The Rhetorical Functions of Semi-technical Language in Post-graduate Academic Legal Writing

by

Paschal Daniel Gerard Maher

Student Number: 0770272

A dissertation submitted for the degree of Ph.D.
by research

University of Limerick

Supervisors:
Dr Fiona Farr & Prof Michael McCarthy

Submitted to the University of Limerick, January 2013
Table of Contents

Abstract ........................................................................................................................................... i
Declaration ....................................................................................................................................... ii
Acknowledgements ........................................................................................................................ iii
List of Tables .................................................................................................................................... iv
List of Figures ................................................................................................................................... vii
List of Charts .................................................................................................................................. x
List of Appendices .......................................................................................................................... xi
List of Abbreviations ...................................................................................................................... xii
Glossary ............................................................................................................................................ xvi

Chapter 1 –Introduction .................................................................................................................1

1.1 Aim of the Thesis ......................................................................................................................1

1.2 Discourse Community .............................................................................................................2

1.2.1 Communities of practice and discourse communities .......................................................2

1.3 English for Academic Legal Purposes (EALP) and English for
   Occupational Legal Purposes (EOLP) ......................................................................................5

1.3.1 The divisions of legal discourse .........................................................................................5

1.3.2 Characterising EALP .........................................................................................................8

1.3.3 The transition from EALP to EOLP ..................................................................................10

1.3.1 Summary comments ...........................................................................................................11

1.4 Approaches to text analysis ....................................................................................................11

1.4.1 Summary comments .........................................................................................................16

1.5 Research context .....................................................................................................................17
Chapter 2 Academic Writing ................................................................. 23
  2.1 Student participation in the discourse community ................................ 23
  2.2 Genre .......................................................................................... 25
    2.2.1 Academic genres .................................................................... 25
  2.3 General Linguistic Features of Academic Writing .................................. 30
  2.4 Student Academic Writing .............................................................. 36
    2.4.1 The writing challenges students face ....................................... 37
    2.4.2 Student writing development .................................................. 39
  2.5 Conclusion .................................................................................... 41

Chapter 3 Legal English ................................................................. 43
  3.1 The Nature of Legal English .......................................................... 43
  3.2 The Origins of Legal English .......................................................... 45
  3.3 Features of Legal English: Lexical, Syntactic and Discourse .................. 50
    3.3.1 Lexical features .................................................................... 51
    3.3.2 Syntactic features .................................................................. 53
    3.3.3 Discourse features .................................................................. 56
    3.3.4 Summary comments .............................................................. 58
  3.4 Legal English Genres ..................................................................... 58
    3.4.1 EALP genres ......................................................................... 60
    3.4.2 EOLP genres ......................................................................... 64
    3.4.3 Sources of law ....................................................................... 67
3.5 EALP and Student Challenges ................................................................. 74
3.6 Conclusion .............................................................................................. 75

Chapter 4 Data Collection and Methodology ................................................. 78
4.1 Corpus-based Research Approaches to Writing ......................................... 78
  4.1.1 Corpus analysis approaches .................................................................. 82
  4.1.2 Longitudinal corpora .......................................................................... 84
  4.1.3 Criteria for collection .......................................................................... 86
  4.1.4 Small and specialised corpora ............................................................. 87
4.2 Semi-technical Language .......................................................................... 89
  4.2.1 Identification process for semi-technical language ................................. 89
  4.2.2 Building on single word units .............................................................. 90
4.3 Data Collection and Organisation in the Present Study ............................... 91
  4.3.1 Process of data collection and breakdown according to university ........ 91
  4.3.2 Participant details ............................................................................. 93
  4.3.3 Representativeness of data .................................................................. 93
  4.3.4 Organisation of the data: Modules covered in the LLM courses .......... 94
  4.3.5 Organisation of the data: Period categories ........................................ 96
4.4 Data Analysis in the Present Study .............................................................. 98
  4.4.1 Parameters for identification of semi-technical language for the whole corpus .......................................................... 98
  4.4.2 Procedure for identification of semi-technical language in study corpus .......................................................... 101
  4.4.3 Delimitations for inclusion/exclusion of semi-technical terms ................. 102
  4.4.4 Period analysis: Why do a period analysis? ....................................... 105
Chapter 5 The Use of ‘Or’ ................................................................. 111

5.1 Literature Review .................................................................................................................. 111

5.1.1 The phenomenon of binomial and multinomial constructions .................................. 111
5.1.2 Semantic and syntactic features of binomial and multinomial forms .................... 114
5.1.3 Semantic relations: Synonymy .................................................................................... 115
5.1.4 Semantic relations: Antonymy .................................................................................. 118
5.1.5 Semantic relations: Hyponymy .................................................................................. 123

5.2 Data Analysis ...................................................................................................................... 126

5.2.1 Syntactic features ........................................................................................................ 129
5.2.2 Source .......................................................................................................................... 138
5.2.3 Rhetorical functions .................................................................................................... 145

5.3 Discussion .......................................................................................................................... 164
5.4 Conclusion ........................................................................................................................ 167

Chapter 6 The Use of Noun Forms ...................................................................................... 169

6.1 Literature Review .............................................................................................................. 169

6.1.1 Background .................................................................................................................. 169
6.1.2 Grammatical metaphor and nominalisation .............................................................. 170
6.1.3 The effect of nominalisation on text development .................................................... 171
6.1.4 Technical terms ............................................................................................................ 171
6.1.5 Labelling functions of noun forms ............................................................................ 172
6.1.6 Collocation and lexical bundles ............................................................................... 173
6.1.7 The effect of lexical bundles on text development ........................................... 175
6.1.8 Discipline specific research on nominal forms .................................................. 176
6.1.9 The use of nominal forms in legal genres ......................................................... 177
6.1.10 The role of intertextuality in legal writing ....................................................... 178
6.1.11 Summary comments .......................................................................................... 178

6.2 Data Analysis .......................................................................................................... 179
6.2.1 Analysis of ‘of’ ...................................................................................................... 179
6.2.2 Analysis of ‘that’ .................................................................................................. 201
6.2.3 Analysis of ‘law’ .................................................................................................. 205
6.2.4 Analysis of ‘on’ .................................................................................................... 211

6.3 Discussion ................................................................................................................ 213
6.4 Conclusion ............................................................................................................... 216

Chapter 7 The Use of ‘That’......................................................................................... 218
7.1 Literature Review .................................................................................................... 218
7.1.1 Citation ................................................................................................................ 220
7.1.2 Evaluation ........................................................................................................... 227
7.2 Data Analysis .......................................................................................................... 234
7.2.1 Attribution .......................................................................................................... 240
7.2.2 Writer Averral ...................................................................................................... 269
7.2.3 Items Shared between Writer Indirect Averral and Attribution ......................... 277

7.3 Discussion ................................................................................................................ 287
7.4 Conclusion ............................................................................................................... 292
Chapter 8 Discussion ............................................................................................................. 294

8.1 Aspects of Academic and Legal English Writing Revealed
    by Semi-technical Language ............................................................................................ 294

8.1.1 Semi-technical language and mastering context specific knowledge .......... 294

8.1.2 Semi-technical language as an aid to understanding
    the cultural undertones in English language academic writing ............... 296

8.1.3 Semi-technical language and intertextuality ..................................................... 299

8.1.4 Semi-technical language and student voice in the text ............................... 302

8.1.5 Some anomalies ................................................................................................... 303

8.2 Binomial and Multinomial Expressions ................................................................. 305

8.3 Reporting and Stance Features ............................................................................. 308

8.4 Nominal phrases ...................................................................................................... 311

8.5 Conclusion ................................................................................................................ 313

Chapter 9 Conclusion ........................................................................................................... 315

9.1 Semi-technical Language: What It Achieves in Post-graduate
    Academic Legal Writing ............................................................................................... 315

9.2 Was the Thesis Successful in its Aims? ................................................................. 317

9.3 Shortcomings in the Analysis .................................................................................. 319

9.4 Implications for Theory ......................................................................................... 321

9.5 Directions for Future Research .............................................................................. 323

Bibliographical References ............................................................................................... 325

Appendices ......................................................................................................................... 363
Abstract

Author: Paschal Maher

Thesis Title: The Rhetorical Functions of Semi-technical Language in Post-graduate Academic Legal Writing

This study, set in the field of English for academic legal purposes (EALP), sets out to first identify a semi-technical word list in post-graduate academic legal written texts and then to examine the rhetorical functions such a wordlist enables as an indicator of the epistemology of the disciplinary community. This field was chosen because access to student assignments is hindered by the fact that they are not in published form; yet numerically, they most likely outnumber published academic material. In a post-graduate context, where in the field of law there is an influx of non-native speakers who have had their legal education in systems other than the English language dominated Common Law, the need to quickly understand how information is to be organised and communicated in student academic texts is a very pressing one indeed.

The thesis adopts a corpus linguistics approach to the identification of semi-technical language. The corpus is comprised of texts written by post-graduate students studying Masters in Law (LLM) courses at three universities in Ireland; the corpus is just under one million words. The approach relies on quantitative methods to arrive at a vocabulary list and beyond the initial setting of parameters for data organisation and filtering, the researcher only becomes more active in the role of interpreter of the list’s rhetorical functions. The rhetorical functions themselves illustrate the positioning of post-graduate student writing between observing academic conventions, such as citation, and professional conventions, such as the use of binomial or multinomial constructions. However, a clear line dividing academic from professional practices does not exist and elements of both can be found to varying degrees in the three main rhetorical fields addressed by semi-technical language: citation, the use of bi- and multinomial constructions and finally, the reliance on nominal forms. The study, which is based on texts that were deemed successful by the disciplinary community gatekeepers (course lecturers), effectively sheds light on what fundamental legal discourse principles have to be adhered to by students whenever they write in their Master level courses.
Declaration

I hereby declare that this thesis is entirely my own work and has not been submitted for any other awards at this or at any other academic establishment. Where use has been made of the work of other people it has been fully acknowledged and referenced.

__________________________
Paschal Maher
Acknowledgements

To my parents and siblings, who instilled in me the value of a good education. To my colleagues, whose encouragement helped me through the PhD years. To Dr Mary Donnelly of University College Cork, Dr Neville Cox and Ms Kelley McCabe of Trinity College Dublin and Dr Sean Donlon of University of Limerick and of course to their students, whose texts provide the foundation for this thesis. To my thesis advisers, Fiona and Mike, for an excellent relationship and finally, to my own wife and children, who must be wondering whether all this really does have an end!
List of Tables

Table 1.1 Typology of situations in which legal English is used, by style and mode (Danet) ................................................................. 6
Table 3.1 Lexical features of legal English ................................................................. 51
Table 4.1 General details of study corpus .................................................................. 92
Table 4.2 Texts provided by each university ............................................................... 92
Table 4.3 Authors provided by each university ........................................................... 93
Table 4.4 Main sub-disciplines covered by course modules ......................................... 95
Table 4.5 Aggregate sub-discipline areas ................................................................. 95
Table 4.6 Period categories for the academic year ..................................................... 96
Table 4.7 Period sub-corpora ................................................................................. 97
Table 4.8 Minimum KeyWord frequencies for each sub-discipline ......................... 100
Table 4.9 Sample of merged Excel file containing colour-coded KeyWord terms .... 102
Table 4.10 Example of selection process stage which is based on subject spread ..... 103
Table 4.11 Section of the WCSL file ...................................................................... 104
Table 4.12 Semi-technical language based on highest keyness values .................... 109
Table 4.13 Semi-technical language based on highest frequency .............................. 109
Table 5.1 Main categories of Gustafsson’s (1975) semantic complementation ........ 117
Table 5.2 Cruse’s (1986) list of antonym relations .................................................... 120
Table 5.3 ‘Or’ position on list of highest frequency keyword items .......................... 126
Table 5.4 Distribution of word-forms .................................................................... 132
Table 5.5 Main rhetorical functions for the ‘or’ construction ...........................................146
Table 6.1 Frequency of keywords facilitating the use of noun forms in each period ............179
Table 6.2 ‘Of’ based expressions occurring across the minimum of three periods .......181
Table 6.3 Total frequency occurrences for rhetorical functions related to disciplinary content based around the node ‘of’ .................................193
Table 6.4 Frequencies and use by authors for textual reference expressions based around the node ‘of’ .................................................................195
Table 6.5 Total frequencies for textual reference expressions ............................................199
Table 6.6 Frequencies and author use of ‘lack of’ in each period ......................................200
Table 6.7 Frequencies of ‘that’ in each period .....................................................................201
Table 6.8 Frequencies for two most common ‘that’ bundles in each period .............202
Table 6.9 Functions and frequencies for ‘noun phrase + be + that’ .........................204
Table 6.10 Frequencies for ‘law’ in all periods .................................................................206
Table 6.11 Frequencies for main compound forms of ‘law’ ..........................................206
Table 6.12 Frequencies and authors’ use of main ‘law’ phrases ....................................207
Table 6.13 Period frequencies for ‘on’ as a keyword .........................................................211
Table 6.14 Relevant frequencies for ‘on’ as a node in nominal constructions ............211
Table 6.15 Total frequencies for main rhetorical functions ..............................................213
Table 7.1 Categories of citation by different researchers .............................................223
Table 7.2 ‘That’ and ‘that the’ position on list of highest frequency keyword items ..........234
Table 7.3 Avveral and attribution occurrences according to source with percentage share .................................................................236
Table 7.4 Percentage distributions of averral and attribution based on genre ........236
Table 7.5 Most common terms preceding ‘that’ ......................................................237
Table 7.6 Terms predominately used as attributions ...........................................240
Table 7.7 Top terms used for court references ......................................................243
Table 7.8 Main terms used with references to non-academic
        or non-law making entities ......................................................................253
Table 7.9 Division of occurrences for academic and quasi-academic references ......262
Table 7.10 Main expressions used for academic-specific references .....................265
Table 7.11 Main expressions used for quasi-academic references ..........................267
Table 7.12 Main words used for writer indirect averral .......................................270
Table 7.13 List of items shared between author self-attributions
        and third party references ..................................................................277
Table 7.14 ‘Fact’ expressions without a comment at the end of the ‘that’ clause .....281
Table 8.1 Main verbs used when reporting an external source ..............................297
Table 8.2 Division of citations among main attribution sources ............................298
List of Figures

Figure 1.1 Kurzon’s map of legal language sources ............................................................. 5
Figure 1.2 Trosborg’s categories of legal language ............................................................... 7
Figure 5.1 Sample of recurring binomials ........................................................................ 128
Figure 5.2 Sample corpus lines for ‘or’ used in a binomial construction ...................... 130
Figure 5.3 Sample corpus lines for ‘or’ as a part of a list .................................................. 131
Figure 5.4 Sample concordance lines for ‘or’ as originating from external sources .................................................. 139
Figure 5.5 Sample concordance lines for ‘or’ as originating from the student writers .................................................. 141
Figure 5.6 Sample concordance lines for student descriptions of a particular law ... 142
Figure 5.7 Sample concordance lines for student autonomous comments .................. 142
Figure 5.8 Sample concordance lines for temporal relations ........................................... 147
Figure 5.9 Sample corpus lines for ‘or’ enabling maximum scope ......................................... 148
Figure 5.10 Sample concordance lines for ‘whether’ + ‘or’ ..................................................... 149
Figure 5.11 Sample concordance lines for ‘or not’ ................................................................. 151
Figure 5.12 Sample concordance lines for ‘whether or not’ .................................................. 152
Figure 5.13 Sample concordance lines for the reinforcement relation ........................................ 153
Figure 5.14 Sample concordance lines for degrees of intensity ........................................... 154
Figure 5.15 Sample concordance lines for list of members of a semantic set ................... 157
Figure 5.16 Sample concordance lines for ‘such as + or’ performing an exemplary function .................................................. 159
Figure 5.17 Sample concordance lines for ‘or + other’ ........................................................... 160
Figure 5.18 Sample concordance lines for ‘he or she’ or ‘his or her’ ................................. 162
Figure 6.1 Shared semantic meaning among expressions ................................................. 183
Figure 6.2 Sample concordance lines for ‘of’ in Period 1 .................................................. 184
Figure 6.3 Concordance lines for expressions related to rights-based ideals .......... 186
Figure 6.4 Concordance lines for the protection of stakeholder interests .............. 187
Figure 6.5 Concordances for legislative-type references ............................................. 188
Figure 6.6 Sample uses of ‘provisions of’ and ‘provision of’ ...................................... 189
Figure 6.7 Court references ......................................................................................... 190
Figure 6.8 Sample uses of ‘case of’ (1) ....................................................................... 191
Figure 6.9 Sample uses of ‘application of’ .................................................................. 192
Figure 6.10 Sample uses of ‘case of’ (2) and ‘cases of’ ............................................. 196
Figure 6.11 Sample uses of ‘number/s of’ and ‘one of’ ............................................. 197
Figure 6.12 Sample uses for ‘lack of’ .......................................................................... 200
Figure 6.13 Sample uses for ‘the fact that’ ................................................................. 202
Figure 6.14 Sample uses for ‘noun phrase + be + that’ ............................................. 204
Figure 6.15 Sample uses of ‘law’ phrases .................................................................. 208
Figure 6.16 Sample uses of ‘on’ ................................................................................ 211
Figure 7.1 Sample concordance lines for court references ........................................... 244
Figure 7.2 Sample of concordances lines for lemmas
    ‘provide’, ‘require’ and ‘state’ .................................................................................. 250
Figure 7.3 Sample concordance lines for the category ‘other’ ................................. 254
Figure 7.4 Sample concordance lines for the category ‘Quasi-judicial entities’ ...... 257
Figure 7.5 Sample concordance lines for the category
    ‘Protagonists in court and police-related activities’ ............................................. 259
Figure 7.6 Concordance lines for academic-explicit references .............................. 263
Figure 7.7 Concordance lines for academic-footnoted references .......................... 264
Figure 7.8 Concordance lines for quasi-academic references ................................. 264
Figure 7.9 Concordance lines for ‘is’ ................................................................. 271
Figure 7.10 Concordance lines for ‘mean’ ........................................................ 272
Figure 7.11 Concordance lines for ‘submit’ ..................................................... 273
Figure 7.12 Concordance lines for ‘in’ ............................................................... 274
Figure 7.13 Concordance for ‘appear’ .............................................................. 275
Figure 7.14 Attribution concordance lines for ‘note’ .................................... 278
Figure 7.15 Writer indirect averral concordance lines for ‘note’ .................... 279
Figure 7.16 Attribution concordance lines for ‘fact’ ....................................... 280
Figure 7.17 Writer indirect averral concordance lines for ‘fact’ ..................... 280
Figure 7.18 Attribution concordance lines for ‘suggest’ .............................. 282
Figure 7.19 Writer indirect averral concordance lines for ‘suggest’ ............. 283
Figure 7.20 Attribution concordance lines for ‘ensure’ ................................. 284
Figure 7.21 Writer indirect averral concordance lines for ‘ensure’ ............... 285
Figure 7.22 Attribution sample concordance lines for ‘clear’ ...................... 286
Figure 7.23 Writer indirect averral sample concordance lines for ‘clear’ ....... 286
List of Charts

Chart 6.1 Percentage share of rhetorical functions related to disciplinary content based around the node ‘of’ .............................................194

Chart 6.2 Percentage share of rhetorical functions ..........................................................214

Chart 7.1 The division between the attributed sources .......................................................269
List of Appendices

Appendix A: University of Limerick Research Ethics Committee letter of approval .................................................................363

Appendix B: Letter to programme directors for permission to have access to students .........................................................364

Appendix C: Information sheet provided to prospective participants .................................................................366

Appendix D: Participant consent form and profile questionnaire .................................................................369

Appendix E: Meta data in file names .................................................................373

Appendix F: Top 20 frequency Keywords per period ........................................................................375

Appendix G: Top 20 Keyness items per period ........................................................................376
List of Abbreviations

BAWE
British Academic Written English

BNC
British National Corpus

EALP
English for academic legal purposes

EAP
English for academic purposes

ECHR
European Convention on Human Rights

EFL
English as a foreign language

EOLP
English for occupational legal purposes
ESP
English for specific purposes

HR
Human rights

HSE
Health Service Executive

ICCPR
International Covenant on Civil and Political Rights

IMRD
Introduction, methodology, results, discussion

IPCAC
Issues, principles, supporting cases, application of cases, conclusion

IRAC
Issues, rule, application, conclusion
LLB
Legum Baccalaureus (Bachelor of Law)

LLM
Latin Legum Magister (Master of Laws)

LRC
Law Reform Commission

NNS
Non-native speaker

NS
Native speaker

PGALW
Post-graduate academic legal writing

PhD
Philosophiae Doctor (doctor of philosophy)
PQ
Problem question

RA
Research article

TCD
Trinity College, Dublin

UCD
University College, Dublin

UL
University of Limerick

WCSL
Whole corpus semi-technical list
Glossary

Affidavit
A written declaration made under oath before a notary public or other authorized officer

Bond
A sum of money paid as bail or surety

Caveat emptor
“Let the buyer beware”. The principle that the buyer must bear the risk for the quality of goods purchased unless they are covered by the seller’s warranty

Conveyance
A generic term for any written document which transfers (conveys) real estate property or real property interests from one party to another

Demand
An emphatic claim, which presumes that no doubt exists regarding its legal force and effect. It is a request made with authority

Escheat
The forfeit of all property (including bank accounts) to the state treasury if it appears certain that there are no heirs, descendants or named beneficiaries to take the property upon the death of the last known owner

Ex Parte
Latin meaning "for one party," referring to motions, hearings or orders granted on the request of and for the benefit of one party only. Ex parte matters are usually temporary
orders (like a restraining order or temporary custody) pending a formal hearing, or an emergency request for a continuance

**Goods And Chattels**

Any property that is not freehold, usually limited to include only moveable property

**Hereafter**

In a subsequent part of this document, matter, case, etc

**Herein**

In or into this place, thing, document, etc

**Herewith**

Together with this

**Indictment**

Any formal accusation of crime

**Injunction**

A court order prohibiting a party from a specific course of action

**Jurisdictional Error**

When an inferior court or tribunal exceeds its powers
Jurisdictional Fact

Some fact that has to exist in order to enable the court or tribunal to act within its powers.

Mandamus

An order of, a superior court commanding an inferior tribunal, public official, corporation, etc., to carry out a public duty.

Replevin

The recovery of goods unlawfully taken, made subject to establishing the validity of the recovery in a legal action and returning the goods if the decision is adverse.

Subpoena

A writ issued by a court of justice requiring a person to appear before the court at a specified time.

Tort

French for wrong, a civil wrong, or wrongful act, whether intentional or accidental, from which injury occurs to another.

Trust

An entity created to hold assets for the benefit of certain persons or entities, with a trustee managing the trust (and often holding title on behalf of the trust).

Wednesbury unreasonableness

Unreasonableness of an administrative decision that is so extreme that courts may intervene to correct it.
Wherefore
For which reason: used as an introductory word in legal preambles

Whereupon
On which
In close consequence of which
Chapter 1: Introduction

1.1 Aim of the thesis

This thesis aims to look at the rhetorical functions of semi-technical language in post-graduate student academic legal writing. Semi-technical language is defined in this study as language that is built around words or expressions which occur at a higher than average frequency in academic legal writing when compared to general academic writing; these words and expressions are limited to those which are used in the majority of sub-disciplines, by the majority of authors, are spread across the study corpus genres and are used throughout the academic year. In effect, assuming these words or expressions do indeed lend themselves to clear patterns of use, then these patterns of use are very likely to be required of students regardless of what sub-discipline they are writing about, what genre they are using and what the particular task rubric is. Rhetorical functions, for the purpose of this thesis, are defined as any element of analysis which the student writers include in their discourse to persuade the expert members of the discourse community that their engagement with a given topic is appropriate for the discipline, and of an acceptable standard.

