataphora represents the use of a word/an expression that refers to and replace other words used later in a text. For example, *if **they** (=cataphor) agree on the terms and conditions of this Agreement, **the Buyer and Seller** (=later expression) will sign it in 2 copies four days after…*

[53] The deontic modality (modals) expresses obligation/prescription and permission. From a linguistic perspective, such obligation/prescription, and permission represent external circumstances permitting or obliging the participant (usually, it is the subject of the sentence) to engage in the state of affairs (J. van der Auwera, V. Plungian, *Modality's semantic map*, 1998, p. 81).

[54] I. RICHARD, *op. cit.*, 2006, pp. 143-145 ; Ch. WILLIAMS, *op. cit.*, p. 120; KENNETH ADAMS, *op. cit.*

shall could only be used with dynamic verbs. [55] The obligation expressed by *shall* must clearly mean 'have a duty to do something' in combination with a particular type of subject. This subject must represent a collective noun having a socio-physical capacity to act such as *a company*, *a party*, *a board*, etc. Moreover, *shall* should not be employed in the constructions such as 'be obliged to' because *shall* looks redundant in 'shall be obliged to'. For the same reason, *may* should not be used in 'may be entitled to' or 'may have the right'. Other types of obligations could be shared between *must*, *will*, and the present simple. Likewise, *may* and *can* could be employed in a clear manner in order to express deontic permission, dynamic and epistemic possibility[56]. We also agree with the above-mentioned experts that *must* could be used to express conditions or mandatory obligations; *will* would work in orders, strong intentions imposed by law or in expressing legal predictions and eventualities; the present simple could express definitions, and descriptions. It could also be a contextual synonym of *shall* with dynamic verbs. In addition, the present simple could be employed to express general prescriptions. Here are some examples of the use of modals and the present simple described above, taken from our corpus:

(Example 28) The non-breaching party **must** provide such termination notice within 30 days after the expiration of the relevant cure period[57] (the use of must with 'after' implying a condition).

(Example 29) To appoint a proxy, the form of proxy and any power of attorney or other authority under which it is executed (or a duly certified copy of any such power or authority) **must** be either (a) sent to the Company's Registrar Computershare Investor Services PLC, The Pavilions, Bridgwater Road, Bristol BS99 6ZY […]. [58] (must implying a mandatory obligation).

(Example 30) The terms of this Agreement **will** continue in effect for any Order hereto that is outstanding at the time of termination of this Agreement or expiration of the Term. […] Subject to Buyer's fulfillment of all Its obligations under this Agreement, TEKELEC **will** defend any suit or proceeding brought against Buyer insofar as such suit or proceeding shall be based upon[59] (Will implying legal prediction and a strong order).

(Example 31) "Completion Date" **means** the date of this agreement. […] Each Management Seller in respect of himself only hereby **warrants** to the Buyer as at the date of this agreement in the terms of the Title Warranties.[60] (The present simple expressing a definition and is used as a contextual synonym of SHALL implying that each Management Seller has a duty to warrant to the Buyer…).

[55] Dynamic verbs are often called action verbs. They describe constant change, activity or progress (sign, transfer, pay, etc.)

[56] In legal context, dynamic modality is mainly expressed by *may* and *can* referring to the ability, capacity or willingness of the participant to do something. Such participant can be an explicit subject of the sentence in active constructions such as in *The Parties **may/can sign** this Agreement in 3 copies*. Otherwise, the participant can be implied in passive constructions such as in *This Agreement **may/can be signed** in 3 copies*. Epistemic modality (possibility) in legal writing is very limited and mainly expressed by MAY either with simple or perfect infinitive (*may + have*) or with *will* as legal predictions. The function of epistemic modality is to make judgements about the possibility, etc. (F. R. Palmer, *Modality and the English Modals*, Longman, 1990, p.50.

[57] Semiconductor Purchase Agreement - Motorola Inc. and Freescale Semiconductor Inc. (2004) from our corpus.

[58] Sale and Purchase Agreement, 2019 from our corpus.

[59] Standard Purchase Agreement, 2003 from our corpus.