Post-graduate academic legal writing (PGALW) could be said to be very much a part of Swales’s (2009: 6) occluded genres category. The fact that the vast majority of the students’ texts are not published makes the material quite inaccessible. Nevertheless, the volume of texts produced by students in post-graduate law courses is undoubtedly of a size that merits attention. An additional incentive to research the area, and indeed of professional interest to this author, is the challenge faced by the English for specific purposes (ESP) tutor who, despite the absence of discipline-specific training, must acquire a level of understanding of how the field organises information in order to be able to work with the relevant genres that students must produce. While disciplines are multi-faceted, it is to be assumed that one way in which disciplinary communities form their identities is through adopting a common approach to learning and problem-solving. This implies that community members will all use a core or semi-technical language, on to which more technically specialised variations will be grafted according to the sub-disciplinary branch. Understanding this semi-technical
language will enable the ESP tutor to acquire a degree of competence with how the discipline organises its information, while at the same time furthering the understanding of the linguistic structure of these core principles. In turn, making student writers aware of these patterns of use should make them more effective writers within the discipline. Therefore, the approach taken in this thesis is very much from a practitioner-based point of view, with the goal of ultimately serving both students and language tutors.

In addition to definitions for semi-technical language and rhetorical function, there are also other aspects to the analysis that need to be understood in order to properly situate the study in its context; these are dealt with in the following sections and are the community in which the research is set, the disciplinary boundaries of that community and the driving factors behind the methodological approach.

1.2 Discourse Community

1.2.1 Communities of practice and discourse communities

To fully understand the concept of discourse communities, it has to be set in the even wider context of communities of practice. Lave and Wenger (1991: 13) saw communities of practice as involving distinct features of language, practice, culture and a conceptual universe. Later, Riley (2002: 43) referred to Wenger’s (1998) three dimensions that define a community of practice:

- mutual engagement (e.g. doing things together)
- a joint enterprise (e.g. mutual accountability)
- shared repertoire (e.g. similar styles, actions or discourses).

At first sight, trying to articulate the difference between the concept of communities of practice and discourse communities may not appear easy, particularly in light of the many interpretations that already exist. Just for discourse communities alone, which Thompson, (2009: 54) described as a “slippery concept”, Burgess (2001: 200) tracked the development from its appearance in the literature as disciplinary matrix by Kuhn in 1970 to its
manifestation as *academic tribes* by Geertz in 1983 and finally to the increasing use of the term *discourse community* starting in the late 80s by authors such as Berkenkotter, Huckin and Ackerman (1988). However, Flowerdew (2000: 129), when writing about an academic context, invoked Swales’ (1990) six criteria that define a discourse community and perhaps through these criteria a distinction can be made:

a) Common goals

b) Participatory mechanisms

c) Information exchange

d) Community specific genres

e) A highly specialised terminology

f) A high general level of expertise.

The above list is more specific and it has a clear language focus when one considers points c, d, and e. Johns (1997) was even more explicit in considering discourse communities as being about “texts and language, the genres and lexis that enable members throughout the world to maintain their goals, regulate their membership, and communicate efficiently with one another” (p.51). Therefore, the term *discourse communities* could be seen as having a community’s texts at its core. However, while texts might be a clearly identifiable core, there are other features whose presence in the concept can only add clarity to the meaning of such texts and it is here that the overlap with the communities of practice takes place. Hyland and Hamp-Lyons (2002: 6) stressed that EAP analysis of discipline specific texts would not provide a comprehensive understanding of a discourse community, but factors such as “ways of talking … argument structures, aims, social behaviours, power relations, and political interests” (p.6) were also fundamental components of the discourse community dynamic. An explicit, or even implicit, understanding of these dynamics will, according to Hyland (2009b) “characterize how speakers position themselves with and understand others” (p. 47). Therefore, the stronger textual focus implied in the concept of discourse community can only be fully understood if placed in the greater context of the community of practice, from which it derives its identity.
Discourse communities can remain quite complex even as one focuses on a particular discipline. Woodward-Kron (2004: 141) referred to the number of sub-disciplines in the study of education and Bondi (2006: 51) saw similar challenges for undergraduate students of business studies who must contend with the vagaries of, among others, accountancy, management, marketing and human resources. However, it is not that each single discourse community is unique in every way. Hyland (2000: 71), when researching academic articles, was able to identify patterns of writing that could characterise either hard or soft disciplines. For example, when writing abstracts, the hard disciplines such as physics or electronic engineering approach to writing was based on the assumption of “a reservoir of understandings, presupposing much of the background required to contextualise their studies” while soft disciplines such as applied linguistics or marketing were obliged to construct abstracts with the premise that there was a “relative absence of well-defined sets of problems and a definite direction in which to follow them.”

The concept of discourse community does not automatically imply homogeneity. Indeed Starfield (2001) sought to highlight the internal struggles that take place in disciplinary settings and framed the discourse community consensus ideal as a goal to strive for rather than taking it as already given. Clark’s (1992) outlook was even more forceful by stressing the hierarchical nature of academic discourse communities:

> It is the senior members of the community, the teaching staff, who establish the rules of behaviour for the community, and it is easier for the staff to flout those rules than students

(Clarke 1992: 118)

If such a view is indeed true, then this reinforces the likelihood that post-graduate academic legal writing is constituted of a relatively stable set of genres, given the students’ position in the disciplinary hierarchy.

Therefore, the study’s textual focus aligns it with the concept of discourse community, though to understand the dynamics within the texts, it is also necessary to look beyond them and develop an understanding of the discourse community at a more general level and the influence it has on master level writing; these issues are dealt with in more detail in Chapter 3. Nevertheless, an additional clarification is required at this point, which is related to the discussion in this section, and that is the disciplinary boundaries of the master level
discourse community. This has to be set against the contrast between English for Academic Legal Purposes (EALP) and English for Occupational Legal Purposes (EOLP).

1.3 **English for Academic Legal Purposes (EALP) and English for Occupational Legal Purposes (EOLP)**

To understand the boundaries within the legal discipline and hence the disciplinary parameters of this study, it is necessary to see how researchers have categorised legal discourse and what characteristics pertain to these categories, as well as what features are shared between them.

1.3.1 **The divisions of legal discourse**

Various researchers have proposed frameworks for the discourses in law. Kurzon (1997) drew a difference between the ‘language of the law’ and ‘legal language’. He defined the language of the law as “the language or style used ... in legal documents that lay down the law” and legal language as “used when people talk about the law” (p. 120). Figure 1.1 below presents his map.

**Figure 1.1 Kurzon’s map of legal language sources (1997: 120)**
Kurzon’s categories are mainly set in the field of English for Occupational Legal Purposes (EOLP); textbooks are the one exception, the only genre likely to be exclusively used in English for Academic Legal Purposes (EALP). Perhaps one could also question, in the light of judicial precedent, why judgements did not form a part of the ‘language of the law’ too, since cases are an important part of the body of laws in common law. That apart, Kurzon (1997: 121) did see the influence of the ‘language of the law’ in legal language in terms of transfer of words, expressions and possibly syntactic structures. This points to the fundamental role of the sources of law on the discourse of the community in general.

Danet’s (1985) table below adopted a slightly different approach by categorising according to style and mode.

Table 1.1 Typology of situations in which legal English is used (Danet 1985: 276)

<table>
<thead>
<tr>
<th>MODE</th>
<th>STYLE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frozen</td>
</tr>
<tr>
<td>Written</td>
<td>Documents:</td>
</tr>
<tr>
<td></td>
<td>- insurance</td>
</tr>
<tr>
<td></td>
<td>policies</td>
</tr>
<tr>
<td></td>
<td>- contracts</td>
</tr>
<tr>
<td></td>
<td>- tenancy</td>
</tr>
<tr>
<td></td>
<td>agreements</td>
</tr>
<tr>
<td></td>
<td>- wills</td>
</tr>
<tr>
<td>Spoken - composed</td>
<td>Marriage</td>
</tr>
<tr>
<td></td>
<td>ceremonies</td>
</tr>
<tr>
<td></td>
<td>Indictments</td>
</tr>
<tr>
<td></td>
<td>Oaths</td>
</tr>
<tr>
<td></td>
<td>Verdicts</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Spoken - spontaneous</td>
<td>Lawyer-client</td>
</tr>
<tr>
<td></td>
<td>interaction</td>
</tr>
<tr>
<td></td>
<td>Bench</td>
</tr>
<tr>
<td></td>
<td>conferences</td>
</tr>
</tbody>
</table>
Danet does not include any academic related genres in her categories. Some of the spoken styles in this analysis have a performative function in giving a new legal status to a person or entity, the most obvious example being the marriage ceremony. What distinguishes the frozen from the formal style is that the frozen documents can be reproduced with just details of the interested parties inserted each time. The formal style is not so hidebound but nevertheless, careful planning is required, particularly with regard to the expected structure of the genre.

Trosborg (1995) recognises the law-making role of judgements in her taxonomy though organises it not entirely in terms of genres that make the law and genres that discuss the law. As can be seen in Figure 1.2 below, her categories are wider and are largely set in communicative contexts.

**Figure 1.2 Trosborg’s (1997: 20) categories of legal language**

Once again the discourse practices of EOLP are prominent with just the ‘language in textbooks’ representing the EALP domain. Maley (1994) offers a similar taxonomy with the language of legal documents, the language of legal consultation, the language of
judicial discourse (spoken and written judgements) and courtroom discourse (the interactive discourse in the courtroom setting).

One might be led to believe that the role of EALP is indeed a very minor one given the amount of visibility it has in the taxonomies outlined above. Candlin et al (2002b: 106) shed some light on the genres in academia when they listed legislation, cases, judgements and textbooks as the principal sources that law students worked with at undergraduate level in Hong Kong. The genres students produced were essays involving critical analysis, the legal problem question and legal briefs (further details of these will be provided in Section 3.4.1). There is some similarity in the list of genres that Swales (1982) reports on for first year law students in Sudan, particularly in relation to the UK law aspect of the curriculum. In addition to studying their own legal codes and constitution, Sudanese students also dealt with law reports (and consequently judgements) and standard UK textbooks on English law. What is clear is that the study of law, like the practice of law, relies to a significant degree on the sources of law (legislation and law reports in particular) and consequently one can speculate that Kurzon’s observation about the transfer of language from these sources will also apply to the academic sphere.

Deutch (2003: 137) was also able to cast more light on the EALP/EOLP divide in her study of the use of legal English in Israel among lawyers and lecturers. She outlined five principal genres: legal documents (e.g. affidavits, wills, conveyancing of title, etc.), legislation, court decisions, books and articles, and surveyed their use among lawyers and lecturers. Legal documents dominated for the lawyers, though the lawyers appeared to use also all the genres to a significant degree. The lecturers largely excluded the legal documents and focussed on the other four, with a much more intensive use of articles and books in comparison to the lawyers. Her study did not include university students, though following the patterns of use by the lecturers one can imagine that, as in Hong Kong and Sudan, legislation, court decisions, books and in all likelihood articles also feature as the required canon for study.

1.3.2 Characterising EALP

Kissam (1987) broke up legal writing into two broad categories: instrumental writing and critical writing. Instrumental writing dealt with professional communications that set
positions between parties in some permanent way (i.e. contracts), while critical writing was a process where:

... a continuous and reciprocal feedback can occur between a writer's partially completed text or texts and her thoughts, memories, and instincts about a chosen subject. (Kissam 1987: 3)

This latter process favours the development of academic legal writing, and combined with Williams’ (2002) view on the need for students in “ascertaining the state of the law” or exploring “some particular facet of the legal phenomenon that is being placed under the legal microscope” (p. 207), would seem to encapsulate the focus of academic legal study and writing. In contrast to the various legal practitioners, Mattila (2006: 4) argued that the language of legal authors was characterised by greater freedom and also employed a good degree of scholarly vocabulary. However, this greater freedom is not to be interpreted as a clear split between academia and professional practice. Candlin et al. (2002b: 103) stressed the influence that professional bodies had on academic study, which is not surprising given that many law graduates eventually end up in such bodies. Also, Williams (2002: 32) stressed the need to get familiar with the authentic documents of law, as he concluded that relying on lecture notes and textbooks would not suffice to properly know the law. The findings of Candlin et al., Swales and Deutch in Section 1.3.1 above all bear out this primacy of the sources of law for legal education.

Compared to professional legal discourse legal academic writing may not be as formulaic, (Tiersma (1999: 61) noted that binomial expressions such as “each and every” were used five times as often in professional legal texts than in other disciplines), nor complex in terms of sentence length as seen in Section 3.3.2.1. Nevertheless, it has attributes which must be learnt by students. The standard features of a specialised discourse, such as conciseness, formal forms, nominalisations, passives (Gotti 2003), or citation, evaluation and modality (Hyland and Tse 2004), all require attention. Furthermore, as a consequence of the legal English lexical features listed in Section 3.3.1, students must learn how to derive the legal meaning of a seemingly unambiguous word or expression. Cownie and Addison (1995:4) illustrate this with the word ‘to steal’. A lay-person may define this in moral terms, but a lawyer needs to be aware of the legal definition by consulting the appropriate statute. Alcaraz and Hughes (2002) defined this category of vocabulary as semi-technical since it
occupied the world of general usage but had a different meaning in the specialised legal context. Similarly, Tiersma (1999:109) contrasted the global understanding of a word like ‘oxygen’ with a legal term such as ‘negligence’. Unlike the former, the latter can only be defined by the period and country in which it is set and hence the strong influence of the jurisdiction of where the student completes his or her studies.

1.3.3 The transition from EALP to EOLP

Candlin et al. (2002b: 106), in addition to outlining the genres that university undergraduate students had to read and produce, did the same for the professional legal training courses. Some elements were shared with the purely academic field, such as the problem question genre, though new elements were also present such as producing legal memoranda, pleading documents and contracts, all of which have a strong practitioner focus. The Law Society and General Council of the Bar, a professional body in the UK, specify what legal knowledge students are expected to acquire:

... intellectual and practical skills needed to research and analyse the law from primary resources on specific matters, and to apply the findings of such work to the solution of legal problems.

And

... the ability to communicate these, both orally and in writing, appropriately to the needs of a variety of audiences.¹

While the first part of the goals is similar to those which undergraduate law students must achieve, a bigger difference is the positioning of one’s texts for a variety of audiences. Another difference is how practitioners use the sources of law. Solan (2005) pointed out that legal decision makers are primarily “in the business of determining the applcability of legal documents to events that have occurred in the real world” (p. 79) and consequently there is less focus on the study of the documents to display knowledge of their content, which is something that is expected of students. Haigh (2009: 128), again on the issue of how texts are read, noted that the difference between academic and legal documents is that the latter must be checked to see if they are legally effective. Furthermore, the primacy of rhetorical skills is also evident in Skinner’s findings (in Stratman 1990: 195) about lawyers,

¹ See “Legal research: defining the concept.” http://www.ukcle.ac.uk/resources/tlr/concept.html
when writing appellate briefs, give more focus to rhetorical techniques as they were already quite familiar with the legal content.

1.3.4 Summary comments
Some genres are unique to EALP such as textbooks, essays and research articles. EOLP also has genres that are seldom seen in academia, appellate briefs, wills, contracts and various solicitor letters being just a few. There is also a more varied audience for genres produced in the EOLP context and as Crystal and Davy (1969: 212) noted, if a document is going to be read, it is likely to be done so by a hostile interpreter. This in turn leads to drafters relying on formbooks, when available, rather than straying from tried and tested methods. EALP on the other hand allows the author to have more freedom of expression, since nothing produced is going to be legally binding in some way. While the contrasts outlined here serve to better understand the position of EALP in the broader disciplinary context, it is now necessary to explain the ‘micro-context’ of where the study took place. With a definition of semi-technical language and the corresponding rhetorical functions now in place, along with an explanation of what branch of the disciplinary community the research is located, what remains is to introduce the logic behind the methodology to identify the target language.

1.4 Broad approaches to text analysis
Bazerman (1994: 82) defined a genre as the elaboration of “the development of single types of texts through repeated use in situations perceived as similar.” This process of elaboration is most likely to be interpreted through the Sydney school, the New Rhetoric approach or the English for Specific Purposes (ESP) approach. The Sydney school approaches texts through the prism of systemic functional linguistics, which seeks to define the register (genre) through classification of its field (what is being talked or written about), mode (the kind of text that is being made) and tenor (role relationships in the exchange). One of the core objectives of the approach is that “it aims to explain the role of language in the way things are so that it may act upon such ways for the potential good of many” (Christie 1999:761). This critical stance is absent from the other two approaches. The New Rhetoric
Approach is a context-driven procedure which seeks to first identify the nature of the discourse community and from there work down to the eventual micro details of the texts it uses. Research that has reflected this awareness of the rhetorical context include Tardy’s (2005) study of the rhetorical development of two students’ writing in light of their improved understanding, through mentor feedback, of the expectations of their discourse community. There is also Ding’s (2008) study of student acculturation to the procedure for writing of grant proposals and at a more general level, Spack’s (1997) longitudinal study of an L2 student’s acquisition of academic literacy in a US university. A common feature with this approach and the Sydney school is the use of a limited number of texts, whose analysis can be done manually.

The ESP approach focuses more on the texts themselves rather than the surrounding context. One version of this approach is classically epitomised by the move analysis as developed by Swales (1990) and could be termed the qualitative approach.

Qualitative approach

Swales’ (1990: 141) genre move structure can be illustrated by his create a research space (CARS) three part move model for research article introductions. Move one establishes a territory, move two establishes a niche and in move three the author occupies the niche. There are many derivatives of this move structure to fit better the genres under analysis as demonstrated in studies by Hopkins and Dudley-Evans (1988) and Lung (2008). Swales himself later proposed an alternative model to CARS called open a research option (OARO) to reflect writing in less competitive, mostly non-Anglophone environments (2004: 244) which shows the high degree of adaptability of the move structure for mapping genres.

Other genre moves were developed by Paltridge (1995) in his analysis of L2 student essay writing for a language programme. At a macro level, he identified discourse elements (e.g. situation-problem-solution-evaluation), then semantic relations (e.g. statement-affirmation, statement-denial, statement-exemplification) and finally the lexico-grammatical encodings of these semantic relations - a system of relations developed by Crombie (1985). Also Brett (1994) developed three categories of communication in his analysis of the results section of sociology research articles: (1) metatext “it is text about the text......guiding the
reader to other parts of the writing” (p.52), (2) “presentation” which deals with how results are obtained and reported, and (3) “comment” which enables the writer to express opinions about and interpret the findings. Brett’s model was used again by Williams (1999) in his analysis of the results section of medical research articles.

Indeed, adaptability appears to be a basic necessity for such modelling. The process of genre description in terms of move structure at a macro level is a task that is easier in some cases than in others. Gardner and Holmes (2009) recognised that some genres have a very fixed structure. They used the example of medical case histories, which showed no structural variety at all in the sample they studied. However, even at such a macro level, some degree of variation is not unusual. The classic Introduction, Method, Results and Discussion (IMRD) structure for research articles, particularly those from the hard science fields, has been criticised by Lin and Evans (2012) as an insufficient description given that literature reviews, conclusions and the coupling of results and discussion sections were not uncommon in their multidisciplinary corpus.

A final aspect is the issue of to what extent a text is one unitary genre. Evidence to date would indicate that there is a view that genres exist within genres. Dudley-Evans (2000: 5) referred to the concept “part genre” as developed by Ayers (1993) when referring to the introduction section of research articles. More recently, Hüttner (2007: 102) argued for the use of the term “genre-constituent” to define clearly distinguishable parts of genres such as introductions in academic papers or welcoming statements in business reports and Samraj (2005: 142), in her study of abstracts and introductions, concurred with Bhatia’s (1993: 182) view that introductions should be considered as genres in their own right. Many exponents of the ESP approach have indeed concentrated their analyses on just one part of a genre text. In addition to Brett (1994), Williams (1999) and Samraj (2005) above, Kaplan et al. (1994) applied Swales’ move to research article abstracts as did Salager-Meyer (1992), who investigated the typical tenses and modal forms associated with each move in medical journal abstracts. A final example is Kwan (2006), who proposed her own move structure for literature review sections in applied linguistics PhD theses.
Quantitative approach

Even if we just remain with the varieties of move structures which researchers have developed to suit a particular genre within a particular discipline (Bhatia 1993) for lab report introductions, Badger (2003) for newspaper law reports, Yang & Allison (2003) for research article conclusions, Kwan (2006) for the literature review in PhD theses) and even at a cross-disciplinary and multi-lingual level (Swales’ (2004: 244) OARO alternative to his CARS model for research article introductions), a common methodological approach between all of these was a qualitative assessment of the moves within the text with the option of inter-rater reliability scores to increase the objectivity of assessments. Nonetheless, Lee (2008) highlighted the criticism of such an approach on the grounds that:

...move analysis on its own has been accused of being too subjective and not linguistically grounded enough in terms of providing a full linguistic characterization of what an individual move is.

Lee (2008: 90)

Hüttner (2007) also expressed reservations about the linguistic realisation of steps in the move analyses done by Swales (1990) in that:

... the criteria employed for deciding whether any of the features described are indeed typical of either the entire genre or specific genre moves are to my mind left rather open.

Hüttner (2007: 53)

Such misgivings were also one reason why a qualitative approach was not taken for the study corpus of this thesis.

An alternative is offered by Biber et al. (2007a: 14), who described the technique as “bottom-up corpus-based analyses of discourse organisation”. Such an approach enables the researcher to look at many exemplars of a given genre. Automatic computational techniques mean linguistic description is primary and only then will functional analysis be used to investigate if linguistically-defined discourse units have systematic functional characteristics. Starting with a computational analysis of the whole corpus to uncover association patterns as the basis on which further functional interpretations will be made is in stark contrast to the more prescriptive move structure analysis. Baker (2006) saw four main advantages in the use of the corpus approach:
a) It limits the level of researcher bias

b) Because sampling is not necessary, it permits the emergence of linguistic patterns that may be otherwise overlooked

c) The true representativeness of patterns can then be determined against the corpus

d) Finally, it can be combined with other methodologies to provide a more comprehensive analysis of the linguistic characteristics of a genre.

The significance of the last point can be seen through the study of Connor et al. (2002). In their analysis of US, Finnish and Belgian students’ letters of application they first manually coded the moves of the genre and then applied corpus analysis techniques to each move. Flowerdew (2005) also conducted a review of corpus-based studies from ESP and New Rhetoric perspectives which attests to the growing integration of quantitative and qualitative methods. Even in the case of Biber et al. (2007b), where manual tagging of moves was eschewed in favour of applying the more automated vocabulary-based discourse units to the IMRD sections in biology research articles, it was recognised that the interpretation of discourse units required human and not computer analysis if subtle signals of meaning were to be noticed. Baker (2006) expressed a similar view when discussing keyword analysis and succinctly puts the argument for a balanced approach in genre analysis:

However, as with all statistical methods, how the researcher chooses to interpret data is ultimately the most important aspect of corpus-based research.

(Baker 2006: 148)

Therefore, in light of the fact that the output of quantitative analyses requires interpretation, the study corpus investigation for this thesis also moved to the qualitative field once computer-assisted data processing was complete. One strong argument for the convergence of patterns derived from a semi-technical wordlist, and hence the validity of asserting that such language represents the core epistemological features of the discipline, can be found in Paré and Smart’s (1994) view of a genre in that “repeated patterns in the structure, rhetorical moves and style of texts are the most readily observable aspects of genre” (p.147) and that “despite the idiosyncrasies of the various individuals…..the genre is enacted in
much the same way from one instance to another” (p.150); this points to the likelihood that
the semi-technical list should indeed act as a marker for regularly occurring patterns of
language use in the corpus.

Finally, looking beyond textual analysis at the quantitative or qualitative level, it could also
be argued that determining the function of a genre in relation to other different genres is
also a step in understanding the nature of the discourse community. Even when one has
applied a rigorous process to identify a genre, it should be remembered that a genre is often
not a single autonomous entity but in fact a part of a more sophisticated communication
chain. Swales (2004: 18) discussed ‘genre chains’, which referred to the chronological
ordering of genres and illustrated this process through Räisänen’s (1999) review of
documents that led to the conference presentation paper. He also invoked Devitt’s (1991)
study on the type of letters tax accountants produce to illustrate the concept of ‘genre sets’,
which he defines as the texts people engage in “both receptively and productively, as part
of his or her occupational or institutional practice” (p.20). Similarly, Bazerman (1994: 97)
used the term “systems of genres” to describe “inter-related genres that interact with each
other in specific settings,” which in his case was the legal paperwork connected with patent
applications. Finally, Swales (2004: 21) considered ‘genre networks’ as sites where texts
absorb features of earlier or other concurrent genres. The view that texts absorb features
from external sources is not a new one. Bakhtin (1981) forwarded that view that language
output did in fact not represent a unique and new event, but instead speakers adopted
elements from previous discourses, and not just their own but also those of others, to
formulate a new text. This heteroglossic relationship can be seen in particular through the
use of intertextuality and interdiscursivity. Hyland (2000: 107) described the former as the
use of or reference to other texts in the existing text (e.g. through citations or quotes), and
the latter as adopting meanings originating from other fields of discourses into the instant
discourse (e.g. a company buying another to ‘secure its supply lines’ is using language that
has military undertones). Both of these features are evident in the EALP study corpus.

1.4.1 Summary comments

The study adopted a corpus linguistics approach to the identification of the semi-technical
word list. Once this list was identified, a qualitative analysis approach was used to interpret
the meaning of such a word list in terms of rhetorical functions. Then, in line with Paré and Smart’s (1994) view on the prevalence of repeated patterns in genres, these rhetorical functions were seen to represent the core epistemological features of disciplinary writing within this particular sub-community. This quantitative approach to identifying semi-technical language means it is very applied in its perspective. This analysis is not locked in by semantic definitions of particular terms and their subjective categorisations as technical or semi-technical. Instead, the methodology offers a level of fluidity in fixing what semi-technical language can be; the nature of the language is determined by the shared features of written texts produced by a discourse community at any given time. This means that semi-technical language in one disciplinary context may, in other circumstances, due to a different mix of sub-disciplines or genres or even the hierarchial level of participating community members, acquire a new identity due to a recalibrated keyword list and corresponding rhetorical functions.

The following section will now outline in more detail the research context for the investigation of post-graduate academic legal writing.

1.5 Research context

Little appears to have changed since Harris’s comment that “law schools and law faculties have remained on the margins of EAP work in universities” (1992: 19), mostly due to the nature of legal language and the disparate legal systems to which it must adapt. While many legal style guides are in circulation, such as Sinsheimer and Brostoff (2003), Fajans and Falk (2005) and Salter and Mason (2007), these tend to have a bias towards native speakers and as Candlin, Bhatia and Jensen noted “are heavily biased in favor of legal content rather than the language of the law” (2002a: 302). What language research has been done has largely focussed on published material such as legislation (Salmi-Tolonen 1994, Trosborg 1997, Bhatia 2010), law reports and court judgements (Bhatia 1989, Mazzi 2007, Lung 2008, Orta 2010), patents (Pellon 2010), contracts (Crystal and Davy 1969, Trosborg 1995); or in the academic sphere, law review notes (Feak et al. 2000) and research articles (Hiltunen 2006, Coulson 2009). Indeed, the prevalence of published material as a source of research is reflected in Hyland’s (2006) review of rhetorical variation across disciplines, where out of 38 academic publications surveyed, just one included student essays in its
analysis. The amount of research done on student academic legal writing has been limited and authors have focussed mostly on the genre of the problem question (Howe 1990, Bruce 2002, Jensen 2002, Langton 2002, Tessuto 2011,). As will be shown in Chapter 4, basing research on student material presents a number of challenges. Even where student legal essays have been collected, as in the case of the British Academic Written English (BAWE) corpus\(^2\), the numbers tend to be small at postgraduate level (28 essays were collected for the BAWE). This paucity of data means post-graduate academic legal writing could be considered as uncharted territory for linguists.

The fragmented nature of law was addressed by Swales and Bhatia (1983), who took the position that law content (though most likely barring cases of international law) tends to be restricted within the bounds of the state where it is studied – family or criminal law does not travel well. While a survey by Candlin, Bhatia and Jensen (2002a) would seem to confirm this outlook, it must be tempered somewhat by the fact that Common Law, while substantively variable from one jurisdiction to another, does share the common language of English. This feature greatly facilitates its study from a linguistic point of view.

Furthermore, the growth of the overwhelmingly English language-based Master of Laws (LLM) programmes as an international phenomenon adds an impetus to attaining a greater understanding of how language is used in such a context. Therefore, we now have an academic legal context which is increasingly transnational in nature, though still relatively untouched by linguists.

There are numerous groups that stand to benefit from the mapping of linguistic behaviour in post-graduate academic legal writing. The challenges faced by the non-native speaking (NNS) students operating in an English speaking academic context have been widely documented (Cadman 1997, Swales 2004, Hyland 2004a) though again, the experience of law students remains largely an unknown. In addition, the native/non-native speaker divide does not fully address the writing challenges faced by students of an LLM programme as there are other categories of student whose backgrounds mean further assistance is required.

There is no undergraduate law degree in the USA so students attending a post-graduate law

\(^2\) The British Academic Written English (BAWE) corpus was developed at the Universities of Warwick, Reading and Oxford Brookes under the directorship of Hilary Nesi and Sheena Gardner, Paul Thompson and Paul Wickens, with funding from the ESRC (RES-000-23-0800).
programme, while mostly native speakers, may be unfamiliar with the conventions of legal scholarship and writing. Furthermore, students from continental Europe who have studied law at undergraduate level will have studied Civil Law (which is based on Roman law) and therefore, despite legal training, will be unfamiliar with the scholarship practices associated with English language-based Common Law (law based on judicial precedent). Therefore, there is a pedagogical need to articulate to a large potential audience what the requirements of post-graduate academic legal writing actually are. The identification of the core competences of the discipline through the elaboration of the rhetorical functions of semi-technical language is a step in that direction.

Finally, as intimated in Section 1.1, the identification of semi-technical language is also a response to a gap in the knowledge of the use of ‘general’ legal language in a post-graduate student writing context. As with many disciplines, the field of law is constituted of several sub-disciplines. The vocabulary profiles of tax law, family law and intellectual property law will all vary considerably; nevertheless, each of the law sub-disciplines is processed through the framework of legal analysis. This implies that, regardless of the particular field of activity, lawyers will approach a topic with a specific set of tools of analysis. If there is an accepted way of ‘doing law’, then this standard approach should be applicable to all sub-disciplines. This in turn would mean that such a standard approach avails of the same structures to express itself and these structures should be possible to locate through the use of corpus analysis tools. Therefore, if one reserves the definition of technical language for the language belonging to a specific sub-discipline, then semi-technical language should be somewhat more generic but nevertheless legal in nature and applicable to all sub-disciplines.

As already stated in Section 1.1, having a precise linguistic description of such language could be of significant help to those who must teach ESP courses at university level. The often cited problem of applied linguists trying to come to terms with the content material and epistemology of the ESP field could be alleviated by adopting a semi-technical language analysis of the discipline. Having access to the information such an analysis could provide would help one to understand both a discipline’s core values and the prevailing linguistic make-up of those values. Hence, this thesis is primarily exploratory in nature. It seeks to cast light on the core workings of post-graduate academic legal writing and by eschewing an *a priori* semantic approach to defining semi-technical language in the
discipline, the more applied corpus linguistics analysis approach means a closer fit between what constitutes semi-technical language and its context of use.

1.5.1 Research questions
To close, having outlined the background and potential benefits of researching the area, it is now necessary to set out the research questions which have to be answered in order to contribute any additional knowledge about the topic:

Research Question 1. What semi-technical vocabulary can be identified and how can this be categorised according to shared features in the EALP study corpus?

Research Question 2. What rhetorical functions does this semi-technical vocabulary fulfill?

Research Question 3. Do these rhetorical functions display a convergence of use which allows them to be identified as core epistemological features of the sub-community’s writing practices?

1.6 Thesis outline
The thesis will first look at the immediate context in which the texts are set. Chapter 2 sets out the core features of academic writing. Given the study corpus’s focus on written texts, various approaches to genre are then elaborated before focusing on the ESP approach, which best reflects the analysis taken here. Following this, the genres which are of relevance to students, either receptively or productively, are analysed focusing in particular on the research article, thesis, essay and the textbook. Moving to linguistic features of academic writing, the chapter reviews, among others, the role of citation, evaluation and the influence a discipline can have on such features. All these elements are relevant to the findings provided in Chapters 5, 6 and 7. Once the above have combined to set the context, it is only then possible to appreciate the role of student writing within the academic community. Here it becomes clear the role writing plays as a means of legitimate peripheral participation (Lave and Wenger 1999) and the challenges students face as they come to terms with gaining competence with any course material and displaying this knowledge in
an appropriate way. Again, this notion of display of knowledge resurfaces in the corpus analysis chapters.

Once the main tenets of academic writing have been reviewed, Chapter 3 then looks at the discipline of law in more detail. The fundamental role of language in law is first discussed and this is further explained through a description of the origins of legal English. Having understood why legal English is written as it is today, it is then possible to highlight the linguistic features of the discipline from a lexical, syntactic and discourse point of view. Also as an aid to interpretation, both the main EALP and EOLP genres are explained as issues of intertextuality and interdiscursivity feature in the analysis of the study corpus.

Chapter 4 will set out the theoretical framework within which the methodology for identifying semi-technical vocabulary is derived. The salient features of corpus construction and analysis are explained, such as corpus-driven versus corpus-informed approaches, balance in the corpus and the vagaries of sampling from the target group. As noted by Clancy (2010), all these aspects have to be articulated if one wishes to say what the data really represent. The fact that the data were collected from the same participants at different intervals and represented quite a narrow field of study means the issue of generalisability is dealt with in the chapter and what exactly its longitudinal characteristic can provide to the analysis; meta-data aspects such as organising the data according to sub-disciplines, periods and genres are also explained. The final part of the chapter is dedicated to the various steps required to determine a semi-technical list. These include the criteria for identifying key legal expressions and their distribution among sub-disciplines, authors, periods and genres.

Chapters 5, 6 and 7 deal with the corpus analysis results and three salient features are subject to analysis in these chapters. Chapter 5 focuses on the use of ‘or’ and its role in binomial and multinomial constructions in the texts. The functions of these constructions are explained as well as the syntactical make-up to achieve these objectives. Binomials have already been recorded as being particularly prevalent in legal writing (Gustaffson 1975) and the phenomena of intertextuality and interdiscursivity are noted in the student texts. Chapter 6 deals with the use of nominal forms and the chapter identifies the key sources students refer to when making propositions, ranging from legal institutions to more
abstract frameworks of law as well as metadiscourse engagement markers (Hyland and Tse 2004), which some lexical bundles can enable. Chapter 7 moves beyond the use of semi-technical language at a phrasal level and introduces its clausal function through the use of ‘that’ in report structures. The chapter analyses how ‘that’ enables attribution and averral\(^3\) (Sinclair 1988). For attribution, the sources which are relied upon are highlighted, as well as what the collocational preferences are for these sources. Furthermore, it contrasts attribution practices, with its undertones of evaluation which students bring to such reporting, with the more explicit averral practices, and the variety of ways in which the student writers bring their own voice into the texts.

Once the results of the corpus analysis have been completed, Chapter 8 will assess the positioning of post-graduate academic legal writing in light of the two main pillars of influence, academic writing as discussed in Chapter 2 and legal English writing as discussed in Chapter 3. The chapter will discuss how students use semi-technical language to satisfy the requirements of writing in an academic setting, while at the same time providing a clearly disciplinary identity by adopting the characteristics that set legal English apart from other disciplines. In essence, the chapter will set out which features, as discussed in Chapters 2 and 3, are pertinent to a post-graduate academic legal writing context. Finally, Chapter 9 will conclude by outlining the broad functions semi-technical language has enabled in the texts and assess the degree to which the hypotheses were confirmed. The limitations of the study are also discussed and further avenues for additional research are presented.

\(^3\) While dealt with in greater detail in Chapter 7, the basic distinction between averral and attribution is that the former refers to propositions made by the student writer and the latter refers to propositions from all other sources.
Chapter 2 – Academic Writing

According to Biber and Conrad (2009: 109), one defining feature of academic prose is its focus on communicating information rather than emphasising the building of personal relationships, which would be the case for conversations. Another feature they identified was that the audience tended to be more restricted and specialised than would be the case for fiction or newspaper readers. It appears that this specialised audience is also particularly interested in the interpretations provided in the texts (Biber and Conrad, 2009: 121); arguments must be developed and conclusions reached rather than simply reporting events. Achieving all of the above requires an understanding of a variety of aspects of the academic world. The sections below focus on three important aspects, without which the understanding of academic writing would be incomplete. Firstly, it is necessary to build on the concept of discourse community and explore the student role therein. To be an effective academic writer, it is necessary to understand how a discourse community works in order to communicate with it in an appropriate manner. The second area of importance is the type of texts that are typically produced within a discourse community. These genres package information in a particular format, are expected to fulfil particular communicative functions and may be differentiated in terms of the audiences they address. Finally, the writing itself will be analysed, from the point of view of explaining its typical features and how it adapts to different disciplinary contexts. Given that the study corpus is made up of student texts, this section of the chapter will look at the case of student writing in an academic context, the role of such writing as a tool of education, the challenges students typically face and the process of maturing into competent academic writers.

2.1 Student participation in the discourse community

Currie (1993: 101) summarised the challenge faced by students entering university as the need to “come to terms with its cultural rules and be equal to the cognitive demands that the institution imposes” and, in relation to what both Woodward-Kron and Bondi noted in Section 1.2.1, be able to acquire this competence for each sub-discipline that belongs to
their subject area. Student membership of a discourse community also raises the issue of what degree of membership is possible since Woodward-Kron (2004: 141) noted that the level of engagement and its duration can vary considerably. Hyland (2006:19) illustrates this by observing that the same texts and genres are used by “the student neophyte, the laboratory assistant, the professional theorist” for different purposes. These different purposes are also apparent in the output of community members, Candlin and Plum (1999: 198) saw writing as a means by which student participants could “evidence their degree [italics added] of membership”. So, what written competencies must students acquire to be recognised by a given discourse community?

Beaufort (2000: 203) suggested five areas of context specific knowledge that the expert writers in her study had acquired: discourse community knowledge, subject matter knowledge, genre knowledge, rhetorical knowledge and task-specific procedural knowledge. Similarly Tribble (2001: 131) outlined the sets of knowledge required for writers to produce “appropriate and effective texts” as content knowledge, writing process knowledge, context knowledge and language system knowledge - the latter perhaps moving beyond Beaufort’s criteria to include one particular challenge faced by non-native speakers. That students’ writing becomes more expert as they move through the education process has been well documented (see Berkenkotter et al. 1991, Bloor 1996, Spack 1997 and Ding 2008). However, the degree of competence is often dependent on how well the student has understood the expectations of the discourse community. Connor and Mayberry’s (1996: 232) student, while conducting the task “in an acceptable manner”, did not fulfil the potential desired by his professor and Belcher’s (1994) three graduate students had mixed degrees of success related to their ability to, among other things, comprehend the epistemological culture of the department (an important issue for the PGALW corpus) and the mentoring role adopted by their supervisors. Nevertheless, for both Belcher, and Connor and Mayberry, the ultimate litmus test for student success within the academic community was the written texts, hence underlining the importance of writing in an academic context. However, what the above fails to tell us is what written genres are students most likely to have to engage with to successfully participate with the discourse community.
2.2 Genre

Research would seem to suggest that two basic categories exist for academic writing. Firstly, there is the high-stake writing that promotes the professional academic development or status of the author. Examples of these genres would include the research article (as analysed by Hyland, 2000 and Stotesbury, 2006), PhD thesis (analysed by Cadman 1997, Bunton 1999, Charles 2006), book review (Hyland 2000) and grant proposals (Ding 2008). Secondly, there is the unpublished lower stake student writing written for evaluation purposes with a significant power distance between writer and (often only one) reader (East 2006). According to Moore and Morton (2005) the most common student genres are the essay, research report, review, exercise, case study report and experimental report. Nesi and Gardner’s (2012) breakdown of the genres in the British Academic Written English (BAWE) corpus show a similar trend with essays dominating and case studies and methodology recount among the top five. While attempting to describe all the genres being used in the world of academic writing would be beyond the scope of this chapter, nevertheless it is necessary to look at some key genres in order to gain a better insight into the academic discourse community and that of the student writing context in particular. The genres may not be ones that the students themselves produce but could be a source that the students rely on when writing their own papers.

2.2.1 Academic genres

2.2.1.1 Research article (RA)
The research article has quite an amount of prestige attached to it. Hyland (2009b: 67) uses Montgomery’s (1996) description as “the master narrative of our time”. By its nature, the RA is the result of multiple actors who have an impact on how the final product will be. Hyland (2009b: 68) traced its development as it passes through the hands of colleagues, language specialists, reviewers and editors. Hyland (2009b: 68) also noted that the RA has to play the twin role of offering something original yet always being deferential to the discipline community from which it draws its knowledge. Lillis and Curry’s (2010: 89) list of interventions by the literacy brokers, whose role is to provide feedback on the text while in production, gives us an insight into what features are important to be aware of in the...
writing of an RA. These, among others, include syntax, lexis, formality conventions, cohesion markers, input on argument structure, paragraphing and journal publishing conventions. The primary audience for RAs is not students of the discipline but already fully-fledged content experts in the field. This may lead one to believe that for those acquiring disciplinary expertise (students), the challenge of reading such articles would be considerable. However, Biber and Conrad (2009: 126) saw the genre offering both obstacles and ease of access for the student population. Obstacles included trying to understand the RA content and being able to evaluate the scientific merit of the article. But on the other hand, at the level of the textual features, they noted that RAs from a single discipline have a smaller range of vocabulary, have less referents and, what could be particularly advantageous for non-native speakers, less use of idiomatic expressions (p.128). Similarly Sutarsyah, Nation and Kennedy (1994) also found that their economics text had a much higher concentration of high frequency content words compared to a corpus of mixed discipline articles, and Flowerdew (1993) recorded a similar phenomenon in his analysis of a biology corpus. Research articles however, remain the creation of discipline experts and contrast sharply with what Swales’ (1996) described as occluded genres. These are the genres that do not have a high level of visibility among the public at large due to the fact that they are not published, and it could be said that they are constituted of the genres that students are required to produce. One example of this type of student produced occluded genre is the essay.

2.2.1.2 Essay

The essay merits attention because, as Coffin et al. (2003) noted, “the essay continues to hold sway across many disciplines” (p.3) and indeed in Nesi and Gardner’s (2012: 10) breakdown of BAWE genres essays accounted for almost 45% of all texts in the corpus. Wingate (2012) also reported that it was particularly common in undergraduate courses and in the fields of the arts, humanities and social sciences. The preference for the essay genre can perhaps be explained by Dunleavy’s (1986: 78) explanation that it serves to foster intellectual development. A further elaboration of this view can be seen in Wingate (2012: 147) who contrasted the school essay genre with the university essay. The former requires the student writer to focus on a claim and adopt a personal opinion on an issue, while the latter requires an analysis of various and conflicting resources before presenting a
considered opinion about what are likely to be more complex ideas. The essence of essay writing was similarly expressed by Hyland (2009b) as “the ability to marshal evidence, evaluate it and mount a sustained argument” (p. 131). Additional skills developed by writing essays were identified by East (2006). He highlighted the need for the ability to carry out the appropriate research and reading, along with organisation in order to achieve an acceptable level of competence. Of course, such competencies need to evolve; Woodward-Kron (2008: 243) found that students of education showed a marked increase in the use of technical terms between the first and third year of their course. This trend of development was also recorded by Hewings (2004) for the increased use of interpersonal terms as an indicator of writer stance, and Wu (2007), again on the issue of evaluative stance. However, writing development does not always entail an increased use of specific language; Binchy’s (2003) longitudinal study of undergraduate writing recorded a dramatic drop in the use of first person personal pronouns between the first and second semester of a degree programme.

Of particular relevance to the texts in the PGALW corpus, Hyland (2009b) also labelled the essay genre as a ‘library research paper’ (p. 130) as students are to rely on library sources in articulating a position rather than drawing from their own empirical work – the modus operandi for the production of texts in the study corpus. One of the challenges students face with the essay genre is that, while they are required to embed their knowledge in the context of the writings of the community experts, an essay is also where students are meant to display their own view on the topic being discussed. Groom (2000: 19) recognised these twin demands of deferring to authorities and displaying a stance, but argued that the more successful writer will manage the multiple voices in the text in a way that the writer’s own voice remains the dominant one.

Another salient feature of the essay genre is that it is stipulative, the prompt comes from the course lecturer and the students must operate within the constraints of such a prompt. Hounsell and Murray (1992: 5) highlighted the drawback of this in that, in other circumstances, writers have some freedom to negotiate the boundaries of their text and consequently students were being denied the opportunity of exploring what they could realistically achieve by having an input on the content right from the beginning. A knock-
on effect of being straitjacketed is that university students may have an underdeveloped sense of audience given that their primary reader is just one person. Some genres try to counter this by simulating an imaginary audience, such as the business case study, or as will be seen in Chapter 3, the legal problem question. However, with the need to display an awareness of the discipline’s pillars of knowledge, upon which a student’s proposition is constructed, Paltridge (2001: 62) noted that particularly NNS writers could have difficulty in anticipating how this imaginary audience is to understand and react to what they read. Expert genres such as the RA do not have to concern themselves with such a fictitious audience and can simply focus on just one class of reader.

2.2.1.3 Thesis
Hyland (2009b) drew the distinction between undergraduate and postgraduate theses. He described the undergraduate thesis as typically between 8000-12000 words and as being by far the most substantial piece of writing undertaken by undergraduates. Again, calibrating the text to fit the audience appears to be a significant challenge as students must display an appropriate degree of intellectual autonomy while at the same time recognising the audience’s greater knowledge of the field. All this is done in the context of students having to “apply theories and methods learned in their courses, to display initiative and to effectively review literature, conduct research, analyse results and present findings” (p. 133). Perhaps unsurprisingly, Hyland found that given their relative inexperience, students tend to be more circumspect and adopt a more respectful stance in their writing, when compared to how RAs are written.

Postgraduate theses on the other hand seem to be less formulaic and indeed Hyland relied on Paltridge’s (2002) categories to describe thesis types, all of which depart in some way from the traditional IMRD model, a phenomenon more recently confirmed by Lin and Evans (2012). PhD thesis length also seems to be much more variable, Thompson, P. (2005b) studied theses from the field of Agricultural Botany, which averaged 31,000 words and this, he noted, was significantly less than a History thesis average of 85,000 words. This circumspection about developing a universal approach to thesis writing was also present in Ramani et al. (1988), who found that for referencing and citations, each research group in their study had their own conventions, which they were unwilling to change.
However, a unifying feature for all thesis writers was that many produce the genre just once. Furthermore, Paltridge (2001: 63) commented that the English-language thesis carried cultural undertones (such as citation, reader engagement and adopting a critical stance), which may not be present in other non-English speaking cultures; a topic also addressed by Cadman (1997), who surveyed thesis writers’ process of learning how to come to terms with an English language (and culture) approach to analysis. Similarly, Tardy’s (2006) extensive review of genre learning for L1 and L2 writers noted both linguistic and cultural obstacles faced by L2 writers.