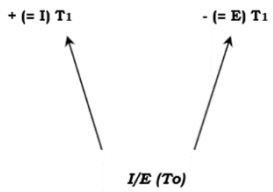
[60] Share Purchase Agreement relating to the sale and purchase of the entire issued share capital of HLG HOLDINGS LIMITED, 2011 from our corpus.

It is in this case, when dealing with modals, that linguistics can help for two reasons. First of all, linguistic terms and schemes/charts enable one to better understand subtleties of modals in a context, like the legal one, in which such modals are similar in meaning. Secondly, the simplified versions of linguistic terms and schemes/charts can make it possible to explain to a non-lawyer or a non-linguist the difference between modals where it is vitally important. For example, before signing an expensive sale and purchase agreement with partners, an accountant or a manager can ask the lawyer-linguist who drafted the document to explain to them the exact meanings of *shall, will, must, may, can*, etc. in the text.

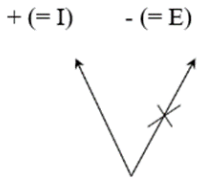
As for English linguistics, there are various linguistic theories in English speaking countries, especially in the US, and also in France. For my courses, as related to modals, Jennifer Coates' and Frank Palmer's[61] studies and some of the elements of the French *Théorie des opérations énonciatives* developed by Antoine Culioli[62] appear to be relevant. The main advantage of these studies is a number of ideas accompanied by schemes that can easily be adapted for teaching legal drafting. It is well known that a picture is sometimes worth a thousand words.

Without going into too much detail, we will provide below some schemes as illustrations of how it can be adapted and applied to the teaching process.

Figure 1 shows that for *shall* and *will* there is the initial point (*I/E*) and the moment of speaking (*To)* from which an obligation or interdiction (*shall not/will not*) expressed by the modals is projected into the future (*T1*). Both *shall* and *will* imply only the *+I* scenario, i.e. implementation of an obligation or an interdiction in the future. *-E* implies that there is no way that such obligation or interdiction will not be implemented[63]. Figure 1.1 shows that *shall* imposes the implementation of an obligation/an interdiction on the entity that does not enjoy any autonomy. In contrast to *shall, will* implies not only deontic force but also the volition of the entity that has to implement an obligation/an interdiction. For the manager or the accountant, it could be transformed into the following possible interpretation: **both *shall* and *will* have a strong prescriptive force though *will* also implies the willingness of the entity to act.**



SHALL and WILL



IE
MUST

[61] Jennifer Coates is a British linguist, professor of English Language and Linguistics at the University of Surrey Roehampton and author of the *Semantics of the Modal Auxiliaries* (1983); Frank Palmer was also a British linguist and author of *Modality and the English Modals* (1990).

[62] Antoine Culioli was a French linguist, professor of English Linguistics and author of the *Théorie des opérations énonciatives.*

[63] As a rule, it is not necessary for me to explain to students what +I and –E imply. However, to those students who are very curious, the following linguistic clarification can be provided: I means that an action expressed by a modal *(shall, will, must, may, can*, etc.) will be situated 'in the interior (I) of realisation', i.e. it will happen. E means that an action expressed by one of the modals will be situated 'in the exterior of realisation' (E), i.e. it will not happen.

Figure 1

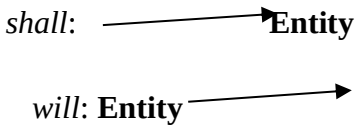


Figure 1.1.

Figure 2

Figure 2 shows that the use of *must* implies that *+I* scenario is prioritized. It means that an obligation or an interdiction (*must not*) has to be implemented. In contrast to *will* and *shall*, in the case of *must*, the *E* scenario, when an obligation/an interdiction may not be implemented, is discarded though it is not totally left out. In other words, *shall* and *will* appear to be 'stronger' than *must* according to the scheme.