2.2.1.4 Other student related genres
Coffin et al. (2003: 67) addressed the issue of academic genres that contained features of professional writing. As already mentioned, the business case study is an example where students must write for the academic assessor, but at the same time be seen to communicate with an imaginary client or professional colleague. Coffin et al. (ibid) considered the response required from students writing case studies to be two-fold. First, students had to be able to understand the theory behind the frame of analysis and secondly, apply it to the problem at hand. While the overall structure of the case study identified by Coffin et al. does not differ that much from the structural analysis done by Lung (2008), Coffin et al. rightly point out that the challenge is how to manage issues such as the use of personal pronouns, which may have a stronger or weaker presence depending on the nature of the (imagined) professional relationship.

The final genre, the textbook, is not produced by students though most likely is relied on by them when writing. Hyland (2009b) analysed textbooks, partially because they represent “repositories of codified knowledge and disciplinary lore” (p. 113) for undergraduate students. He noted that textbooks had more “authorial assuredness” and that there were less explicit references to earlier work, with the effect that textbooks tend to focus largely on accepted knowledge within the community rather than arguing new claims. He also recorded the higher incidence of metadiscourse features as the textbook authors made explicit connections between ideas and engaged with the novice reader more directly than one would do in an RA. This leads to the conclusion that textbooks tend to be uncontroversial and authoritative, as their function is to transfer the central features of a
discipline to new entrants. However, while not discussed by the authors above, a challenge faced by novices in the community, who most likely initially rely on textbooks as input for writing assignments, is to address the linguistic issues that will allow the student to extract the information, but not the style in which it is presented, in order to produce a text that is appropriate for student-to-lecturer communication.

To conclude, it would appear that genres are a key tool of communication within a disciplinary discourse community. Genres do not seem to have just one audience and some seem to be produced by just one section of the discourse community. The genres produced by the more senior members of the community, such as RAs, carry a higher level of prestige than, for example, an undergraduate essay but nevertheless, there appears to be a degree of borrowing between genres, at least by those that are lower ranked, while it can be assumed that higher ranked genres are likely to borrow from each other. This mingling of texts can cloud a clear definition of what an individual genre is, which in turn has led to the development of many tools to interpret the texts produced, as seen in Section 1.4. These tools are necessary, as understanding the nature of genre enables the development of more effective pedagogies for a smoother transition from peripheral participant to full community member.

2.3 General Linguistic Features of Academic Writing

Candlin et al. (2002b: 108) based their distinction between workplace writing and academic writing on the work of Dias et al. (1999) who suggested that workplace writing was “purposeful and problem-oriented” while university writing was epistemically focused. Hyland (2000: 12), when framing the role of writing within university discourse community practices, saw it as a reflection of “methodologies, arguments and rhetorical strategies designed to frame disciplinary submissions appropriately.” However, the significant pedagogical role of writing cannot be ignored. Bazerman (1982, cited in Williamson 1988: 91) believed that writing was the tool that enabled students to participate in the academic community. This approach was reinforced by Jolliffe and Brier (1988:54), who maintained that to acquire a level of knowledge akin to what experienced participants
in a discipline had, the novice had to “write about the discipline’s subjects, using its genres and its preferred styles.” Indeed Evensen (1996: 94) went even further by proposing that it was possible to gain new insights through the writing process, a view partially shared by Anson (1988: ) though she also gave credence to the fact that writing could be interpreted as a process of acquiring a community’s social and intellectual conventions as implied by Bazerman above.

While academic writing manifests itself through a variety of genres, what constitutes academic writing itself is perhaps more stable across the genre landscape. Nesi and Gardner (2012) used a multidimensional analysis approach on the BAWE corpus and found that the student texts scored high on ‘elaborated’ and ‘abstract and impersonal’ categories. Previously, Elbow’s (1991) rather cynical view of academic discourse nonetheless identified the several pertinent features: formality, impersonality through a preference for the passive form, explicitness, hedging and finally complex sentences with a considerable amount of embedded clauses. The development of such stylistic features can be attributed to a number of factors. Biber and Conrad (2009: 122) defended the use of the passive voice for two reasons: it removes an agent, which in many cases can be a vague group of researchers, without compromising the information content of the proposition. Secondly, the passive allows for the structuring of dense, informational prose and thus the reader can focus on concepts and objects rather than the people who are perhaps more peripheral to the ideas being discussed. Biber and Gray (2010) explained the explicitness in academic writing as the need to clearly identify the referents in a statement, and perhaps the formality perception could also be related to Biber and Gray’s view that academic writing is ‘compressed’ due to the heavy reliance on complex noun phrases, a feature that is particularly prevalent in the EALP corpus. Complex noun phrases are the preferred option because, as Woodward-Kron (2008: 236) pointed out, nominal forms lend themselves to qualifications and modifications, as the need arises. The consequence of this of course is the use of embedded clauses, which also features in Elbow’s list. Explicitness is also supported with the use of subordinators of purpose (e.g. ‘in order to’), which allows one to clearly mark the relationship between clauses (Biber et al. 1999: 839). However, the defining feature of explicitness is tempered somewhat by the fact that Biber et al.’s (1999: 291) academic prose corpus showed a significant number of plural nouns. This was
explained by the fact that academic authors must also concern themselves with generalisations that are valid more widely. In addition to a higher incidence of plural nouns, academic prose nouns also attract more suffixed nouns forms (e.g. ‘ion’ as in fermentation, condition and conclusion). Again, Biber et al. (1999: 325) explained this as the need to refer to abstract concepts and also nominalising actions and processes into a noun phrase, which then allows for modification as noted already.

The recurring theme of noun forms perhaps goes to the heart of the difference between, particularly academic writing, and speaking. Halliday (1993) referred to the synoptic effect of writing, in which there is a preference to objectify processes, give them fixed parameters, and this is achieved through grammatical metaphor. Halliday’s description of how it works was that “processes and properties are construed as nouns, instead of as verbs and adjectives” (p.111) and its fundamental role in academic discourse was highlighted by Martin (1990), when he concluded that specialised technical discourse largely depends on the transforming effect of grammatical metaphor. Specialised discourse is implied in Joliffe and Brier’s (1988:51) advocacy of “determinate patterns of language”, which the authors believed aid the description of subject matters in specific ways. Durrant and Matthews-Aydinli (2011) considered the ability to use the correct formula as “the most effective ‘shortcut’ into the discourse community” (p. 59) and Li and Schmitt (2009: 86) promoted the use of formulaic sequences as “pragmatically efficient” as members of the academic community knew and routinely used these sequences and hence it was one competence that needed to be acquired if one was to become a successful writer. While formulaic sequences are clearly identifiable surface features, Gardner (2012) highlighted the phenomenon of connectors (she used the example if the ‘if...then...’ construction) acquiring very different rhetorical functions in different disciplinary contexts. This aspect provides further insights into the epistemology of a discipline and constitutes a significant part of the semi-technical language analysis in the empirical chapters of the present thesis.

The work by Hyland and Tse (2004) could be added to the profile of academic language through their identification of features such as citation (evidentials), evaluation, frame and endophoric markers (referring to other parts or stages in a text) as indicative of academic texts. While highlighting how these features of metadiscourse vary according to academic
field will be dealt with later in this section, the role of citation merits further attention here. Charles (2006: 311) argued that citation served two main functions in academic writing. Firstly, it showed how the new research was derived from the current state of disciplinary knowledge. Secondly, it enabled the writer to engage in a critical conversation with other research in the field and consequently establish his or her own academic authority. Hyland (2000) considered citation to be “central to the social context of persuasion” (p. 20) as it allowed one to justify arguments, though he also recognised the possibility of adopting an ideological stance as writers aligned themselves to a particular community or orientation. While the latter point may be more relevant to more established writers in the academic community, the use of citation to back up assertions in student texts was also noted by Baratta (2010a: 14) as a necessary component of good academic writing. Citation certainly seems to support sound intellectual practices at a novice and expert level, and while its absence can lead to unsound arguments or undermine one’s authority, the worst case scenario would be that of plagiarism. The unanimous agreement on attributing to sources does not however carry over to how writers should identify themselves in the text. The impersonality aspect as identified by Elbow at the start of this section still appears to hold sway if one is to judge by Bennet’s (2009) review of academic style manuals; the traditional argument being that the objectivity of analysis is best served by using passive or other impersonal forms. That said, Bennet also noted arguments which have been made for the selective use of a more active and personalised voice. This would seem to be particularly applicable to the fields of the humanities and social sciences, where the interpretation of data can be more subjective and hence the use of more personalised forms might not be amiss in certain circumstances. Thompson and Tribble (2001: 99) also noted that disciplinary variation leads to different citational patterns and the fact that it appears as one of the features of semi-technical language in the EALP corpus, will enable further light to be cast on the practice in a student academic legal context.

Furthermore, the extensive work on academic prose carried out by Biber et al. (1999) revealed other significant features about the register: amplifiers, to express the degree of intensity of a specific characteristic (e.g. newness or complexity); comparative constructions to explain phenomena through the contrast; the prevalence of conditional and concessive clauses to specify circumstances in which certain facts hold and to enable the
qualification of a proposition. Other means of developing arguments availed of linking adverbials, these can be result/inference adverbials (e.g. ‘therefore/as a result’), appositional adverbs (e.g. ‘for example/that is’), adverbs that enable enumeration (e.g. ‘firstly ... etc.’) and contrastive or concessive adverbs such as ‘however’ or ‘in contrast’.

The use of such tools in the Anglo-American dominated university context is not however a neutral process of knowledge display and construction. Spack (1997) noted the rhetoric required by the US institution where her study took place obliged the student to adopt a new stance toward knowledge, one different from her (non-Western) view and Belcher (1997) was also critical of the adversarial nature of Western academic discourse with its polarisation of views and persuasive nature. Perhaps the rhetorical structure from which such a discourse is derived can be seen in Hansen (1988: 204). Rooted in classical rhetoric, Hansen applied the logos (or reason) appeal as developed by Toulmin et al. (1984) to analyse social science texts. Hansen claimed that while there may not always be an explicit expression of these elements in an argument, nevertheless members of a discipline “learn to reason using the kinds of grounds, warrants, and backing their colleagues require to judge the acceptability of claims” (1988: 205). Therefore, dominant Western rhetorical practices in the university context would appear to observe certain ground-rules when it comes to the process of reasoning but as can be seen below, probably no two disciplines write the same way.

Anson (1988: 3), while accepting that disciplines may work toward the same generalised goal, noted that written discourse differed particularly in relation to “assumptions of audience, purpose, and the conventions of style and format.” The uniqueness of disciplinary discourse was also acknowledged by Lea and Street (2000: 39) who suggested that student writing had more to do with issues of epistemology than with surface features. Research has certainly confirmed both perspectives. Per the former, Williamson (1988: 126) illustrated that the writing practices expected from undergraduates in biology, English and sociology were very much influenced by the departments’ perceptions of whether the future trajectory of the student body was likely to be in the world of work or to continue within the academic community at post-graduate level. Similarly, Candlin and Plum (1999) found that the writing behaviours of computing and psychology students were influenced by the
views of the department as to the subject discipline position in professional or academic life. Regarding Lea and Street’s assertion, it is perhaps more useful to first look at the differences in epistemology at a more general level. Coffin et al. (2003: 47) spoke about academic knowledge as a continuum. At one extreme they placed the ‘harder’ sciences, whose new knowledge could be demonstrated through quantifiable experimental proof. At the other extreme lay the humanities disciplines, which do not base knowledge on quantifiable proofs but rely on how well argued a case is. Finally, straddling the middle were the social sciences, which apply quantifiable methods to less predictable data. Hyland (2009b: 7) explained this distinction as the sciences using a range of technical terms to explain how things happen or exist and then create further technicality through defining, classifying and explaining. The humanities rely on abstraction rather than technicality, moving from individual instances to more general observations and social sciences again capturing elements of the two extremes. Hyland (2000: 29) also referred to the knowledge divide as hard and soft domains of knowledge, the former being represented by science and engineering and the latter by social science and humanities. Hyland (2004a) analysed master and PhD theses for metadiscourse and found that, at a more general level, the soft knowledge disciplines used more metadiscourse than their hard knowledge counterparts (2004a:144). One explanation for this could be taken from Becher (1989), who was of the view that all humanities disciplines were reiterative in nature. This meant that researchers revisited and reinterpreted material and hence one can imagine that reframing a context would require considerable efforts in terms of metadiscourse in order to guide the reader to the desired viewpoint. Also Dahl (2004), while researching disciplinary features in a multilingual context, found that the soft knowledge-type subjects of economics and linguistics were more heterogeneous in nature and hence required much more subjective interpretation, and consequently metadiscourse devices, in contrast to the research papers in medicine. However, there is evidence that the polarisation of disciplines as just described does not hold in all instances. Silver (2006) sought other common denominators and contrasted the use of metacognitive verbs signalling prediction between empirical or ‘factual’ disciplines (such as business or biology) and more speculative disciplines such as economics or physics and found a far higher level of occurrence in the latter group. In terms of lexis, Biber (2006b: 43) found that natural science had a large number of
specialised terms, which contrasted to the relatively few technical terms in business and engineering, as both these disciplines relied much more on everyday terms with a specific technical meaning. Biber (2006b: 55) also noted the degree of specialisation in that there was the phenomenon of rare specialised nouns (present in just one text) occurring much more often in the humanities and natural science than in business and engineering. The research of both Biber and Silver would certainly point to a less prescriptive view of how the disciplines should be categorised, as shared features between very different fields seems to be possible. Nevertheless, uniqueness cannot be denied, at least at the level of each discipline. An analogy that captures the essence of differences in disciplinary epistemologies comes from Hansen (1988), who contrasted a sociology and anthropology text for rhetoric and epistemology. The author likened the disciplines’ efforts to describe phenomena to that of an aerial photo for sociology and a video of a hand-held movie camera for anthropology.

2.4 Student Academic Writing

The centrality of writing for students has been underlined by many researchers. John (2009: 272) described it as a “crucial activity” in order to enter the community. Woodward-Kron (2004: 141) noted the multiple drafts students must produce if they are to create and develop their academic identities and Pecorari (2002: 63) saw writing as the means by which one could maintain a position within a community. Hyland (2009b: 5) recognised writing’s more prescriptive gatekeeping and assessment functions, but also highlighted its enabling role in socialising students into a discipline’s academic practices. However, all of the above does not imply a homogenous convergence of discipline novices towards a single academic identity at the core of the community. While all students may need to write to gain entry, thereafter, the degree of integration will depend on each individual’s motivation and career goals. Stierer (2000: 193) commented on how students for an MA in Education were positioned as novice academics when in fact they most likely had no intention of continuing as professional academics but return to the world of teaching. Therefore, a certain tension arose as much of the language used in the course and expected from the students reflected the institution’s goal of induction into the specialised academic
community. Hamp-Lyons (in Hyland and Milton, 1997: 184) also noted that students were assessed according to requirements of the academic community to which they didn’t belong and of which they had little experience. Woodward-Kron’s (2004) view of the pre-service teachers he studied was that they were more “consumers of disciplinary knowledge” rather than active producers. Therefore, it would appear that the greater the disparity in expertise between writer and reader, which is the case in undergraduate writing (East 2006: 3), and using Beaufort’s (2000: 201) definition of low-status texts (and consequently having a low impact on the institution’s functioning and success), the more students must defer to those who evaluate their texts rather than a wider audience.

2.4.1 The writing challenges students face

While students struggle against their limited awareness of the knowledge of the discipline, they have to produce writing to be evaluated by senior members of the disciplinary community.

(Williamson 1988: 96)

The difficulty facing students in adapting their writing to fit the expectations has been well highlighted in the research literature. Krause’s (2001) study found that the main difficulties facing first-year undergraduates when writing assignments was first to find relevant sources, then select the relevant points to include and finally to synthesize these in their text. This perhaps is indicative of the intellectual norms at third-level education where, as Bizzell (1992) noted, the norms of writing at second level are no longer “the ways of winning arguments in academe” (p. 165). However, while the difficulties above could be at a pan-university level, there are also more subjective issues that will vary from one context to another. Lea and Stierer (2000) noted that all too often the qualities of good writing were assumed to be self-evident though students must also contend with matters of preference of individual teaching staff. Anson (1988) also pointed out that what students write is partially a reflection of how they interpret their teacher’s instructions. Candlin and Plum (1999) and East (2006) both referred to the variability of tutor marking as a further complication for students trying to comprehend the writing requirements of the discourse community.

The challenge does not stop there however. The subjective views of good writing held by teaching staff would seem to support Hyland’s (2000: 130) view that audience awareness is a key factor for successful writing along with the metadiscourse knowledge that enables
this communication. This would seem to correlate with the findings of Howe (1990: 234) on the lack of detail accompanying legal citations by expert writers when writing for a peer audience, while such a model was considered inappropriate for law students, who would be expected to display the background details for their professors. Hyland (2009a) also noted that audience played a big role in determining the use of engagement markers. Students used fewer personal pronouns as engagement markers when compared to expert writers because the nature of writing required was that students display the current state of disciplinary knowledge in a rhetorically appropriate way. Hyland found a similar pattern of caution in the students’ writing for the use of directives and claiming community membership. A final feature distinguishing student from expert writing was highlighted by Durrant and Mathews (2011); they found that researchers tend to use formulaic expressions more often than students, a likely sign of greater awareness of the acceptable ways of talking (and writing) within the community.

While many examples discussed above relate to undergraduates, what about postgraduate writing? Ivanic and Camps (2001: 28) saw postgraduate students as occupying two positions in the academic community. They were still students and hence still receiving knowledge and subject to formal institutional assessments, however, they were also developing into producers of knowledge with all its linguistic implications due to the change of power distance between them and more established members of the community. Hyland (2009b: 139) further divided the postgraduate body of students into masters and PhD streams. While both were to showcase the results of independent research, masters’ theses were much shorter. Another major difference he noted was that masters’ students had a different career trajectory, being far more likely to enter, or re-enter the workplace rather than remain in the university sector. Nevertheless, despite the contrasting expectations of doctorate and masters students, caution still appears to be a feature in graduate writing. Kousantoni’s (2006) study of RAs and theses at both master and doctorate level showed that the student thesis writers used more hedges with their propositions. Their caution was also evident in the avoidance of explicit self-mentions, with a preference to let the data make any claims rather than expose themselves to personal criticism. This behaviour is also echoed in the PGALW corpus where personal pronouns are almost absent from the semi-technical language list (see Section 7.2). One point worth
noting is that perhaps the influence of genre is highly significant here. Established researchers do not generally write essays and the idea of publishing multiple PhDs in order to engage with other expert peers would be considered as somewhat odd. These genres, almost by definition, are subject to institutional rather than peer assessment and therefore it is difficult to escape the notions of knowledge display, deference to the reader and caution when making claims. They serve a developmental function, which is not present in expert-produced genres of RAs and books.

2.4.2 Student writing development

Despite the numerous challenges that students face, the undoubted mastering of genres is apparent in the overwhelming numbers that graduate through the university system. The theory of intellectual growth and development as proposed by Perry (1970) and King and Kitchener (1994) appears to be enabled through the process of writing. Whereas one starts from a position of a dualist point of view on issues of debate, this changes to an awareness of multiple approaches to find a solution and finally, towards the end of college, students are able to make a reasoned commitment to one point of view. Carroll’s (2007) research confirmed this. One change in that study was that students initially responded to the essay rubric by outlining the multiple ways in which individuals could deal with the issue, but towards the end of the programme they were able to set out a thesis in response to the rubric and subsequently justify it. In addition, while students were still articulating the multitude of responses one could make, they were now able to determine common patterns between these responses. This rhetorical development was also noted by Thompson (2009: 74). His study of a history undergraduate’s essays written in the first and third year revealed an increased sophistication in argumentation in the later text. Berkenkotter et al.’s (1991) study of post-graduate student Nate and his writing development over three consecutive semesters showed the transition from an informal oral style in the first text, which leaned heavily on a body of knowledge based outside the new community, to greater intertextuality in the final text. The final text was far more embedded in the literature of the subject material and much better able to address its assumed reader through, among other things, the use of appropriate terminology. Similar patterns of development were also recorded by Bloor (1996) and Beaufort (2000). The evidence from research clearly demonstrates that writing development occurs on many fronts, though it should be noted
that this is not a uniform progression among students; Binchy’s (2010) longitudinal study of undergraduate essays in a philosophy programme revealed that, despite an aggregate convergence to a style which was more in compliance with disciplinary expectations, there was nevertheless quite a degree of individual variation in the evolution of the students’ essays.

The results above confirm Swales view that:

...as graduate students ... develop their understanding of their disciplinary and departmental circumstances, they gain a more nuanced and more exact set of understandings of their genre sets and of the individual genres that comprise them, especially when they have opportunities to iterate several exemplars of a particular genre.  
(Swales 2004: 21)

The fact of being able to iterate several examples of the same genre was also one explanation why Thompson’s (2009) history texts showed relatively more rhetorical development in comparison to the engineering texts in his study. History students just had to produce the essay genre, while engineering students were required to produce several different genres and hence had fewer opportunities to acquire the same level of proficiency - this was particularly the case for non-native speakers. The idea of Swales’ more nuanced response is also apparent in McNabb’s (2001) study of graduate students’ journal submissions. He found that students did not compromise on the content of their papers (which one could also interpret as having acquired a degree of proficiency in terms of disciplinary knowledge) but instead, when making revisions, their efforts focussed on rhetorical aspects around their argument. While disciplinary competence can, to varying degrees, be attainable, attention to rhetorical aspects when setting out arguments would appear to be a constant companion of writing, regardless of the status of the author. As with the graduate submissions in McNabb’s study, Stratham (1990: 187) also details the findings in Skinner’s (1988) study of lawyers writing appellate briefs, which shows that most attention was given to matters of rhetorical concern rather than focussing on the applicable cases, statutes and other (content) materials, which the lawyers were already familiar with.
2.5 Conclusion

The context of academic writing is certainly not the homogeneous monolith that one might imagine. The discourse communities in which such writing takes place are, like all social constructions, populated by multiple interdependent groups, blurred around the edges and in a constant state of flux as members continue to either enter, progress through or leave the system. Many general discourse communities (such as law) are also populated by an array of sub-discipline communities (those specialising in family law, property law, contract law, medical law etc) and in more recent times the network has become even more comprehensive as cross-disciplinary functions attract increasingly more resources. Nevertheless, what define discourse communities are the shared practices and texts that in some way distinguish one from another. Epistemology and lexis are two features that normally contribute significantly to a discipline’s unique fingerprint, and the identification and analysis of semi-technical vocabulary should be able to shed light on the nature of both these elements.

Again, with genre, there would appear to be many more instances where a template is not as fixed as one might have originally imagined. As noted above and in Section 1.4, there are many approaches to determining how a genre works, though making a generalised statement about its structure can be fraught with exceptions as one begins to consider disciplinary influences and local institutional preferences. However, perhaps one uncontroversial distinction one can make about genres is the division between those texts that serve a pedagogical purpose and those that serve a purely research purpose. The pedagogical genres, such as essays and theses of all varieties, are far more numerous but in many instances could be considered as low-stake writing. Some of course are high-stake, particularly when successful completion is the condition for attaining a qualification, though high-stake does not mean access to a wide readership. Nevertheless, these genres serve to guarantee that the established knowledge within a discipline is comprehensively understood by a select section of the general public (that is, students), and they serve to introduce the same group to continued expansion of the knowledge base by encouraging research methods that range from the rudimentary to the sophisticated. The pedagogical genres also enable exposure to other disciplinary genres, whose content must be mastered if
students are to successfully produce their own texts. This issue of intertextuality also manifests itself linguistically in the student texts and indeed it features strongly in the semi-technical list from the study corpus. A discipline’s register may not immediately reveal how this is done, given the greater visibility of technical terms, though the analysis of the semi-technical vocabulary list provides insights into how such patterns of academic interconnectedness are expressed.

The information and argument focus of academic writing means dealing with a discipline’s content and packaging its interpretation in an appropriate manner. The stylistic features in academic writing do render it quite unique from other spoken and written registers. Hence, it is hardly surprising that students new to the discipline and non-native speakers require some adjustment in order to articulate themselves in the appropriate manner. Despite the emphasis on diversity between academic discourse communities in terms of how the epistemologies of hard and soft knowledge disciplines differ, it could be argued that they also share some common points in terms of academic style: citation is obligatory when external sources are being used, impersonal styles can be particularly prevalent among student writers and a nominal style of writing seem to hold sway. Indeed, Bennet’s (2009) conclusion, having reviewed academic style manuals, was that there was a large amount of agreement on the general principles and main features of academic discourse in English. Perhaps the modalities of how one, for example, makes a citation can vary from discipline to discipline and consequently it is in situations such as this that students need to be sensitised. To be able to do so again requires a comprehensive description of the register in question, and to this end the contribution made by a semi-technical vocabulary list could be considerable.
Chapter 3: Legal English

This chapter will analyse legal English from a number of perspectives. First, its role in the law, and particularly the Common Law system, will be highlighted. Then, it will be necessary to chronicle how legal English came into being as Common Law did not always rely on the English language to achieve expression. Also, given the strong historical emphasis which lies at the core of Common Law values, in order to better understand the language of law as it is used today one is obliged to trace its development through the centuries. Once the ‘how’ of its coming into being has been answered, it is then easier to explain the ‘why’ of why it has its linguistic features and the functions they serve. The chapter will close with a review of the main genres that occupy the academic and professional environments, as well as those that have an overarching influence across the whole field.

3.1 The Nature of Legal English

The statements “words are the lawyer’s most important tools” (Volokh, 2007:131) and “words are the lawyer's tools of the trade” (Lord Denning, cited in Howe, 1990) underline the central role of language in the field of law. However, what exactly is ‘law’? Williams (1961) distinguished law by observing that a “fact is something perceptible by the senses, while law is an idea in the minds of men” (p.287). To illustrate this more clearly, building on a proposition by Charrow et al. (1982: 181), we can see that while chemists produce results through their laboratories, medical doctors their patients and architects their buildings, lawyers rely on the use of language to carry out the main functions of law, which Danet (1985: 273) defined as the ordering of human relations and the restoration of order when it breaks down. Indeed Candlin et al. (2002a: 313) noted that all the major legal skills in law are language based, for example, advocacy, negotiating, the drafting and interpretation of legal documents all rely heavily on the role of language. Conley and O’Barr (1998) went one step further to emphasise the primacy of language in the field of law by claiming that “language is not merely the vehicle through which legal power
operates: in many respects, language is legal power” (p.14). Conley and O’Barr later clarified this view by pointing out that “language is the essential mechanism through which the power of the law is realized, exercised, reproduced, and occasionally challenged and subverted” (p. 129).

While the union of law and language seems to be conclusive, based on the observations above, what is less certain is the unity of law on a global scale. Swales and Bhatia (1983) concluded that law courses did not travel well because “law is a less universal subject than science or medicine” (p. 99). The effect of globalisation seems to have had limited impact if we note Harvey’s (2002: 180) view, almost 20 years later, that law lacked the universal referents of disciplines such as mathematics, though he didn’t see this as a unique feature, citing religion and political science as disciplines which were also system-bound. However, he did expect increased standardisation to be a feature of law in the future and indeed Bhatia and Candlin (2007: 140) observed such a trend in aspects of business law. Nevertheless, the system-bound nature of law still has a strong hold over the discipline. Gotti (2008: 249) found that the adoption of international rules on arbitration by individual countries led to a variety of interpretations of the standard code. However, even if one accepts the vagaries of a system-bound legal code as an unavoidable feature of law, there may still be a unifying factor for some legal systems. While systems such as Civil Law, which is derived from the ancient Roman code, must contend with multilingual expressions of national laws, Common Law, the legal system analysed in this study, operates through one language only, English, albeit with lots of borrowings. This common means of expression, while not freeing one from the constraints of national differences, is nevertheless a unifying feature that enables the adherents to this legal system to communicate more easily with each other and for researchers to have a translation-free access to its workings across national boundaries.

Therefore, it can be argued that the Common Law system is global, at least in terms of the language it uses. What perhaps is still not clear is exactly how this Common Law system works. The term Common Law can be defined in several ways, MacIntyre (2005: 5) saw three distinct senses: first it refers to countries that have adopted the features of the English legal system as opposed to other systems such as the continental European Civil law system.
Second, it refers to judge-made law rather than statute law, which is passed by parliament. Finally, it refers to a system which historically has just one source of remedy available to it, the payment of damages. The alternative source of law that grew in parallel to this definition of Common Law was Equity, which allowed remedies such as ordering a defendant to stop committing a nuisance. For the purpose of this study, Common Law will be primarily defined according to the first definition above, which provides the widest scope by absorbing the other two definitions and it allows for reference to all law-making instruments emanating from such a system.

Finally, it is worth noting a feature of legal English which is shared among all legal languages. Mattila (2006: 3), in defining the concept of legal language, observed that the target of the message varied from the population as a whole, to layers within that population, or just a number of particular citizens. He also pointed out that despite its effect on the receiver of the law, the message is largely produced and interpreted by legal experts and the type of language it contains is not similar to that which is used for everyday communication. Indeed, it deviates to such a degree that legal language is frequently incomprehensible to the general public. Given that legal English is no exception to the above, it is now necessary to look at the origins of legal English in an effort to understand why legal English has deviated from general public discourse norms, despite the fact that its core function is to provide a regulatory framework for activities related to that general public.

### 3.2 The Origins of Legal English

The use of the term legal English masks the hybrid nature of this specialist discourse in that the baggage that legal discourse has acquired through the centuries is a mix of many linguistic influences. Even the term law⁴ is not of Anglo-Saxon origin, but derives from the Old Norse term “lay”, which meant “that which is laid down” (Tiersma, 2008: 9). Mellinkoff (1963) recorded in detail the evolution of what legal English is today and it is his work which dominates the description to follow. This begins with Celtic lawyers, who

---

⁴ See Glossary of lesser known legal terms
learned the law as an unchanging oral ritual and did not tolerate any departure from the word-for-word accuracy required to maintain the magic of the chant. This oral tradition continued into Anglo-Saxon England and the retention and repetition of oaths was aided by rhythmic features such as an emphasis on alliteration (e.g. *to have and to hold*). Anglo-Saxon words still to be found in legal English today include *hereafter, herein, herewith, manslaughter, murder* and *steal* (Mellinkoff 1963: 13). The next linguistic wave to have an impact on legal language came with the Vikings. Not only did *law* originate from this period, but also *bond, trust* and *sale*. However, it was with the Norman conquest of England that Old English, with its Old Norse and Celtic influences, began to lose ground, or at least had to share oral pleadings with both French and Latin. While Old English continued to be used in the secular local courts and at times French, in order to facilitate the better understanding of litigants, oral Latin tended to prevail in the Church courts. When it came to written law, Latin dominance was even more apparent. Churchmen operated in both religious and secular courts (Pollock and Maitland 1898: 132); they were, unlike the vast majority of the population, literate and, given that Latin was already the language of record in France, this habit of use became the norm in Norman-controlled England for statutes, charters and writs. The dominance of Latin in law would last for approximately two centuries and with it came terms such as *subpoena, testify, verdict, homicide* and even the Old Norse *lawful* had to share the same semantic space with Latin’s *legal*, though the synonymous relationship does not always exist.

In the 1100s, French experienced an upswing as the means of communication in law, even if its use as a language of general communication declined significantly from the middle of the 1200s (Jespersen 1905: 87, Tiersma 2008: 10). However, in the field of law the identity of French was in no way being metamorphosed into Middle English. The introduction of the Year Books in 1260, which provided case reports along with legal and personal comment and which ended in 1535, were written exclusively in French. Expressions such as *appeal, demand, heir* and *indictment* all entered English from French through their use in a legal sense. As to why this trend of French dominating legal proceedings occurred when English was beginning to occupy most fields of communication across all classes is not

---

clear. Mellinkoff (1963: 100) raises a theory which some believe is characteristic of the legal classes even today. French was the language of education and hence came to mark the noble and the wealthy. As it was the offspring of these two groups who studied law, legal French served as a barrier to all but the privileged and thus represented a means of informally regulating access to the discipline. In this instance, language did indeed represent power.

The first sign that French was about to begin its decline came with the Statute of Pleading (1362) which required that English be used for oral pleadings in court, though ironically the statute itself was written in French (Hiltunen 1990: 55). In the following period of 100 years, French continued to lose ground as the means of oral communication and became restricted to producing legal documents. What appears to have happened is that while the basic pleadings, with their requirement to adhere to the ritual of reciting oaths without the slightest variation of words remained in French, the debate between the parties before observing these formalities was increasingly in English. Another institutional development was the growth of Equity in the 1400s, which was accompanied by written pleadings in English (Fisher 1977: 874). Equity developed as a body of law to fill the gaps left by the limited number of Latin-written writs and (mostly financially-based) remedies allowed by Common Law (Clark 1925: 528). Mellinkoff noted that the next wave of French terms imported into this more formalised English for legal purposes also reflected the greater level of technicality that law as a discipline was acquiring, bail, warrant, assault, proof and arrest are all examples from this period.

Early Modern English was now awash with a mix of languages and thanks to the Old English love of binomial word-doubling, there was a ready-made compromise when it came to deciding which version of a word to use. Expressions such as goods and chattels; give, devise and bequeath; authorise and empower; cease and desist; breaking and entering all found a home in the field of law. A second heave to institutionalise the vernacular into the legal profession was not to come until the Commonwealth period and in 1650 Parliament passed ‘An Act for turning the Books of the Law, All Process and Proceedings in Courts of Justice, into English’. The wording of the statute itself reflected the mongrel nature of English, in that it is replete with terms derived from Latin, French,
Old Norse and Old English, though one could consider this as progress for the cause, given that the Statute of Pleading of 1362 had been written in French. The Act was not well received by the legal profession (Brice Heath and Mandabach 1983: 90) and indeed with the Restoration it was repealed and reports were again produced in what Tiersma (2008: 11) noted as a now depleted French and the pleading forms reverted to Latin. Notwithstanding the resistance to change, English continued to standardise itself. The early 17th century saw French-English translations appear for what had formerly been treatises in French only. The period of civil unrest leading up to the era of the Commonwealth also had an effect on the use of French in the Inns of Court, and with the decline of French as the language of legal education combined with the increased use of English in the courts, it was inevitable that by the end of the 17th century the practice of law reporting in French had ceded to English.

In light of the now near supremacy of English, with the exception of some legal documents being still written in Latin, one might be led to believe that the language of law was finally becoming accessible to the (also English speaking) general public. This however was definitely not the case. Legal English was infused with Latin terms and the debris of French words, now cloaked as English, was everywhere. Such a state of being prompted the passing of a new English-for-lawyers law in 1731, whereby English was to be the sole language for all dealings in the field of law. Once again, those within the profession saw this development as dangerous. Mellinkoff quotes the view of James Burrow, Clerk of the Crown in the Court of King’s Bench on the outlawing of Latin in favour of English:

‘...from a fixed dead Language to a fluctuating living one; and for altering the strong solid compact Hand (calculated to last for Ages)...into a Species of Hand-writing so weak, flimsy and diffuse that ... many a modern record will hardly out-live it’s Writer, and few perhaps will survive above a Century.’

Mellinkoff (1963: 135)

As is evident today, Burrow’s prediction of the demise of legal English was wrong, though there were still factors that require further attention that explain why legal English developed as it did. Mellinkoff (1963: passim) noted that the effect of written pleadings taking over from oral pleadings in court was that a decision was now reduced to a single point, and this decision became known as a *precedent*. This critical word, along with its
companion term *stare decisis* (to stand by things decided), both entered legal dictionaries in the 18\(^{th}\) century. The effect they would have on court procedure was reinforced by the ever wider availability of law reports now that printing presses were plentiful. In addition, there was also the development of the practice of focusing on form over substance. Conveyancers used words and syntactic constructions in their documents to avoid the results that other words in the rules were designed to guarantee (Mellinkoff 1963: 182). This hair-splitting approach to legal documents provided fertile ground for lawyers to operate within, but also resulted in a level of complexity in the law which only the sharpest eye would be able to navigate through. Similarly, the 17\(^{th}\) century relied on the courts to produce most of the law as parliament was not yet as productive or operating with the authority as it would have after the advent of William of Orange. The courts already had a well-established tradition of insisting on a set sequence of pleading and they did not tolerate any deviation from this pattern (Baker 2003: 8). Variance in details in the same document or across the documents also caused cases to be struck out. All these factors led to an increased verbosity and cross-reference as pleaders sought to avoid gaps in their documents that could be seized upon by a hostile reader. Garner’s (2001: 713) analysis of punctuation also noted that there was no consensus on standardisation in the 17\(^{th}\) and 18\(^{th}\) century. Finally, as noted by Hiltunen (1990: 58), already in the 15\(^{th}\) century legal fees were based on the number of sheets required to produce a document. Although there were subsequent efforts to curtail the practice (Mellinkoff 1963: 189), the underlying pricing system meant that lawyers were encouraged to make their documents as long as possible. These developments only served to further isolate legal English from the mainstream use of the language.

Echoes of the Celtic forefathers can still be heard today when Charrow *et al.* (1982: 181) referred to the “legal incantation” of the court bailiff crying “Oyez, oyez, oyez”, and indeed it could also be extended to the frozen forms of the promulgations at the beginning of legislative acts (without which, the act would not be valid). As was the case in the time of the Celts, the effect of these rituals and formalities is to provoke an “awestruck respect for the magic potency of certain words” (p.181). Alcaraz and Hughes (2002: 7) attributed the formality of legal language to the fact that the scientific basis of the discipline is enshrined in texts already produced, the reliance on these texts requires the precise reproduction of the language used therein. Lawyers also argue that the language constructed as it is
guarantees precision and clarity, though this last point may be subject to some debate in light of the constant tension between precision and vagueness in legal documents (Endicott 2005). Bhatia (1993: 140) also noted that the drafters of legislative documents choose orthodoxy over innovation when expressing the will of Parliament in a statute. The reasoning he provided was that the emphasis in all legislation is primarily on avoiding litigation and therefore the same terms and constructions will be used repeatedly as it is believed that they have stood the test of time. Crystal and Davy (1969) explained this conservativeness due to the fact that:

...certain things must be said in certain ways for fear of seeming to misrepresent the law, and before they may be said differently the law itself must often consent.

(Crystal and Davy: 214)

This last observation by Crystal and Davy indicates a far less organic approach to the development of legal English with a clearly designated gatekeeper (the courts, which interpret and enforce the law) when compared to the more open flux of influences that are brought to bear on English in the public domain. This contrast between general English and legal interpretations of language has been highlighted by Cownie and Addison (1995: 4) and Charrow et al. (1982: 185). For example, assault has a general English dictionary definition as “a violent attack, either physical or verbal”, while the legal interpretation does not require physical contact and focuses on the intention in one person which produces fear in another.

Now that it has been shown how legal English came into being and what principles guide the use of the language within the legal discipline, it is now necessary to look in more detail at the main characteristics of legal English that are the result of this path of development.

### 3.3 Features of Legal English: Lexical, Syntactic and Discourse

The three categories of lexical, syntactic and discourse features constitute the main linguistic means through which legal English has forged its identity. What follows is a
A composite picture of the whole discipline; therefore there will be elements which belong exclusively to English for Occupational Legal Purposes (EOLP) and those that are also shared with English for Academic Legal Purposes (EALP). It is important to encompass all three linguistic features as issues of intertextuality and interdiscursivity are relevant to the empirical chapters in this paper, as well as the ensuing Discussion chapter.

### 3.3.1 Lexical features

The lexical features of legal English have been well documented (Mellinkoff 1963, Charrow et al. 1982, Danet 1985, Hiltunen 1990, Alcaraz and Hughes 2002, Haigh 2009). The main elements, such as Latin terms, archaic adverbs, suffixes, formal terms, etc., will be examined briefly in the following table:

**Table 3.1 Lexical features of legal English**

<table>
<thead>
<tr>
<th>Lexical Feature</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latin terms</td>
<td><em>Habeas corpus, mandamus, caveat emptor</em> etc.</td>
</tr>
<tr>
<td>French origin terms</td>
<td><em>Replevin, parole, escheat</em> etc.</td>
</tr>
<tr>
<td>Archaic adverbs</td>
<td><em>Wherefore, whereupon, hereinafter</em> etc.</td>
</tr>
<tr>
<td>Prepositional phrases</td>
<td><em>By virtue of, pursuant to, for the purposes of</em> etc.</td>
</tr>
<tr>
<td>Performative verbs</td>
<td>Employee understands that he/she will acquire confidential information...</td>
</tr>
<tr>
<td><em>(the performative verb has the power to change the state of being)</em></td>
<td></td>
</tr>
<tr>
<td>Binomial and multinomial expressions</td>
<td>...to compel a <em>State, international governmental organisation or person to do or abstain from</em> doing any act, threatens to <em>kill, injure or continue to detain</em> the hostage, commits an offence (Taking of Hostages Act 1982, UK.. In Charrow <em>et al.</em> 1982: 176 )</td>
</tr>
<tr>
<td>Euphemisms</td>
<td><em>indecent acts, material witness, at Her Majesty’s pleasure</em></td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Suffixes ‘-ee’ and ‘-er/or’</th>
<th>Promisor/promissee, licensor/licensee, lessor/lessee, drawer/drawee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nominalisations</td>
<td>the assumption of risk, the application of common law, the protection of the rights of the child</td>
</tr>
<tr>
<td>Terms of Art</td>
<td>tort, injunction, plaintiff, ex parte</td>
</tr>
<tr>
<td>Argot</td>
<td>GUMMOW J: .....is it not, because at the end of the day it is said that this is <strong>Wednesbury unreasonableness</strong>, is it not? MR AZZI: Yes, it is - - - GUMMOW J: .....within <strong>jurisdictional error</strong>, is it not? MR AZZI: <strong>Wednesbury unreasonableness</strong> in this particular case, there is a <strong>jurisdictional fact</strong> which is critical, essential, relevant inquiry. So it becomes a <strong>jurisdictional fact</strong> (Minister for Immigration and Citizenship v SZIAI and Anor [2009] HCATrans 28, Australia)</td>
</tr>
<tr>
<td>Common terms with uncommon meanings</td>
<td><strong>Without prejudice</strong> would normally signify without bias, but in law the expression means without the loss of any rights. <strong>Demise</strong> signifies ‘the end’ in the general public sphere but again in law it indicates the transfer of property using a leasing arrangement⁷.</td>
</tr>
<tr>
<td>Determiners and participle adjectives</td>
<td><strong>the said party repeatedly objected to such activities</strong></td>
</tr>
</tbody>
</table>

⁷ The latter example raises an interesting issue in that the legal meaning is older than the present day general meaning and may indicate language being imported through specialised contexts before entering the mainstream use.
number of parties populate the text and to impress upon the reader the seriousness of the content.)

<table>
<thead>
<tr>
<th>Lexical repetition</th>
<th>A member of the Garda Síochána shall, unless he or she is of opinion that ... where the member does not have such an apparatus ... A member of the Garda Síochána may arrest without warrant ... A member of the Garda Síochána shall not make a requirement ... (Road Traffic Act 2011, Ireland)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shall</td>
<td>State parties shall ensure that a child shall not be separated from his or her parents against their will (Williams, C. 2005a: 120)</td>
</tr>
<tr>
<td></td>
<td>If the county returns are not received by the Department of State by 5pm of the seventh day following an election, all missing returns shall be ignored … (Williams, C. 2005a: 12)</td>
</tr>
<tr>
<td>May</td>
<td>The head of a government institution may extend the time limit set out in section 14 in respect of a request for... (Privacy Act 1985, Canada)</td>
</tr>
<tr>
<td>Extensive range of vocabulary</td>
<td>e.g. contrast lexis pertaining to tax law and family law</td>
</tr>
</tbody>
</table>

### 3.3.2 Syntactic features

The, at times, complexity of legal English for a layperson is not just due to unfamiliarity with the legal lexicon, but the syntactic constructions can also make sentences unwieldy. The study of legal English has revealed the following three features as particularly prevalent.
3.3.2.1 Long sentences with multiple embedded and coordinated clauses

Bhatia (1993: 106) recorded one sentence in the Income Tax Act 1984 (Singapore) which had 271 words, which seems quite mild in comparison to the 740 word sentence recorded by Hiltunen (1984: 109) in the Road Traffic Act 1972 (UK). While efforts have been made to shorten sentence lengths, it is questionable if it has been with much success. The Road Traffic Act 2011 from Ireland includes single sentence paragraphs. Admittedly the paragraphs are not long but nevertheless a sentence can run to more than 100 words. Crystal and Davy (1969) explained this tendency for legal documents to have stand-alone sentences as being the desire “to convey all the sense that has to be conveyed at any particular point and do not need to be linked closely either to what follows or what has gone before” (p. 201).

Another reason for sentences being so long is the habit of drafters to insert qualifying clauses immediately after the element of focus. Indeed, Hiltunen (1984: 119) found that the average depth of embedded sentence in legal texts was far higher than other genres such as newspaper articles, literary criticisms and scientific writing; a result which was confirmed by Gotti (2003: 89) who found that legal texts’ sentence length was generally twice that of other specialised languages. Hiltunen (1990) explains this practice as to “serve the purpose of disambiguation” (p. 85). However, the insertion of such clauses comes at the cost of elegance and can lead to syntactic discontinuities:

...was a person who, under any provision of the British Nationality Acts 1948-1965, was deemed for the purposes of the provision to section 5(1) of the 1948 Act to be a citizen of the United Kingdom and colonies by descent, or would have been so deemed if male. (British Nationality Act 1981)

3.3.2.2 Passive forms

Alcaraz and Hughes (2002: 19) noted the abundance of the passive form in legal documents though Gotti (1993: 99) did point out that its presence was not universal, contracts in particular required the active form to clearly specify the rights and duties of each party.

Charrow et al. (1982: 177) elaborated on the nature of passives and identified passives that appear as participial phrases (as an alternative to the conventional relative clause with relative pronoun – called a “whiz” deletion):
... to decide all questions of fact submitted to you...  (Charrow et al. 1982: 177)

In addition, they identified truncated passives, in which the agent becomes even more obscured by inserting qualifying clauses:

If ... any rule ... is repeated or stated in varying ways  (Charrow et al. 1982: 177)

Maley (1994) pointed out that passives were particularly suitable in procedural sections of legislation. These sections had a high concentration of technical legal vocabulary, which was mostly represented by nominalisations and the nominalisations in turn frequently discarded the use of an agent. These nominalisations also reinforce Martin’s (1990) view that specialised technical discourse depends on grammatical metaphor to transform processes and actions into entities:

A recognizance mentioned in subsection (1) shall be conditioned upon and subject to such terms and conditions as the Court shall order  (Maley 1994: 23)

Although the passive structure is discouraged in many writing guides (Putman 2003, Fajans and Falk 2005, Volokh 2007, Haigh 2009), Alcaraz and Hughes (2002: 20) noted that the whole point of the construction in legal documents is when the import of the statement is universal, or when the agent is too obvious to be mentioned (e.g. ‘the accused was found guilty’ – it is not necessary to say it was by a court). The criticism levelled by the writing guides is also frequently for another stratum of legal writers, namely students, whose texts do not become in any way legally binding.