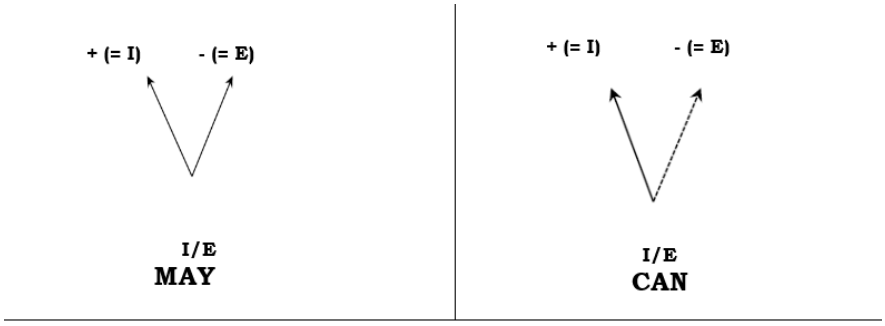


Figure 3

Using the same signs of representation, the main difference between *can* and *may* can be shown. Deontic, epistemic or dynamic *may* always implies a choice between possible *(+I)* or impossible (-E). For this reason, *may* is more hypothetical in all its meanings than *can* which cannot provide a genuine bifurcation as *may* does. With *can*, the 'impossible' scenario becomes less probable than with *may* as shown with a dotted line for *can*. With this scheme, it is easier to explain that *can* does not have epistemic possibility as it does not imply a pure bifurcation 'possible/impossible'. A number of linguists doubt that this modal can express a real permission[64]. For these reason, legal drafters should be careful, using the modal in legal writing. The linguists claim that *can* seems to have the only dynamic meaning (dynamic possibility) which is interchangeable with dynamic *may* (dynamic possibility). In this case, dynamic *may* will always be more hypothetical than *can* due to the *may*'s possible//impossible property.

In this regard, in Example 27 dynamic possibility expressed by *can in* 'ELI LILLY can provide' (80% of certainty) is closer to the present simple (ELI LILLY provides=100% of certainty) whereas *may* 'in Such Know-How may include' implies 60% of certainty and appears to be more hypothetical[65].

With Jennifer Coates' concept, it is easier to explain the cases in which the overlapping of meanings occurs. For example, *may* can be represented as a deontic centre (deontic permission = blue nucleus) because deontic permission is the primary meaning of *may* in legal discourse. There is a transition zone between the deontic centre and dynamic periphery (dynamic possibility=area around the blue nucleus). Next to it, there

[64] F. PALMER, *Modality and the English Modals*, 1990, p.72.

[65] We have suggested 60%, 80% and 100% of certainty simply as a conventional reference in order to show that the present simple implies the absolute degree of certainty. In this case, MAY is the most hypothetical whereas CAN is situated between the present simple and MAY.

is also the epistemic meaning of *may*. Therefore, depending on a context, some of the meanings of *may* can overlap. For example, there are legal provisions in which *may* can be interpreted either as a deontic *may* (permission) or as a dynamic *may* (possibility). Sometimes *may* can also be interpreted either epistemically or dynamically (the green zone of overlapping) as shown in the following scheme:

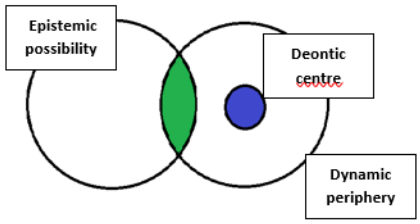


Figure 4

In her study, Jennifer Coates also shares a very effective set of paraphrases that could be used as a linguistic tool, in order to 'decode' modals to non-specialists. For example, the three meanings of *may* can be paraphrased in the following way:

Deontic *may*: *X is allowed to do…/ Y is allowed to be done*

Dynamic *may*: *It is possible for X to do…./ It is possible for Y to be done*

Epistemic *may*: *It is possible that X does/will do/did…*

These paraphrases can also help a lawyer-linguist explain to non-specialist how exactly the overlapping of meanings can be represented:

> (Example 32) […]the directors be generally and unconditionally authorised to exercise all the powers of the Company to allot the New Ordinary Shares, provided that: (1) the maximum aggregate nominal amount of relevant securities that **may be allotted** under this authority shall be the aggregate nominal amount of the said New Ordinary Shares referred to in paragraph 3.1 above; […].