3.3.2.3 Conditionals

Crystal and Davy (1969: 203) considered the conditional form to be the principal structure for the great majority of legal sentences and Danet (1985: 282) also noted its significant role in her study of an assignment document. To put its role in a more practical light, Gotti (2003: 126) pointed out that insurance policy documents and wills are governed by a hypothetical-predictive principle which basically starts with a clause stating that if certain events take place and certain conditions are met, then other actions will be triggered (for wills it governs events such as what to do, for example, if the designated heir dies before coming of age).
Of course, conditionality is not just represented by ‘if’. Salmi-Tolonen (1994) found various alternatives to ‘if’, even if they were not as frequently used, in her study of national and EU legislative documents, *whenever, when, whether, in the case, in this event, if and in so far as, in the absence of* and *should* represented one set of alternatives in her corpus. Salmi-Tolonen had another category of conditionals which she referred to as “concessive conditionals” (p. 22), these included *provided that, save, where, notwithstanding* and *apart from*.

Once again, EOLP dominates as a source for the syntactic structures common to legal English. Long sentence with embedded clauses incorporating the passive form and often based on the basic premise of conditional events might best describe the effect of these combined syntactic features. What still needs to be determined is whether these prevailing features reveal themselves in the semi-technical language of post-graduate student writing.

### 3.3.3 Discourse features

This sub-section completes the description of legal English. While some elements could be linked to the syntactic categories, the overall effect here is to focus on style and features beyond the word or sentence level.

#### 3.3.3.1 Impersonal style

Related to the archaic diction and preference for formal terms as outlined in Section 3.3.1, legal writing is known for its impersonal style. One reason for this is that legal documents and legislation in particular, are often designed for the public in general or categories of people or entities in society:

*A person who attempts or incites another to commit, or becomes an accessory after the fact to an offence...* (Drugs Act 1981, Western Australia)

Williams (2005a) was of the view that the use of the third person in legislative texts “helps to reinforce the idea of impartiality and authoritativeness” (p.37). Beyond the genre of legislation, the tendency to use impersonal forms remains in genres such as mortgage agreements:
WITNESSETH:

WHEREAS, to induce Mortgagee to make the Loan and to secure payment of the Note and the other obligations described below, Mortgagor has agreed to...

3.3.3.2 The dominance of statements

“Most ... are in the form of statements, with no questions and only an occasional command” (Crystal and Davy 1969: 203). This observation was based on the analysis of an endowment assurance policy and a hire purchase agreement. Bhatia (1993: 102), on the other hand, stressed the directive nature of the discourse of legislation as legal drafters sought to impose obligations and confer rights. However, the statement argument by Crystal and Davy seems to hold for legislation as the use of ‘shall’ has the effect of transforming what might in other contexts be an imperative form into a statement form, though without losing any of its illocutionary force:

If, after the material date, there is a change in any of the matters particulars of which are required by sections 1 to 3 to be included or referred to in a statement under section 1, the employer shall give to the employee a written statement containing particulars of the change.

(Employment Rights Act 1996, UK)

3.3.3.3 Textual mapping

Bhatia (1993: 139) used the term textual mapping to illustrate how a legislative provision could in turn refer the reader to numerous other sections of the same statute or indeed other statutes:

... who is a British citizen by virtue of section 2(1)(a) only or by virtue of registration under section 3(2) or 9; or ...

(British Nationality Act 1981, UK)

The phenomenon also exists in other legal documents such as contracts:

Until the passing of property under clause 3a) above, the Customer shall ...
...if the Customer being a Company is unable to pay its debts within the meaning of section 123 of the insolvency Act 1986...  

The discourse features above display an absence of intimacy between the texts and those to whom they are directed. They also appear to bring to bear other texts or sections of the

---

existing text on the propositions being made, which again has the effect of reinforcing the formality of the communication. The influence of EOLP continues to dominate with its trappings of authority and distance.

### 3.3.4 Summary comments

The description of legal English is heavily reliant on how the language works in professional rather than academic settings. The question remains as to what degree academic writing imitates the professional norms, which dominate the discourse’s linguistic make-up. However, even EOLP is not a single monolith and uniformity of writing is clearly not present. Specific aspects of lexical, syntactic and discourse features outlined above have been shown at times to be not prevalent in all legal documents (e.g. in Langton’s (2002) study of the problem question the use of ‘shall’ was marginal in comparison to ‘will’ and ‘may’). Despite this, it can be argued that the list is representative of the linguistic features of legal English as various researchers have commented on the discipline’s tendency to embed aspects of one genre in another and of course the pervasive nature of the use of legal terminology (Charrow et al. 1982, Kurzon 1997, Candlin et al. 2002b, Bhatia et al. 2004, Hafner and Candlin 2007). However, recognising that homogeneity in its purest form does not exist, it is now necessary to deconstruct legal English into its constituent genre parts, which might help explain better how the language works in different contexts.

### 3.4 Legal English Genres

Swales and Bhatia’s (1983) assertion that law does not travel well because it lacks the universal consistency that hard science subjects can have does not mean that the fragmented nature of law precludes any sharing of conventions between its genres. Candlin et al. (2002a: 313) accepted the view that legal content varies across borders, but argued that legal writing conventions were indeed more stable. Charrow et al. (1982: 178) argued that the features identified in formal jury instructions also appeared in briefs, appellate court decisions, statutes, regulations and form books and concurring with this view Bhatia et al. (2004: 224) claimed that many academic and professional legal genres were embedded
within each other. Hafner and Candlin were also quite clear about the shared characteristics of legal genres:

...in terms of generic structure, grammatical and lexical patterning, judgments bear considerable resemblance to letters of advice and legal opinions, two of the genres that students would be writing for their legal writing and drafting course. As a form of legal argumentation, cases may also include useful samples of language for some language functions in other legal professional genres, for example making submissions in pleadings (Hafner and Candlin 2007: 5)

However, it is not the case that one needs to learn just one genre to understand all the others. Hafner and Candlin also warned that there were subtle differences between the genres and Bhatia *et al.* (2004) noted that the level and depth of embedding is what makes each genre unique. Gotti’s (2003: 113) review of a name agreement and a tenancy agreement also revealed differences in the structure of the two seemingly similar texts in terms of function. Nevertheless, there do appear to be shared features across legal genres. Dámová’s (2007) analysis of a warranty deed, a will, two contracts and two acts also showed shared features such as the unconventional use of capital letters, archaic expressions, enumeration etc. Of particular relevance to the study in this paper, Carvalho (2007) highlighted the prevalence of binomial expressions across legal genres in general and Garzone (2003: 202) found that ‘or’ and ‘of’ were among the top four most frequent words in her analysis of the London Court of International Arbitration rules. Both of these findings also surface in the present study of post-graduate student academic texts (see Chapters 5 and 6).

Given the general reliance on the sources of law, Kurzon’s (1997) view about the transfer of linguistic features from these sources to other legal genres is also quite plausible. However, as the discussion above noted, there are also differences. Legal genres serve different functions in the discourse community and society and are produced and used by different members of the legal discourse community. Therefore, it is necessary to describe the main genres within the discipline in order to have a more comprehensive understanding of the linguistic profile of legal English. One apparent advantage which may facilitate any analysis of legal genres is that each single variety appears to be quite stable. Indeed, Bhatia *et al.* (2004) went so far as to argue that computer based corpus analyses were not necessary to determine linguistic frequencies in legal English genres given that “legal
discourse is so conservative in its construction, interpretation and use ... a manual analysis can be equally efficient and reliable” (p. 207).

The analysis below will group the genres into three broad categories, EALP genres for those found predominately in the university environment, EOLP genres will deal with legal documents whose overarching function is to clarify the rights and duties between parties. Finally, the sources of law genres will deal with documents emanating from law-making institutions with a national or even international jurisdiction, such as parliament and the courts. Written and not oral discourse genres will be focused on, given that the empirical part of this study is based on written texts.

3.4.1 EALP genres

3.4.1.1 Law review article (Notes)
Law review journals, which are particularly common in North America, are journals which are edited by law students and include articles by students, which are known as notes. Fajans and Falk (2005: 7) outlined the basic four-part structure of the student notes genre:

- Introduction
- Background
- Analysis
- Conclusion

Feak et al. (2000: 201) found that law review student notes differed somewhat from other disciplines in that a significant number of articles in the sample studied contained no abstract. Perhaps of even greater interest is the move analysis for introductions done by Feak et al. does not mirror Swales’ four rhetorical moves. The main difference being that the law text introductions do not contain a review of previous research, instead the three moves being:

1. Opener: usually a discussion of an act, law or legal principle, perhaps using one of the techniques suggested by Volokh (see above).
2. Establishing the legal problem

3. Focus or intent of the article followed by a road map of how the article will deal with the issue.

Therefore, what students seem to analyse in lieu of previous research is the state of the existing law. Indeed, Feak et al. (2000: 203) found that, while citations were not common in introductions, what citations existed were mostly for the primary sources of law (such as legislation, the courts and government agencies) and not academic sources. The review article remains largely faithful to the problem-solution pattern (Hoey, 2001). Fajans and Falk (2005: 69) noted that “the paradigm most common in legal scholarship is the problem-solution pattern” with the occasional need for a “cause and effect pattern”. A final feature of the genre is that, in contrast to, say, hard science disciplines, law reviews tend take a historical approach, in that the focus is on past court decisions that often shape the law in its present form (Hiltunen 2006: 250). Similarly, Coulson (2009: 180) noted that in his study the articles talked 75% of the time about epistemic aspects of the legal problem rather than its phenomenal aspects. Therefore, what mostly counted were “methods, conceptual tools, and prior findings of other jurists” rather than details of the event itself.

3.4.1.2 Seminar paper

Brostoff and Sinsheimer (2003), Fajans and Falk (2005) and Volokh (2007) all considered the seminar paper to be similar to the student law review article. Fajans and Falk (2005: 5) maintain that the only real difference between the published student law review and the seminar paper is in terms of the format the manuscripts must have (footnotes v endnotes) and that the seminar paper is shorter than the law review article. The typical structure outlined by Brostoff and Sinsheimer (2003: 293) is:

- An introduction of the topic and the outline of the paper

- A detailed discussion of a legal situation or background

- A detailed discussion of the problem or a detailed discussion of the facts and holding of the case being critiqued
- A proposed solution, possibly an evaluation of that solution or a critique of the judicial reasoning in the case

- A conclusion.

The authors also recommend that students rely predominately on primary authorities. Again, this confirms that in contrast to other fields, academic research must cede to the prevailing influence of the sources of law when studying the discipline. It really would seem that whatever the field of activity, no form of legal analysis can be done without the presence of such instruments. This trend is also confirmed in the analysis of the study corpus.

3.4.1.3 The problem-question

While published material provides an ease of access for researchers, the case of student occluded genres such as the problem question is quite different. The maximum number of texts surveyed in the research studies done by Howe (1990), Langton (2002), Tessuto (2011) and Uhrig (2011) was ten. Both Howe (1990) and Bruce (2002) saw the purpose of the PQ as to position students as lawyers in the lawyer-client relationship. Bruce (2002: 357) outlined the recommended rhetorical structure for the PQ: first, to identify the issues, second, identify the legal principles and cases relevant to the problem; the student should then apply these rules to the problem at hand and arrive at a conclusion (IPCAC). Similarly, a variation of this, called IRAC (issues, rule, application, conclusion), is also commonly taught by law schools and evidence of this form of analysis can be seen in Howe’s (1990) breakdown of the moves in the PQ genre. His moves included the stating of the issue, the relevant law and cases that support it, the application to the facts and finally an opinion by the author.

Other features particular to the PQ genre included the virtual absence of ‘shall’ (Langton 2002: 26), but a much more frequent use of ‘will’ and ‘may’. Tessuto’s (2011) model PQs also displayed a far higher quantity of epistemic modals compared to deontic modals and the dummy ‘it’ featured regularly instead of direct self-references, a feature also replicated in this study corpus. Finally, Howe’s (1990: 229) recording of the higher incidence of cases cited in contract law texts compared to other legal sub-disciplines echoes findings by Bondi (2006) about cross-disciplinary variation, even when focusing on neighbouring discourses.
3.4.1.4 Case note

The case note concentrates on just one case. Its structure is similar to that of the PQ in that students must identify the legal issues, the rule and its application. Brostoff and Sinsheimer (2003: 56) specify that the rule is broken up into the holding, which is the court’s answer to the specific legal question asked by the litigants, and the rule, which is the broad legal principle on which the holding stands. These elements will be accompanied by the rationale used by the court to arrive at such a conclusion. Furthermore, a case note also requires students to discuss dissenting opinions and they should close with an evaluation of the case. Putman (2003: 78) identified several benefits that the analysis brings such as understanding how constitutional or statutory law is applied by the courts, the litigation process is clarified, students gain an insight into legal analysis and they have the opportunity to develop their legal writing skills.

3.4.1.5 Legal essay

As with the problem question, research into legal essay writing is very much a fringe activity (Mgina’s 2004 analysis of the lexical and syntactical features of undergraduate law essays was based on a sample of six native speaker essays). Williams (2002: 169) defines the legal essay genre as “the answering of questions other than problems.” Williams goes on to explain that the prerequisites of good essay writing in terms of content are the avoidance of irrelevancy as “questions are often worded to cover only a fragment of a particular subject” (p. 171) and not to limit oneself to mere description of definitions of concepts or principles but to show their legal effect through the provision of reasons and authorities. Unfortunately, further details about genre structure were not given. Holland and Webb’s (2003: 91) advice on essay writing is also not very detailed, recommending students to “be accurate...be relevant...be concise”, support arguments from primary or literary sources and follow the structure of introduction-discussion-conclusion. What is clear however from the analysis by Jensen (2002) is that the structure of essays is quite different to the problem-question genre. While essays are built around core arguments with supporting elements which give a sense of cohesion and progression to an essay, the problem-question is by nature disjointed, it is made of up of discrete units and each unit must be discussed and decided upon separately. Another point of difference revealed in
Howe’s (1990: 226) analysis was that definitions were far more common in essays than in the problem-question genre.

Insight into the style of writing desired can be seen from Fajans and Falk’s (2005: 135) advice that scholarly writing should “avoid passives and nominalizations” so that the “prose that results will be concise and comprehensible”.

Similar advice is given by Garner (2002), Putman (2003) and Haigh (2009). However, this advice from the US was not followed in the UK university texts surveyed by Mgina (2004), which contained a high frequency of modals, technical terms, prepositional phrases, long and complex sentences, and passive forms. This would seem to indicate that university students, at least on this side of the Atlantic, are more inclined to imitate what they see in the sources of law rather than heed the recommendation of legal writing guide books.

**3.4.1.6 Summary comments**

The academic genres seem to cover two broad areas, how the law can be applied to problem scenarios and a critique of the existing law or laws governing a particular area. These analyses can then be channelled into obligatory (and consequently quite occluded) genres, such as essays, or non-obligatory (but more prestigious) genres, such as the law review articles. It is interesting to note that student dissertations did not feature in the review; this was due to the paucity of research on the genre, though one could argue that the seminar paper description fills the gap. Nevertheless, overall, the occluded genres remain relatively untouched by research, which the study corpus should at least partially remedy.

**3.4.2 EOLP genres**

Looking at the research of Candlin *et al.* (2002b) and Deutch (2003) it would appear that the applied nature of the genres in EOLP and in particular the legal relations between parties which they try to regulate (through wills, contracts etc) puts a certain distance between it and the discourses occurring in EALP. If one considers the more frozen forms in EOLP, they do not seem to influence the EALP genres very much, though both rely on similar sources to inform their work. For that reason the review is included here, though given that the present study investigates EALP genres, the review of EOLP genres will be a brief one.
3.4.2.1 Contracts

Keenan (2003) defined a contract as:

... an agreement between two or more persons to do or abstain from doing some act or acts, their intention being to create legal relations and not merely to exchange mutual promises.

(Keenan 2003: 81)

Trosborg (1997: 64) outlined the structure of a contract as follows:

- Title
- Introduction (the nature of the contract, the identity of the parties and the title is repeated in this section as technically it is not a part of the text of the document)
- Recitals (to provide the background facts which serve as the basis of the contract)
- Definitions (not always needed but could be used to clarify technical or semi-technical terms)
- Body of the document (this is where all terms that need to be agreed to have to be expressed. Headings that signal the content of each section are very important here and the normal practice is to move from important events to minor events, more likely to less likely events or in a chronological order).
- Housekeeping provisions (regarding managing the document itself rather than the subject matter of the contract)
- Signatures and dates.

A particular linguistic feature of the genre is the prevalence of the active form, this is because it must be clear who does what and who is entitled to what in the contract (Gotti 2003: 99). Trosborg (1997: 86) also noted that ‘shall’ played a prominent role in contracts as parties articulated the obligations and promises to each other. A contract is also one of the genres which is quite frozen in style and hence templates (or formbooks) can be used. Crystal and Davy (1969: 194) explain the preference for reproducing replica contracts with the minimum of change as to do with the fact that the existing documents have already been tested in the courts and hence the lawyers know how such formulations will be interpreted -
introducing new formulations would lead to legal uncertainty. Another feature which Trosborg (1997: 59) points out is the assignment of titles to the parties, ‘seller/buyer’, ‘lessor/lessee’ enable the contract to proceed according to a set formula once the roles have been agreed. Finally, as mentioned earlier by Crystal and Davy about the ‘hostile interpreter’ of legal documents and hence the care in their construction, another feature of contracts which induces extreme caution by the drafter is the rule contra preferentum. Haigh (2009: 95) explains this as in the event of an ambiguity in a contract it must be decided against the party that suggested it.

3.4.2.2 Legal Memorandum
This could be described as the EOLP version of the problem question. Brostoff and Sinsheimer (2003) define it as “a document that communicates information and analysis on a specific legal problem” (p. 87). It is written for another attorney’s use, it will consider both sides of the legal issue and try to predict the likely outcome in a court; hence its core structure follows the FIRAC moves (Facts, Issue, Rule, Application, Conclusion).

3.4.2.3 Trial/Appellate Brief
Trial and appellate briefs follow the same format as legal memoranda. However, as Putman (2002: 333) points out, while legal memoranda should provide an objective analysis for what is often an internal audience, a brief seeks to persuade the court on how it might resolve a legal issue. Putman (2002: 357) also cautions about the court rules which must be adhered to when preparing briefs, particularly appellate ones.

3.4.2.4 Other EOLP genres
There are many more genres in EOLP than have been studied in varying detail by linguistics researchers. Candlin et al. (2002b) mention the various types of letter: informational, opinion and demand, along with affidavits. Alcaraz and Hughes (2002) mention deeds and indentures, power of attorney letters and insurance policies, Hafner (2010) analysed barrister’s opinions, while Crystal and Davy (1969) based their insights into the nature of legal documents on an endowment assurance policy and a hire purchase agreement. Common themes from Section 3.3 resurface in the genres. This can be, in the case of wills, the very high occurrence of ‘if’ clauses (as noted Finegan’s 1982 study of testaments) or for patents, which Pellon (2010) found to be highly formulaic as well as
having technical or legal language dominating depending on the section of the document and thus a very wide range of vocabulary.

### 3.4.2.5 Summary comments

The EOLP genres appear to operate on a cline, some, like certain contracts, are quite frozen, while others such as the legal memoranda give more freedom to the writer. Particularly with the less frozen genres one can see a connection to the writing genres in EALP. The case analysis approach in the academic problem question, progresses to a legal memorandum, barrister’s opinion or trial brief. The rhetorical skills required when arguing a position in essays or seminar papers also get recycled and refined as lawyers seek to persuade the courts of the legitimacy of their client’s claims in the EOLP appellate briefs. What doesn’t appear to be happening is that EALP genres rely on EOLP genres for content. As will be seen in the study corpus, the content in EALP genres come from the section which follows.

### 3.4.3 Sources of law

This section focuses on just two primary sources of law, legislation and appeal court decisions. These sources constitute the bulk of laws in any country. A detailed description of how these texts are constructed is of relevance since EALP genres rely on these instruments for analysis and application and hence the strong likelihood of students adopting some of these features in their own writing.

#### 3.4.3.1 Legislation

Bhatia (2005) saw statutes as the means by which “society creates a model world of rights and obligations, powers and responsibilities, freedom and constraints” (p. 352). Unlike the focus on precedent in judicial decisions, Williams (2005a: 76) observed that prescriptive texts such as legislation are firmly fixed in the present or the future. Bhatia (1993: 102) considered the main features of a statute to be highly impersonal, decontextualised (as its illocutionary force holds regardless of who the speaker or listener is) and all-inclusive in terms of the contingencies it wants to govern. Legislation in Common Law jurisdictions are different in nature to Civil Law codes. In Civil Law, legislative intentions are often expressed in general terms as the system relies on the courts to interpret them without any constraints of law-making judicial precedent. On the other hand, statutes in Common Law
jurisdictions want to avoid giving too much room for interpretation to the courts which also have a law-making role. Therefore, statutes are far more detailed with the objective of being as precise and all-inclusive as possible. However, this means it is also a document which must live with a certain amount of conflict. As Bhatia (2005) concluded:

…one may need specificity of expression so long as one can predict specific descriptions of facts, but at the same time one may also need general abstractions, which are often seen as vague and indeterminate, to cover cases yet unfamiliar and unpredictable (Bhatia 2005: 352)

While statutes are predominately read by lawyers, the writer of the statute is not the originator of the document (Bhatia 1993: 102). Parliament expresses its wishes, which must then be translated into a legislative text by a legal drafter. Neither of these two parties takes on the duties of the other (deciding content or drafting) (Bhatia 2005: 345).

Maley (1994: 19) maintained that, allowing for some variety in configuration across jurisdictions, all modern statutes followed a regular form. This generic structure contained the following elements:

- The long title
- Year and number
- Short title
- Preamble
- Enacting formula.

Then for the main body of the statute:

- Definitions
- Substantive part
- Procedural part
- Schedules are normally at the end (they contain supplementary detailed provisions).
The division is usually done via sections, sub-sections, paragraphs and even chapters if the statute is very long.

Trosborg (2008: 202) outlined three types of rules to be found in statutes. Stipulation rules set out the type of jurisdiction an act shall have, definition rules provide terminological explanations for the expressions in the document. Maley (1994: 26) referred to these as legal fictions in that it is a device which enables the drafter to say “for the purposes of this statute, X is Y”. Finally, action rules assign duties, rights, actions (or prohibitions) and powers to different parties. For Trosborg (1995: 41), direct ordering is the most dominant speech act in statutes (47.6% of total number of strategies compared to just 9.6% in conversational English). However, it is not executed through the use of imperatives, but ‘shall’ is the favoured tool.

According to Garzone (2001: 156) ‘shall’ is one of the defining linguistic features of legislative texts. In her review of 21 Acts of Parliament she found the modal to be the third most frequent word in the corpus after ‘be’ and ‘section’ (with a stop list for function words, prepositions, conjunctions etc.). These results contrast with those of Trosborg (1997: 86) who found ‘shall’ to be considerably more frequent in contracts rather than statutes. However, given that both Williams (2005a) and Garzone (2001) highlight its legislative role, its case as a leading member in statues merits attention, even if further research may help clarify this dissonance in findings. Garzone identified two main uses for ‘shall’, the deontic use was to set obligations for specific parties while the performative use was employed to bring a new state of being into existence as the following example illustrates:

There shall be an authority for Greater London, to be known as the Greater London authority

(Garzone 2001: 157)

Williams, C. (2005a) also dedicated quite an amount of space to the use of ‘shall’ in legislative texts and again the core function appears to be that of denoting duty with mandatory effect. ‘Shall’ has been criticised as being out of touch with modern day English (Williams 2005b) where its use is quite marginal in comparison to ‘will’ (for futurity) or ‘must’ (for obligation). However, precisely because of its ability to combine futurity and obligation Williams (2005a: 194) argues that in some instances it is the most effective instrument for efficient writing in legal texts.
As already noted in Section 3.3.3.3, Bhatia (1993) highlighted another significant feature of statutes which is *textual mapping*.

The effect of this is that the reader is required to do much more work in collating all the relevant information to any given statement, while the drafter is spared the challenge of coordinating all the relevant elements into the same text location. All this numbering also leads to very few cohesive ties being present in the texts. Hiltunen (1990) explained this as the objective of making it “possible to refer to a subsection and cite it as a coherent whole without having to make the reader aware of what precedes or follows it” (p. 68).

Maley (1994: 24) also noted the breaking of clauses into numbered and lettered sections (as can be seen in the example in the paragraph above) as this helps identify component parts more easily, though Maley nevertheless conceded that syntactic complexity (due to multiple embedded clauses) still rendered legislative texts incomprehensible to all but the specialist reader. Another element of significance to statutes is nominalisation (Bhatia 1993) and Maley (1994: 23) remarked that this was particularly common in the procedural sections in order to represent processes. Hiltunen (1990: 79) also identified nominalisations as a key feature and added that post-modification through the use of *of* was the dominant form (e.g. “the entry of a person’s name in the supplemental list shall …” p.79).

Accompanying nominalisation, Maley sees the passive playing a complementary role since the agent is frequently superfluous to the processes being described, as Maley’s own example shows:

\[
\text{A recognizance mentioned in subsection (1) shall be conditioned upon and subject to such terms and conditions as the court shall order} \quad \text{(Maley 1994: 23)}
\]

To close, the following could be considered to be the main remaining features of statutory language: 1. Salmi-Tolonen (1994) found that conditional forms occurred at a much higher rate in legislative texts than in general texts. 2. Complex prepositional phrases were investigated by Swales and Bhatia (1982) and they found that there were rhetorical preferences in their use (‘by virtue of’ could be used to invoke either a directly or indirectly applicable provision, but ‘under’ could only be used for a directly applicable provision). 3. Binomial and multinomial expressions were highlighted by Gustafsson (1975) as being much more prevalent in legislative texts in comparison to other non-legal genres. 4. Finally,
returning to the aspect of embedded clauses and long sentences (Section 3.3.2.1) Bhatia (1993: 111) noted the effect of syntactic discontinuity:

A secure tenant has the right –

a) if the dwelling house is a house, to acquire the freehold of the dwelling-house: (Bhatia 1993: 112)

Drafters insert clarifications, regardless of the conventional boundaries of noun, verb or any other type of phrases. The effect is a level of clarity which ironically at the same time disrupts the flow of the text.

3.4.3.2 Judicial Decisions

Williams (2005a: 28) broke up legal writing into two broad categories, descriptive writing, which fits the genres of academic scholarship, and normative or prescriptive writing, which can be applied to many of the more formulaic EOLP genres and legislation. In between these two he had hybrid genres; these included, among others, briefs, petitions and what will be analysed here, judicial decisions. The significance of judicial decisions in Common Law lies in the fact that appeal court decisions can be binding for lower courts who deal with similar cases in the future, this is largely not the case in Civil Law. Maley’s (1994: 44) generic structure for a judgement is as follows:

- Facts: an account of events and/or the relevant history of the case
- Issues: can be of fact, law or both
- Reasoning
- Conclusion: the principle or rule declared applicable for the instant case
- Order or finding.

Bhatia (1993: 135) and Lung’s (2008: 432) analyses of generic structure were similar though in their reasoning section they identified an important part of the decision making process which is the ratio decidendi. This is “the rule of law upon which the decision is founded” (Williams 2002: 95), though as Harris (1997: 292) points out, it is rare that the judge will actually signal the ratio. This is a well recognised challenge for students of law (Holland and Webb: 148) and indeed, to make things even more difficult, Lung (2008: 436)
observed that the main emphasis in a case report is on how a decision is reached. Therefore, the bulk of the report will focus on the process of deriving principles from the legal issues in the instant case, in parallel with considering existing case and statute law, and then how these rules or principles are applied to the facts. Badger (2003: 258) claimed that, at least for newspaper law reports, the signalling of a ratio was often through the expression of generality, either through the use of the present tense, the use of indefinite determiners, use of conditional sentences or expression of generality (e.g. “it was universal practice … it would be contrary to public policy”), though he did not seek confirmation of these findings from lawyers.

For Bhatia (1993: 178) the court judgement was one of the genres richest for intertextuality. This meant that judges, when writing their opinions, had to rely on external legislation texts and precedent cases for first, the building of a legal rule, and then applying it to the instant facts. Orta (2010: 282) expanded this by highlighting the fact that appellate courts enter into a number of dialogues when delivering an opinion. Texts of evidence, counsel submissions, lower court decisions, as well as engaging with future readers are all addressed by the judges. Bowles (1995: 207) also noted that, unlike the impersonal nature of statutes, the opinion issued by a judge is heavily laden with first person reporting, it is very much presented as a monologue. However, in Mazzi (2007) a slightly different picture was presented in his study of reporting verbs used in the decisions of three Supreme Courts. It wasn’t just for the judge’s own voice that the reporting verbs were used, but also to report the propositions of the litigant parties and other courts. In many cases, the first person reporting noted by Bowles was not the main form but it ranged from approximately 7% of occurrences for the verb state to as high as approximately 60% for the verbs ‘consider’, ‘agree’ and ‘believe’.

The writing style of judges has also been commented upon (unfavourably) by Mellinkoff (1963: 27). He referred to the pompous nature of the judicial discourse style, for example, the use of terms such as “solemn … supreme … superior … fundamental” to evoke overawed respect; also, the use of belittling or sharp tones when dismissing contrary opinions (e.g. “mere … absurd … subvert”) and the use of adverbs to intensify effect (e.g. “obviously … clearly … overwhelmingly”). On a less controversial note, Harris’s (1997)
study of procedural vocabulary, which he considered to be particularly prevalent in the reasoning section, highlights again the role of nominal forms in legal discourse as judges employ shell nouns such as ‘observation’, ‘argument’ or ‘principle’ to label sections of text, processes or the propositions of others. Finally, evidence of the hybrid nature of judicial decisions can be seen in the use of epistemic modality. Maley (1994: 45) acknowledged the presence of this academic trait in written judgements and maintained that, with the exception of the section that focussed on the facts of a case, it was present throughout the entire judgement. Indeed, the genre appears to be obliged to incorporate such a means of expression given that for cases which deal with civil rather than criminal matters, the maxim followed by the courts is to base the decision of the balance of probabilities\(^{10}\). This feature, combined with the phenomena of reporting propositions, either their own or of others, and the use of shell nouns, whose role in academic writing has been clearly earmarked by Francis (1994), Schmid (2000) and Flowerdew (2006), confirms the intermediate position that the judicial decision genre occupies between the formal or frozen documents of EOLP and legislative texts and the non-binding analyses of academic writing.

### 3.4.3.3 Summary comments

Similar to EOLP genres, the primary sources of law have both highly formulaic genres (legislation) and those that offer greater writer freedom (judicial decisions). This could be explained by the fact that legislation anticipates events, while the courts react to events and hence require a more flexible space in which to respond to unforeseen eventualities. As will be seen in Chapters 5 to 7, both are incorporated into the student texts as one of the key contributors to semi-technical language. Now that the legal written genres have been described, what remains is to understand the legal writing environment from a student perspective.

3.5 EALP and student challenges

Some writers about legal education have been critical of the sink or swim view taken by community members toward students as they endeavour to gain competence over the required skills set. Foreign students in particular face many difficulties. The fact that law content is not universal means that foreign nationals must deal with unfamiliar content, both at the level of statutory details and at the level of lexis (see Section 1.3.2 for Tiersma’s contrast for the understanding of the scientific word ‘oxygen’ and the legal term ‘negligence’). Similarly, students from Civil Law and other legal systems must come to terms with Common Law ways of doing law, such as the inductive approach, which informs the logic of case law (Holland and Webb 2003: 322) and contrasts to the deductive approach, which many Civil Law courts take.

Students studying in their country of origin are not spared either. Stratman (1990: 198) was critical of the veridicalist view that sees writing as a separate process from legal analysis, logic and method. He also objected to the view that students should learn about legal writing “by immersion in a sea of legal prose and legal writing tasks; the strong must learn to swim by constant flailing about” (p.211). Thompson, C. (2005) highlighted the tension students experienced in trying to meet the academic expectations of showing a degree of personal creativity in their legal analysis, while at the same time being bound to adhere to reporting on what the legal authorities had ruled or thought about the topic. In fact, being faithful to the letter of the law requires, in some instances, a very strict code of reporting as the law is expressed in one way only and is no longer the law if that wording is changed by a third party. As quoted by a lawyer in Williams (1991): “the law is the law, you can’t paraphrase the language of the law” (p. 24). Writing-support materials for students are also not entirely satisfactory either, particularly for non-native speakers. Candlin et al’s (2002a) criticism of EALP books was that they focused mostly on L1 speakers and when L2 students were considered, the context was usually limited to a particular jurisdiction or even college.

Conley and O’Barr (1998: 133) differentiated between high and low grade students, the former being able to select relevant facts to a case while the latter tended to get bogged
down in irrelevant detail. Bruce’s (2002) observation about his own students answering the legal problem question genre would also seem to confirm such a difficulty in that they:

...seemed to lack either the confidence to omit less salient material or the rhetorical skills to foreground the salient and background the obvious. (Bruce 2002: 331)

Finally, in light of the above it is hardly surprising that Williams (1991: 21) observed that the most common deficits that novice law students had were firstly their tendency to use “fillers”, which indicated that they were unable to discern what could be taken for granted and what required further explanation. Secondly, students were more likely to summarise cases instead of using them as tools of analysis for the problem presented. Lastly, due to “cognitive overload”, student writing was likely to suffer. The last point finds echoes in Williamson’s (1988: 96) observation about the struggle of students to produce texts despite “their limited awareness of the knowledge of the discipline.” Nevertheless, despite these criticisms, students do manage to acquire a level of discipline expertise. Jacobson (2001: 3) identified four stages of increasing complexity for student academic legal writing, beginning with a descriptive text but without detail, then a descriptive text with detail, thirdly the ability to apply information and come to conclusions but with no detail in the analysis, and finally a text that applies information, details the analysis and concludes.

Even in preparing for the production of texts the behaviour of students differs to that of lawyers. For example, with cases, Bhatia (1989: 228) pointed out that lawyers read them for referential purposes, but students read them to be educated and then must display this acquired knowledge to the content expert. It is indeed the readership of student texts which is one of the main features that separates the vast majority of student writing from that produced by other members of the legal discourse community. While students, practitioners and academic experts all read statutes, often a student essay is read by just the class lecturer.

3.6 Conclusion

That English managed to emerge as the language of Common Law should not be dismissed as a matter of course, given the profession’s preference for French and Latin at different stages of its gestation. Nevertheless, perhaps it was the combination of policy, but more
importantly the push-factor of English being used by the population as a whole, and for whom the laws were being made, that ensured the eventual dominance of English. In comparison to English in the public domain, legal English appears to have been much less organic in its development and more subject to regulation with the gate-keepers in the form of the courts deciding on linguistic issues such as the meaning of terms and which terms could be allowed in any given circumstances. Also, the English that did filter into law had to adapt to linguistic practices that were already well institutionalised. In certain instances, such as the use of Latin or French terms for technical aspects of the law, remaining with the non-English expression would often appear to be the most efficient option (e.g. just consider the number of English words required to explain the concept of *habeas corpus*). However, the apparent advantage of codifying the law through the increased use of nominal rather than verb phrases, which makes the organisation of argument easier as one can modify the noun forms as appropriate, should be off-set by reduced syntactic complexity. Unfortunately, as Gibbons (1994) points out: “the language of law appears to have the worst of both worlds, combining complex phrases with complex sentence syntax” (p. 7). The law’s desire to be as precise as possible, perhaps in light of the historical challenges to the wording of documents and the intention to reduce the courts’ scope for legal intervention, has rendered many legal genres unreadable to the great majority of ordinary citizens. Nevertheless, it is necessary to understand why such features exist if one is to engage fully in the discourse practices of the discipline community.

While stressing the unifying effect that legal analysis can bring to the discipline, the enormous range of genres, of which some have been covered in the review above, cannot be easily dismissed. While Trosborg (1997) found features in genres that would promote the idea of commonality across the spectrum, it might be more appropriate to say that some genres share genes more easily than others. The EALP genres would appear to be influenced to a significant degree by the judicial decision genre and far less so by more frozen documents such as a leasing agreement. Similarly, the EOLP trial or appellate briefs can be seen as a more sophisticated development of the persuasive essay that university students may be asked to write. This thesis will now proceed to look at the study corpus of post-graduate academic legal texts. As already outlined in Chapter 1, the methodology behind the identification of semi-technical language will be explained in Chapter 4. Once
this methodology has been explained and applied in Chapter 4, the main features of the resultant language will be analysed in Chapters 5, 6 and 7. It will then be possible to return to the features of academic writing and legal English to see how PGALW is positioned between these two main pillars of influence.
Chapter 4: Data Collection and Methodology

This chapter will deal with the process of identifying semi-technical vocabulary in the study corpus. To achieve this end, it is first necessary to look at the research options offered by a computer-based corpus approach and explain why this study has chosen its particular path. Then, the type of corpus constructed will be explained in addition to the opportunities that a corpus of this nature provides for analysis. An overview of semi-technical language research follows before the methodology for determining the semi-technical language in this study is elaborated.

4.1 Corpus-based Research Approaches to Writing

Academic writing research is a multifaceted entity. Even within the field of academic writing there are a variety of approaches available to a researcher. One such approach is the use of a small number of subjects with Berkenkotter, Huckin, and Ackerman (1991), Connor and Mayberry (1996), Spack (1997), Cheng (2006), Li and Schmitt (2009), and Baratta (2010a) focusing on just one student. Another research option is the ethnographic approach which aims to better understand the key processes and stakeholders within the discourse community where the analysis is set (Beaufort 2000; McCarthey and Garcia 2005; Ding 2008). A common feature between these two approaches is the tendency to work with a relatively limited number of texts. This issue of quantity of texts surveyed is one defining feature which sets the current study apart from those listed above; 123 texts were collected from 30 contributors.

Biber and Conrad (2001: 331) described a corpus as “a large representative electronic database of spoken or written texts, or both”. Baker (2006: 2) described corpora as “generally large ... representative samples of a particular type of naturally occurring language.” In addition to being generally large, a term that has different meanings depending on whether, for example, it is for spoken or written data, Bowker and Pearson (2002: 9) also stressed that they be in electronic form and be collected according to specific
criteria. Aston (1998: 205) noted that the electronic texts should be ‘homogeneously-encoded’ and with regard to the specific criteria, Schlitz (2010: 92) stressed that it be “representative” in that it should “represent a particular variety of language.” However, a comprehensive view of representativeness requires not only that the sample of spoken or written texts “includes the full range of variability in a population” (Biber 1993: 243), but that to remain fully representative, it must be updated regularly (Hunston 2002: 30) in order to account for change over time.

Returning to the variety of language issue, this can either have a very wide scope, as is the case of the 100 million-word British National Corpus (BNC), which seeks to be representative of British English, or quite a narrow scope, as would be the case of Flowerdew’s (2003) 93,000 word corpus based on lectures in an undergraduate biology course. While Flowerdew’s corpus may be considered small in relation to the BNC, a manual analysis of the data would nevertheless be quite labour-intensive. This leads to a significantly attractive feature of electronic corpora in that the data can be processed by corpus linguistic software such as WordSmith 5.0 (Scott 2008), the one used for this study, to generate wordlists, clusters, concordances, keywords etc. Additionally, what is common to the two corpora mentioned above is that any claims made about the language in the data are possible to verify, they have been derived from the corpus in question as opposed to less empirically based views on how language may work. This evidence-based analysis of language is undoubtedly a very attractive feature of computer-based corpus research, and when applied to written texts it is clearly one way for analysts “to depict what is usual in a genre” (Hyland 2010: 199).

However, when looking at a genre or genres from a particular field, there is often a need to provide a more descriptive view of the language features than just frequency counts or collocational preferences. Brown and Yule (1983) saw this analysis as one of discourse analysis, where it was not possible to “be restricted to the description of linguistic forms independent of the purposes or functions which these forms are designed to serve” (p.1). Indeed, Nunan (1992: 160) stressed the rhetorical routines which discourse analysis seeks to unearth and in the same vein, Paltridge and Wang (2010: 257) viewed discourse analysis
as the focus on “the linguistic patterns which occur across stretches of spoken and written texts” but also, and perhaps more significantly for this disciplinary study, “the way in which language constructs different views of the world and different understandings” (ibid). Thornbury (2010: 274) noted how corpus linguistics facilitated discourse analysis through the application of genre analysis, phraseology, pragmatics and ethnography research methods. He summed up the combination of corpus and discourse analysis as “counting and interpreting” (p. 282), with the former providing a quantitative grounding for the “hunches” of the researcher. Consequently, for a more complete analysis, the statistically-based corpus approach is married to the more subjective interpretive approach of discourse analysis, which also implies a combination of research methodologies, quantitative and qualitative.

Dörnyei (2007) defined quantitative research as the conversion of data into numbers so statistical analyses can be performed. Qualitative research, on the other hand, is defined as non-numerical data (words, in this study) and uses non-statistical methods to derive an understanding. Again, for the present study, this means using content analysis to uncover the rhetorical functions of particular expressions in the texts. Among the characteristics of quantitative research, Dörnyei identified standardised procedures and a quest for generalisability as two main features. Both of these points will be dealt with in Sections 4.3 and 4.2.3 respectively below. For qualitative characteristics, he highlighted, among others, the prevalence of a small sample size and that “the research outcome is ultimately the product of the researcher’s subjective interpretation of the data.” That the interpretation of data is subjective does not mean giving free reign to researcher inference; Chalhoub-Deville (2006) stressed that the process of inference itself “requires justification backed by evidence” (p.3), thus inviting the advantages that computer-based corpus analysis can offer. Dörnyei’s qualitative features mentioned above are discussed and illustrated in more detail in Sections 4.1.4, 4.3.3 below and chapters 5, 6 and 7. Therefore, the approach taken in this thesis follows the quantitative path to start out with, followed by a sampling approach to the quantitatively processed data. A sampling approach was the preferred option as it was data rather than researcher reliant, in the grounded Chalhoub-Deville sense as described above. Of course, some researcher interference is necessary in terms of determining the
sampling mix, though this process is separate to any preconceived notions of language use and consequently the language itself remains untouched. This corpus driven process is discussed further in section 4.1.1 below.

The combination of the quantitative and qualitative approaches leads to what Johnson and Onwuegbuzie (2004: 14) described as mixed methods research. The idea of this approach is to take the best of what the quantitative and qualitative tools can offer and hopefully minimise the weaknesses that both might have (for example, quantitative research may offer generalisations about data but fail to explain the underlying meanings while conversely, qualitative research interpretations based on small samples may lack any basis for generalisability). There are several possibilities when combining the approaches and among the nine identified by Johnson and Christensen (2004: 418) there is the sequence that applies to the study in this paper:

\[ \text{QUAN} \rightarrow \text{QUAL} \]

The quantitative approach (QUAN) dominates the initial analysis but then cedes to qualitative (QUAL) interpretations of the data. This mixed method approach certainly complements Jaworski and Coupland’s (2006) antidote to the limitations of discourse analysis’s in-depth focus on single cases in that “multiple perspectives and methods increase the likelihood of reaching good explanations” (p.31). In effect, the mixed methods approach in the context of this study could alternatively be termed as a corpus assisted discourse studies (CADS) approach (Partington 2008). Riccio and Venuti (2009) explain this process as:

\[ \text{CADS analysts collect texts and design corpora with specific research purposes in mind, and explore features of a particular discourse after becoming familiar with it both by using concordancing tools and by reading single texts or excerpts} \]

\[ \text{(Riccio and Venuti 2009: 137)} \]

Significantly, Riccio and Venuti’s view that the objectives of a CADS approach typically involve investigations of discourse types “to uncover meanings that are non-obvious to the naked eye” (ibid) neatly coincides with the objectives for the study corpus under analysis.
here. The formalised approach required by computer-based corpus analysis also meets Miles and Huberman’s (1994) desire for transparent systematic procedures, particularly for data reduction and data display, which can then lend further credence to the findings derived from the qualitative analysis that may follow. Computer-based corpus analysis also helps facilitate the requirement for internal reliability, which Nunan (1992) defined as “the consistency of data collection, analysis and interpretation” (p.14). However, before dealing with data processing, it is first necessary to clarify several issues around the corpus itself, as the following section will show.

4.1.1 Corpus analysis approaches

Corpora can be used from two perspectives, one is what Tognini-Bonelli (2001) called the corpus-based approach and the other she referred to as corpus-driven. The former is where the researcher already has a theory about the data to be analysed and the corpus serves to provide feedback as to whether the particular theory of language is a reality or not. Her corpus-driven approach basically inverts the deductive process of the corpus-based model of analysis and any theoretical statements that may be formulated are derived directly from the evidence provided by the corpus. This latter approach would seem to be less prescriptive in its approach to analysing texts and should permit the discovery of language behaviours that had not previously been anticipated. In terms of implementation, Sinclair (2004a) specified that:

...you do not use pre-tagged text, but you process the raw text directly and then the patterns of this uncontaminated text are able to be observed.

(Sinclair 2004a: 191)

However, the veneer of objectivity about what the corpus has to reveal is not completely without blemish as all corpora, to be representative of the field under study, require what McEnery et al. (2006) referred to as balance. What is required for balance is that a corpus has a sufficient range of text categories that are representative of the area under study. McEnery, Xiao and Tono cite the British National Corpus as an example of a balanced corpus, its representation of a wide range of English language contexts is due to probability sampling techniques, though the reality facing individual researchers building their own
corpus based on meagre resources is quite different. For example, when dealing with the collection of texts that belong to the private rather than public domain, there is the requirement to get the authors’ permission to have access. Therefore, submissions to such a corpus may be uneven resulting in the final range of texts being not fully representative of the area under study. Wagner (2010: 25) defines this *convenience sampling* as “surveying individuals who are readily available and that the researcher has access to”. Perhaps with the solo researcher in mind, Johnson (2008) summed up the dilemma as “a tradeoff between the feasibility of research and the adequacy of the sample” (p.35). About the limitations of results drawn from such data Glass and Hopkins warned:

> Results from street corner polls, polls of the audience of a particular television or radio program, or readers of a particular magazine cannot be generalized beyond such groups without great risks

(Glass and Hopkins, 1996: 226)

There is also the potential bias of the ‘volunteer effect’ (Perry 2005, Dörnyei 2007) in that those who participate are the more motivated ones and perhaps do not completely represent the target population and consequently the nature or quality of the linguistic output of the target group. However, the goal of representativeness is also recognised by McEnery *et al.* (2006) as being far from straightforward as they note that “there is no reliable scientific measure of corpus balance” (p.16). Indeed, Hunston (2002: 28) illustrated this through the dilemma of collecting a corpus of the language of newspapers – what might the appropriate balance be between newspaper sections, word count per newspaper and the influence of circulation figures? In light of the potential conflict between the ideal of representativeness through balance in a corpus and the reality of convenience sampling faced by many researchers, the view of Atkins *et al.* (1992: 6) is perhaps the most pragmatic under the circumstances in that they advocate that knowing the corpus is unbalanced is what counts and to interpret results accordingly. Clancy’s (2010: 87) review of the issue of balance (or imbalance) also concluded that a clear documentation process of corpus design was imperative so the scope of a claim on language use could be clearly measured.