Deontic *may*: the maximum aggregate nominal amount of relevant securities that **is allowed to be allotted** under this authority

Dynamic *may*: **it is possible for the maximum aggregate nominal amount** of relevant securities **to be allotted** under this authority.

In order to master all the aspects of the modals described above, as **Exercise XIV**, students have to draft contract provisions using different modals to express different obligations and have to explain their choice. Then, as **Exercise XV**, students must also interpret modals in sale and purchase agreements and contracts, using paraphrases. The suggested time for Exercise XIV and XV is about 45-50 minutes. Students need time to draft provisions and carefully think of their choice of modals with jurilinguistic analysis.

Tenses

Another important feature of legal drafting, irrespective of the legalese or PLM style, is the use of grammatical tenses. The temporal dimension of prescriptive texts is mainly represented by the present simple and the present perfect. It is also confirmed by our corpus as in the following examples:

> (Example 33) IN WITNESS WHEREOF, the parties hereto **have caused** this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

(Example 34) Motorola will furnish to Freescale a certificate certifying that the original and all copies of the Licensed Programs and derivative versions thereof, in whole or in part and in any form, **have been destroyed**[66].

(Example 35) Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Seller) and shall be valid until such time as the Purchaser **has received** prior written notice that such agent has ceased to act as agent.

As a rule, the present perfect frequently occurs with the prepositions *until, provided that* or *after* as well as in conditional clauses after *if* and *unless* as in Example 35. This tense introduces a resulting condition, implying that one legal event or an action is or will be possible if such resulting condition has occurred. This metaphorically resembles a mechanism in which one gear wheel drives the other one in order to produce motion. In other contexts, especially in oral discourses, it is the present simple that is usually employed after *if* and *unless*, which makes the sense of such *if*- or *unless* clauses more neutral. The preference for the present perfect after *if* or *unless* in legal drafting reveals the importance of the resulting of this grammatical tense for legal texts.

(Example 36) WHEREAS, the Company **desires** to purchase from the Seller, and the Seller **desires** to sell to the Company, an aggregate number described in Section 1.1 below of common shares, no par value per share, of the Company (the "Common Shares," and such number of Common Shares, the "Purchased Securities") in accordance with the terms of this Agreement.

(Example 37) This agreement **contains** the whole agreement between the parties relating to the transactions contemplated by this agreement and supersedes all previous agreements, whether oral or in writing, between the parties relating to these transactions.

(Example 38) The Seller irrevocably **appoints** the Trustee as its agent to receive on its behalf in England and Wales service of any legal proceedings to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation.

(Example 39) The Seller **represents** and **warrants** to the Company that it has good and valid title to the Purchased Securities free and clear of lien, mortgage, security interest, pledge, charge or encumbrance of any kind ("Liens"). [67]

Another grammatical tense, which plays a crucial role in legal drafting, is the present simple. However, many linguists overlook the fact that, apart from modals, the most commonly used verbal construction in legal context is the present simple[68]. The present simple is employed in two cases: 1) in legal provisions of declarative nature as in Examples 36 and 37; 2) in legal provisions of prescriptive nature in Examples 38 and 39.

One of the main advantages of the present simple is that it enables one to render the action in its entirety[69]. Another benefit of this tense is that it implies the atemporal character of the action. Declarative statements or deontic prescriptions expressed by the present simple can be validated at any time. For this reason, the present continuous is never used in a legal context as it does not possess these linguistic properties. In addition, according to my experience, it is the linguistic explanation that helps students better understand the absence of the present continuous in legal texts.

[66] 34, 35, 36 - Semiconductor Purchase Agreement - Motorola Inc. and Freescale Semiconductor Inc. (2004) from our corpus.
[67] 36, 38 - Purchase Agreement - ValueAct Capital Master Fund LP and Valeant Pharmaceuticals International Inc. (Feb 24, 2011); 37, 39 - Agreement for the Sale and Purchase of Share Capital of Sky P, 2018 from our corpus.
[68] Ch WILLIAMS, *op. cit.*, p. 150.
[69] *Ibidem*, p. 153.

As has already been mentioned, the present simple can be interchangeable with *shall*. Nevertheless, we suggest that the present simple can have deontic meaning solely in a particular morpho-syntactic configuration. Drafters should use dynamic verbs in affirmative phrases with an entity, as the subject of the phrase, which possesses socio-physical force to act. This socio-physical force can also be defined as linguistic agentivity (e.g. *a company, a board, a party*, etc.), as in Examples 38 and 39[70].

As a practical activity **[Exercise XVI]**, for this part of the course, students have to draft contract provisions using grammatical tenses. It should be noted that the use of the present perfect causes difficulties for French speaking students since this tense does not exist in their language. The suggested time for Exercise XVI is about 20-25 minutes with peer checking and subsequent open class feedback.

In addition, in **Exercise XVII**, students should identify the cases in legal extracts in which they could replace *shall* with the present simple in English. Finally, they have to indicate where they can translate the French present tense into *shall* and/or the present simple in legal English. The suggested time for Exercise XVII is about 25-30 minutes since students will need time to carefully analyse suggested extracts and their choices for translation.

6. Conclusion

In this paper, we described a three-step strategy for teaching contract drafting. Our approach covers the process from understanding the negotiations of the UK and US sale and purchase agreements from our corpus to attributing to them a relevant legal and linguistic framework.

The first step includes analysing the needs and objectives of the parties who envisage signing the contracts. With a set of exercises provided for this step, students learn how to pass from an initial business idea to negotiating the key conceptual elements of the agreements.

The second step describes the legal aspects of the drafting of the agreements once the deal has been negotiated and approved. This includes identifying appropriate provisions to be included in such agreements. The exercises suggested for this step help students to understand the usual structure and content of the agreements.

Finally, the third step covers the jurilinguistic aspects, which provide a linguistic frame to the agreement. This covers the choice of the legalese or PLM's style, the use of modals and grammatical tenses as well as a certain number of textual devices.

Such a multifaceted approach enables teachers and students to consider contract drafting from a legal and jurilinguistic perspective. It helps to visualise the whole process from developing and negotiating the initial business concept to a range of key legal and linguistic elements which constitute the agreements.

Corpus

Corpus of US Sale and Purchase Agreements and Contracts (2000-2013)

Purchase Agreement - Equinox Nutraceuticals and Stacked Digital LLC (January 21, 2013)

https://contracts.onecle.com/xhibit/equinox-purchase-2013-01-21.shtml

[70] A. OSMINKIN, *L'emploi du présent dans le contexte juridique trilingue*. Une approche contrastive à partir d'un corpus anglais, français et russe, 2023, p. 102.

Purchase Agreement - ValueAct Capital Master Fund LP and Valeant Pharmaceuticals International Inc. (February 24, 2011)

https://contracts.onecle.com/valeant/valueact-purchase-2011-02-24.shtml

Semiconductor Purchase Agreement - Motorola Inc. and Freescale Semiconductor Inc. (2004)

https://contracts.onecle.com/freescale/motorola.mfg.2004.shtml

Standard Purchase Agreement (May 19, 2003)

https://contracts.onecle.com/arbinet/tekelec.purchase.2003.05.19.shtml

General Purchase Agreement - Egenera Inc. and Goldman, Sachs & Co. (June 26, 2002)

https://contracts.onecle.com/egenera/goldman-sachs.mfg.2002.06.26.shtml

Corpus of UK Sale and Purchase Agreements and Contracts (2008-2023)

Sale and Purchase Agreement (7 November 2019) https://www.gallifordtry.co.uk/media/1214/saleandpurchaseagreementbetweengallifordtryplcandgoldfinchjerseylimitedandbovishomesgroupplcdated7no.pdf

Assets Purchase and Sale Agreement (7 November 2014) provided by Natasha Costello

Agreement for the Sale and Purchase of Share Capital of Sky P, (3 October 2018)

https://www.cmcsa.com/static-files/514fc99a-fbd3-4543-8353-9312a8e21c63

Sale and Purchase Agreement, (23 September 2008)

https://www.sec.gov/Archives/edgar/data/1123647/000119312508230291/dex101.htm

Share Purchase Agreement relating to the sale and purchase of the entire issued share capital of HLG HOLDINGS LIMITED, (12 May 2011)

https://www.sec.gov/Archives/edgar/data/354190/000119312511142565/dex21.htm

Other Legal Documents

Consolidated version of the Treaty on European Union (26 December 2012)

https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

Decision RG 19-11413 of 12 July 2021 rendered by International Commercial Chamber at the Court of Appeal of Paris

Decision RG 21-10727 of 14 February 2023 rendered by International Commercial Chamber at the Court of Appeal of Paris

Decision RG 22/20498 of 16 May 2023 rendered by International Commercial Chamber at the Court of Appeal of Paris

Bibliography

ADAMS K., *Shall means Shall ?*, personal blog https://www.adamsdrafting.com/shall-means-shall/

ADAMS M. C., CRAMER P. K., *Drafting Contracts in Legal English*, Aspen, 2013.

ANDERSON M., WORONER V., *Drafting and Negotiating Commercial Contracts*, Dublin, 4th ed., 2016.

BLACK'S LAW DICTIONARY, fourth pocket edition, Thomson Reuters, 2011.

CAMBRIDGE DICTIONARY ONLINE, https://dictionary.cambridge.org/#google_vignette

CARTWRIGHT J., *Contract Law: An Introduction to the English Law of Contract for the Civil Lawyer*, Dublin, 3rd ed., 2016.

COATES, J., *Semantics of the Modal Auxiliaries*, London, 1983.

CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/legalese

COSTELLO N., KULBICKI L., *Practical English Language Skills for Lawyers: Improving Your Legal English*, London, 2023.

FOLEY R., *Going out in style? Shall in EU legal English*, in Law, Linguistics, in UCREL Technical Papers, 2001, pp. 185-196.

GILBERT E., *La théorie des opérations énonciatives* d'Antoine Culioli, in HAL Open Science, 1993, pp. 1 - 57.

HAMILTON A., *GenAI and commercial contracting: what's the point?*, November 2023, https://www.radiantlaw.com/resources/genai-and-commercial-contracting-whats-the-point.

RICHARD I., *L'évolution de l'emploi de shall, de must et du présent simple dans le discours juridique normative dans le cadre du Plain Language Movement*, in ASp [la revue du GERAS], 2006, pp. 137-157.

O'KEEFFE A., *From Corpus to Classroom: Language Use and Language Teaching*, Cambridge, 2007.

ONECLE, database of legal documents, https://www.onecle.com/info/about.shtml.

OSMINKIN A., *L'emploi du présent dans le contexte juridique trilingue. Une approche contrastive à partir d'un corpus anglais, français et russe*, in Comparative Law and Language, Vol. 2 No. 1, 2023, pp. 86-104.

OSMINKIN A., *Pronominal Adverbs Based on Here-, There-, and Where- as Textual Connectors in Legal Discourse*, in International Journal of Law, Language & Discourse, *8*(2), 2020, pp. 57-85.

PALMER F., *Modality and the English Modals*, London, 1990.

STARK T. L., LLORENTE L., M., *Drafting Contracts: How and Why Lawyers Do What They Do*, Wolters Kluwer, 2nd ed., 2014.

STARK T.L., *Thinking like a lawyer – to come to an agreement*, Journal of Legal Education, Vol. 54, No. 2, 2004, pp. 223-234.

WILLIAMS Ch., *Is legal English "going European"? The case of the simple present, Verbal constructions in prescriptive texts* in Canadian Journal of Linguistics/Revue canadienne de linguistique 58(1), 2013, pp.105–126.

WILLIAMS Ch., *Tradition and Change in Legal English, in Linguistic insights: studies in language and communication*, rev. ed., 2007.

WILLIAMS Ch., *Legal English and Plain English, an introduction*, in ESP Across Cultures 1, 2004, pp. 111-124.