The focus of study in this thesis is concerned with articulating some features of non-published writing in the field of law for master level students. Therefore, in light of the
research fields highlighted above, it is primarily an individual discipline study. With regard to the issue of the analysis being corpus-driven or corpus-based there were certainly aspects of legal writing that could have been investigated in a corpus-based approach. Distinctive features of legal writing have been identified in newspaper law reports (Bowles 1995, Badger 2003), the problem question genre (Howe 1990, Bruce 2002, Langton 2002), law review articles (Feak, Reinhart and Sinsheimer 2000, Coulson 2009), law reports (Bhatia 1989, Harris 1997, Lung 2008), legislation (Hiltunen 1990, Bhatia 1992, Cowrie and Addison 1995), contracts (Feng 2007), or at a broader level, the specialised lexical, syntactic and textual discourse features identified by Gotti (2003) could all have been brought to bear on an initial analysis of the texts. Nevertheless, it was decided to adopt the corpus-driven approach. Such an approach was felt to be less prescriptive in terms of not having to apply a particular framework on the texts right from the beginning or, to use Perry’s (2005) exploratory-confirmatory continuum, to push the analysis into the exploratory domain by using corpus analysis software to “explore some phenomena prior to the development of any hypothesis” (p.80). By applying statistical software such as the WordSmith Tools KeyWord analysis, the defining features of writing in this field would become apparent when compared to a larger more general academic corpus and then the challenge would be to decide on a research response to what the study corpus had revealed about itself. The goal was fundamentally to enable the texts to speak for themselves with the minimum of prior intervention.

4.1.2 Longitudinal corpora

A Master of Law programme typically runs for one year or a maximum of two, which makes it an accessible entity for an individual researcher to investigate. Collecting data from a course programme means that there is the possibility of creating a longitudinal corpus. Granger (2004: 131), in her review of learner corpora, drew the distinction between longitudinal and quasi-longitudinal corpora. She defined the former as data collected from the same learners over time and the latter as data collected at a single point in time collected from learners of varying levels of proficiency. In 2004 the former were “very few and far between” while the latter were “still relatively infrequent”. There have, in the meantime, been instances where longitudinal corpora have been used, particularly in the
field of language acquisition of children (Lieven 2008, Lieven et al. 2009, Roy et al. 2009) At a broader level Campbell (2004) used a ‘real’ longitudinal corpus to build up over a period of 3 years the speaking profile of young and older native Japanese speakers and Cutting (2002) did weekly recordings of six native speaker post-graduate students in order to identify the emergence of an in-group lexis. All of the above however are largely concerned with spoken language. One significant longitudinal written corpus is the 143m word newspaper corpus collected at the University of Lancaster on the representation of Islam and Muslims in the UK press between 1998 and 2009 (McEnery 2010). However, despite the efforts of the University of Lancaster, at a global level the presence and use of longitudinal written corpora remains quite limited. Smaller corpora do exist, for example Thompson (2009) highlighted the writing development of some contributors to the BAWE, though that particular corpus overall is more suitable for quasi-longitudinal analyses. Similarly elsewhere, Meunier’s view of the inability in the last decade of learner corpus research to provide a clear picture of the developmental stages of interlanguage is partially because of “the lack of large longitudinal learner corpora” (2010: 209).

The present study presented the opportunity to create a ‘real’ longitudinal written corpus, so long as participants contributed their texts throughout the academic year. Not only could it correspond to Granger’s ‘real’ status, but also Menard’s (2002) criteria for what made a corpus longitudinal, namely that it could be broken up into two or more periods, the subjects are the same or similar and the analysis was a comparison between periods. The reality of third level education means that the building of a longitudinal corpus must deal with the feature of dispersion of students across modules, unlike second level and primary institutions, where the students all progress through the system in a mostly uniform manner. However, it should not preclude a comparative analysis of the same students, though more time may be needed to accumulate a sufficient quantity of texts. Nevertheless, a longitudinal corpus remains a rich source for investigation. While Menard’s view of a genuine longitudinal design was that it “would permit the measurement of differences or change in a variable from one period to another” (p.2) the longitudinal corpus in this study was going to be used to identify the repetition of variables from one period to another in order to build an understanding of the legal language common to all sub-disciplines.
addition, the retrospective nature of data collection (students submit their texts once they have completed their LLM programme) should help avoid the *Hawthorne effect* (Perry 2005: 103) which is when students change their behaviour because they are being subject to study. It is far more likely that students focussed on the higher priority of successfully completing their LLM when writing during the academic year rather than being conscious of what an applied linguistic analysis of their texts would reveal.

4.1.3 Criteria for collection

The collection of data to build the corpus involved contacting universities in Ireland. The universities were selected for three main reasons:

i) The universities offered English language Masters in Law programmes.

ii) They were all based in a Common Law jurisdiction.

iii) All the programmes required students to submit high stake writing assignments throughout the year.\(^{11}\)

Point iii) is particularly relevant as the study was intended to include texts that were produced outside the conventional timed exam context, which potentially held two disadvantages for research purposes: one being that the scripts are hand-written and therefore substantial work would have been required to convert the data into electronic text form; the second was the assumption that the pressure of time in a conventional exam context leads to a form of writing that may not reflect how the students normally express themselves. With the essay requirement it was also hoped that exemplars of student writing throughout the whole year would be available and not just end-of-programme theses. A final point worth noting is that the participants attached the mark they received for the assignments and all texts submitted had passed\(^{12}\).

The texts collected were all entire texts as recommended by Sinclair (2004b), even if the

---

\(^{11}\) Assignments whose mark is part of the final assessment for the course module and eventually the whole programme

\(^{12}\) While the universities varied in terms of what mark constituted a first, second or even third class honour, all set the pass mark at 40%.
sub-section comparisons were not going to be made. It was felt that setting a word limit per text would impact on representativeness as the corpus was already likely to be relatively small and such limits would be detrimental to its overall size with the effect of weakening the validity of any findings on language description.

4.1.4 Small and specialised corpora

Given the finite size of the field of study (five candidate universities with the largest class size being 100) and a collection period set at two years, it was presumed that the study corpus was never going to be large in the vein of general English corpora such as the Bank of English (500 million words) or the BNC (100 million words). Indeed, the final corpus size was approximately 950,000 words and while it could not be considered large in the sense of the large corpora that exist today, could it be considered medium sized or just small? Aston (1997: 54) defined a corpus as small if it was within the 20,000 to 200,000 word range, though O’Keeffe and Farr (2003) were of the view that anything below five million words was small and this was also the opinion expressed in O’Keeffe, McCarthy and Carter (2007). Given that ‘large’ corpora seem to be getting larger with the passage of time, in that the LOB and Brown corpora of the 1960s were considered large at one million words and today, the Cambridge International Corpus is 1.5 billion words, it would seem appropriate for the study corpus to adopt the ‘small’ mantle. This, while not surprising, is also fitting as Gavioli (2002: 294) pointed out that small corpora have “increasingly concentrated on studies of genre and ESP.” Indeed, small corpora tend to be applied more in specialised contexts as general corpora are designed for a different purpose, namely to provide a general description of the target language (Flowerdew 2004: 11, Gavioli 2005: 7). There even appears to be a difference in the make-up of a specialised corpus and a more generalised one. Sutarsyrah et al. (1994: 38-40) compared an economics corpus with a general academic corpus and despite having approximately the same number of tokens, the economics corpus had less than half the amount of word types. Another feature of note was that for lower frequency items the general academic corpus had more word types, but for the high frequency items the opposite was the case with the economic corpus providing more word types. This word profile of a specialised corpus would seem to confirm the view of Sager et al. (1980) that “statistical data can confirm that special languages have a higher rate of repetition of lexical items than general language” (p.283). The texts found in
specialised corpora are also likely to be “occluded genres” which Swales (2009: 6) defines as “those that are hidden and out of sight to all but a privileged few”. It is reasonable to categorise LLM student writing as such a genre given that the texts are written for an audience that is in most cases going to be no more than one person (the lecturer), and in random cases also an external examiner. One advantage of this restricted readership is that the weighting given to the texts is, in this sense, equal and avoids Cook’s (1998: 58) concern that some corpora ignore the difference between a private communication and one that has a far wider audience. Furthermore, it has been noted that occluded texts tend to be overlooked in English for General Purposes corpora (Gavioli 2002: 294) and in relation to the reference corpus used for this thesis, even in a relatively specialised corpus such as the BAWE, post-graduate legal texts represent a mere 28 out of a corpus total of 2858 texts.

Therefore, the limitations on size set by the target community seem to be offset by the specialised and homogenous nature of texts collected. To what extent can small specialised corpora satisfy Nunan’s (1992: 15) external validity requirements for generalisability of findings? While caution has been voiced about the generalisability of findings in small specialised corpora (Aston 1998, Gavioli 2002, O’Keeffe and Farr 2003) the case can still be made for the findings as indicative of the linguistic behaviour of the texts produced by the discourse sub-community under analysis. The extent to which the findings about this “experimentally accessible population” (Gall et al., 1996: 474) are applicable to the world of LLM writing in general would require further research comparing the features uncovered here with multiple sites of data collection. However, in the meantime, it may be worth adopting a replacement term to generalisability as promoted by Merriam (1998). She stressed the primary influence of the local conditions of the research and proposed the less definitive term of “working hypothesis” (p.209). This of course assumes that the texts collected are indeed representative. This issue will be discussed in further detail in Section 4.4.3 below.

At a very broad level, the study follows what Fuentes-Olivera described as “corpus work that investigates the discursive features of a discipline” (2008: 71), though in this case a sub-community within the legal academic community. The focus of analysis was therefore
first on identifying a legal lexis that has a high level of presence across sub-disciplines and which appeared regularly throughout the year; and second, to elaborate on the rhetorical functions therein in order to better describe a common legal language across sub-disciplines. It was, in effect, to explain the role of semi-technical language in post-graduate legal academic writing.

4.2 Semi-technical Language

Semi-technical language is certainly not a new concept, its application to the discipline of arithmetic was studied by Brooks in 1926 and course books that deal with the subject have existed since the 1960s (for example, Herbert’s The Structure of Technical English (1965), Ewer and Latorre’s A Course in Basic Scientific English (1969), and Bates and Dudley-Evans’ Nucleus – English for Science and Technology (1976)). While semi-technical vocabulary lists are clearly well-established in the world of applied linguistics, for this thesis it is first necessary to take a step back in order to understand better the process of isolating semi-technical language.

4.2.1 Identification process for semi-technical language

Any quantitative-based approach to identifying semi-technical vocabulary means the core criteria of frequency and distribution must be addressed. The definition of semi-technical vocabulary effectively means language items meeting set frequency and distribution parameters across sub-disciplines, genres, authors and in the case of longitudinal corpora, periods. Before articulating further the technique applied to the present study corpus, approaches taken by other researchers will be first reviewed.

Inman (1978) was one of the early adopters of the computer-based approach. Her 114000 word corpus of professional and scientific journals was broken down into technical words (21%), function words (9%) and the remaining 70% was considered sub-technical. Such a high percentage of sub-technical words raise doubts about frequency and range across texts. Indeed, King (1989: 15) showed that in a study of written and spoken academic English that approximately 50% of all terms appeared just once or twice in his corpus. Yang (1986)
further refined the search system by setting criteria of sub-technical words having to have a high distribution among texts but a relatively low frequency. On how to address the issue of when a frequency becomes high or low, Yang set up a stop list of function words (all of which had a high distribution and frequency) and excluded them from further analysis. The issue of excluding apparently general English words from a semi-technical vocabulary list has more recently come in for some criticism (see Hancioglu et al. 2008, Hyland and Tse 2009, Martinez et al. 2009), mostly on the grounds that they too can carry a discipline specific function. Baker’s (1988) approach to isolating semi-technical language was less prescriptive in terms of avoiding stop-lists, though the study itself was silent on the distribution of the terms across texts. Both King (1989) and Farrell (1990) addressed the issue of range by documenting the number of texts in which the vocabulary item occurred and while Farrell did not include the most frequent grammatical items in his semi-technical list for his electronics corpus, he did concede that these could nevertheless be of pedagogical interest due to their collocational possibilities (p.32). Fuentes (2001) adopted an even more rigid empirical approach to identify what he described as common core vocabulary. In terms of range he set threshold limits for multiple variables before a vocabulary item could be categorised. In effect, it meant meeting a required presence in a certain number of texts, subjects and genres.

A common feature of all the researchers above was that they focused on an individual discipline from which they then extracted the semi-technical vocabulary of the field. In light of the findings of Hyland (2008) and Hyland and Tse (2009) about the lack of uniformity of this type of vocabulary on a cross-disciplinary basis, particularly in terms of distribution, such an approach seems more appropriate. Moreover, Hyland and Tse’s observation that semi-technical language was easier to identify between the electrical and mechanical engineering fields raises hopes that this will also be the case for the sub-disciplines of law.

4.2.2 Building on single word units

While frequency of single word forms appears to be the principal starting point in identifying technical, semi-technical and general language items in academic texts (Salager

... discrete item frequency lists, though extremely useful in defining learning targets, are also by nature unrevealing of the subtleties of lexical phrases, multi-word units, and pre-formulated chunks. (Hancioglu et al. 2008: 460)

This is consistent with Sinclair’s (1987) view that there was a strong correlation between the sense of a word and the pattern of words surrounding it. King (1989) was also a keen advocate of moving beyond a checklist of words when he stated that “we are not concerned with the item per se but with its function and meaning in a particular context” (p.19). This is what was also implied by Martinez et al. (2009) when they sought the inclusion of GSL words for teaching ESP in an EFL context once such vocabulary had satisfied the criteria of having a rhetorical function in the genre. Nevertheless, single, or even multiple, word units serve their purpose as markers of how a discipline discourse may be constructed - though how to identify vocabulary which can be categorised as semi-technical requires a further look at methodology. The remaining sections deal with how the study corpus was organised and analysed in order to arrive at a list of semi-technical terms for postgraduate legal academic writing.

4.3 Data Collection and Organisation in the Present Study

4.3.1 Process of data collection and breakdown according to university

In order to gain permission to have access to students, it was first necessary to apply for clearance from the University of Limerick Research Ethics Committee (see p.363, Appendix A). Once that was obtained, it was then possible to contact the programme directors from each of the candidate universities to request permission to speak to the classes (see p.364, Appendix B). The lecturers were forwarded with a short information
sheet (see p.366, Appendix C) and the same sheet was also handed out to the students in each class. Those who were interested in participating then had to give their written consent and complete a short student profile form which provided details of university, gender, nationality, previous qualifications or work experience and languages known (see p.369, Appendix D). These students were subsequently contacted by email once they had completed their course with the request to return their written material as file attachments. These files were then converted into text form and made anonymous through a common coding system (see p.373, Appendix E).

Texts were collected in 2008 from the LLM programmes of Trinity College Dublin and University College Cork. In 2009 the University of Limerick LLM programme was added to the list. The LLM programmes at the Irish universities were one year of full-time study or two year part-time. The profile of the data collected is illustrated in Tables 4.1, 4.2 and 4.3.

**Table 4.1 General details of study corpus**

<table>
<thead>
<tr>
<th>Total corpus size</th>
<th>Total number of authors</th>
<th>Total number of texts</th>
</tr>
</thead>
<tbody>
<tr>
<td>933,435 tokens</td>
<td>30</td>
<td>124</td>
</tr>
</tbody>
</table>

**Table 4.2 Texts provided by each university**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Essays</td>
<td>26</td>
<td>48</td>
<td>12</td>
<td>86</td>
</tr>
<tr>
<td>Theses</td>
<td>17</td>
<td>5</td>
<td>2</td>
<td>24</td>
</tr>
<tr>
<td>Assignments/Case studies</td>
<td>12</td>
<td>2</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>Total</td>
<td>55</td>
<td>55</td>
<td>14</td>
<td>124</td>
</tr>
</tbody>
</table>
Table 4.3 Authors provided by each university

<table>
<thead>
<tr>
<th></th>
<th>Trinity College Dublin (TCD)</th>
<th>University College Cork (UCC)</th>
<th>University of Limerick (UL)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>University Total</td>
<td>20</td>
<td>7</td>
<td>3</td>
<td>30</td>
</tr>
<tr>
<td>Male</td>
<td>12</td>
<td>2</td>
<td>2</td>
<td>16</td>
</tr>
<tr>
<td>Female</td>
<td>8</td>
<td>5</td>
<td>1</td>
<td>14</td>
</tr>
</tbody>
</table>

There is a more limited contribution from the UL though that can be explained by the fact that texts there were collected from just one LLM programme in comparison to two years of programmes from TCD and UCC. Also, the size of the LLM programme in Limerick in terms of students is at least 50% smaller than those of the other two institutions.

4.3.2 Participant details

Of the 30 participants in the research project just two were non-native speakers and these were subsequently eliminated from the period analysis (see Section 4.4.5 for criteria set for authors to qualify for period analysis). All participants had studied law at undergraduate level and with the exception of the two non-native speakers, came from a common law background. The gender divide was 14 female and 16 male. Again, nationality was overwhelmingly Irish with just three exceptions, one German, one Chinese and one from the United States.

4.3.3 Representativeness of data

Chalhoub-Deville’s (2006) remark that “the more observations generated, the more confidence one can have in the dependability of results” (p.2) raises the question of how many observations are actually sufficient. The issue of assessing the representativeness of the study corpus requires that one considers the potential size of all marked texts produced. This is already a difficult enterprise as some participants, because of their choice of modules, were required to sit more exams than produce marked essays. It was also not possible to ascertain how many students followed which module. That leaves us with a
rather crude system of measurement which is a headcount of study participants as a ratio to total number of potential participants. Enrolments at Trinity, Cork and Limerick universities, the institutions whose texts contributed to the final version of the study corpus, were approximately 100, 80 and 40 respectively per academic year. This would mean a total of 400 possible candidates, of which 30 participated, which is just less than 8% of the target population. As already pointed out, this 8% also represents those who were required to produce relatively few marked assignments during the LLM programmes and this would imply that the participants and total number of texts submitted could well be a higher percentage of the target population of texts than the one calculated above. Therefore, Moessner’s (2009: 223) view that representativeness is not an either/or property but something to which one can ascribe degrees of achievement may be a more appropriate means of interpretation. If one compares the study corpus with that of the BNC, whose 100m words is said to be representative of British English in the 1990s, then, in light of a vastly greater target population from which the BNC extracted its texts, it can be argued that the 8% base line calculated above should lend some credibility to the study corpus findings, at least for the LLM programmes from which the texts come. Finally, given the apparent amount of vocabulary repetition in specialised corpora and their more compact size in terms of word tokens as already noted by Sager et al. (1980) and Sutarsyrah et al. (1994), then, assuming that the rhetorical structures supported by the vocabulary also adopt repetitive behaviours, the greater the likelihood of the study corpus providing a satisfactory degree of representativeness.

4.3.4 Organisation of the data: Modules covered in the LLM courses

In order to be able to ascertain whether one subject was particularly dominant and thus creating a bias within the data, it was necessary to set out subject categories under which the texts could be filed. Having set out provisional categories of subjects, the advice of a university law professor was then sought. Table 4.4 below shows the categories which were the result of this process.
Table 4.4 Main sub-disciplines covered by course modules

<table>
<thead>
<tr>
<th>Sub-disciplines</th>
<th>Tokens</th>
<th>Authors</th>
<th>Texts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal law</td>
<td>272502</td>
<td>12</td>
<td>47</td>
</tr>
<tr>
<td>Human rights (HR) law</td>
<td>146145</td>
<td>9</td>
<td>13</td>
</tr>
<tr>
<td>Business law</td>
<td>301925</td>
<td>15</td>
<td>33</td>
</tr>
<tr>
<td>Environmental law</td>
<td>55790</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Medical law</td>
<td>39957</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Comparative public law</td>
<td>17810</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Jurisprudence</td>
<td>35249</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Legal history</td>
<td>15497</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Mediation</td>
<td>41900</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Regulation</td>
<td>6660</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

These were subsequently simplified further into the sub-discipline areas shown in Table 4.5.

Table 4.5 Aggregate sub-discipline areas

<table>
<thead>
<tr>
<th>Sub-discipline area</th>
<th>Tokens</th>
<th>Authors</th>
<th>Texts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal law</td>
<td>272502</td>
<td>12</td>
<td>47</td>
</tr>
<tr>
<td>HR law</td>
<td>146145</td>
<td>9</td>
<td>13</td>
</tr>
<tr>
<td>Business law</td>
<td>301925</td>
<td>15</td>
<td>33</td>
</tr>
<tr>
<td>Miscellaneous law (all other subjects)</td>
<td>212863</td>
<td>15</td>
<td>30</td>
</tr>
</tbody>
</table>

While criminal, HR and business law are relatively homogenous in terms of constituent texts, this is clearly not the case for the miscellaneous sub-corpus. Nevertheless, the

---

13 The total number of authors for Miscellaneous law is less than the sum of all its sub-disciplines because some authors would have contributed texts from more than one of those categories
exclusion of this sub-corpus would mean removing approximately 25% of all texts, which could have the effect of reducing further the randomness of the collection process. As discussed in Section 4.1.1, the convenience sampling adopted due to the constraints of limited access to student papers can have repercussions for the representativeness of the findings (Glass and Hopkins 1996). Based on the spread of texts collected, one can speculate that students gravitate towards criminal and business law subjects in particular, to a lesser extent they take HR modules and then the miscellaneous mix represents the remaining minority preferences. Therefore, to exclude the latter could well mean a misrepresentation of the module mix taken by students attending the programmes. While any keyword list for the miscellaneous sub-corpus will perhaps lack the clear identity of the other three discipline-centred sub-corpora, this anomaly is somewhat mitigated by the fact that the study will focus on semi-technical language which should, by definition, be a range of expressions common to all sub-disciplines.

### 4.3.5 Organisation of the data: Period categories

As discussed in Section 4.1.3, the goal of breaking up of the data into set periods was to identify the keyword legal terms that maintained a constant presence throughout the year thus minimising author, genre or subject influences. Therefore, the data were first surveyed to see if text submission dates allowed for the division of the academic year into set periods. Table 4.6 shows the division of periods which facilitated the clustering of texts into clear groups.

**Table 4.6 Period categories for the academic year**

<table>
<thead>
<tr>
<th>Period</th>
<th>Months covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>October to December</td>
</tr>
<tr>
<td>2</td>
<td>January to March</td>
</tr>
<tr>
<td>3</td>
<td>April to May</td>
</tr>
<tr>
<td>4</td>
<td>June to September</td>
</tr>
</tbody>
</table>

The periods appear to follow the terms set by the colleges. For example, TCD has three
terms that coincide with period 1, 2 and 3 while UCC’s two academic terms coincide with periods 1 and 2. The first three periods included mostly essays with a small number of problem assignments, while Period 4, being written out of semester time, was comprised exclusively of theses.

Sections 4.4.1, 4.4.2 and 4.4.3 below will explain how the whole study corpus was used to derive a common set of semi-technical terms across the four sub-disciplines. Sections 4.4.4, 4.4.5 and 4.4.6 will then explain the subsequent filtration of texts based on authors who met the minimum presence requirement in the periods set out in Table 4.6 above. The authors qualifying for inclusion in the period analysis are listed in Table 4.7 below.

Table 4.7 Period sub-corpora

<table>
<thead>
<tr>
<th>Authors</th>
<th>Period1 texts/tokens</th>
<th>Period2 texts/tokens</th>
<th>Period3 texts/tokens</th>
<th>Period4 texts/tokens</th>
<th>Total texts/tokens</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>1/5430</td>
<td>1/3334</td>
<td>1/24584</td>
<td>3/33348</td>
<td></td>
</tr>
<tr>
<td>C1</td>
<td>1/6087</td>
<td>3/13225</td>
<td></td>
<td>5/34096</td>
<td></td>
</tr>
<tr>
<td>D1</td>
<td>2/6835</td>
<td>4/13691</td>
<td>1/3703</td>
<td>7/24229</td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>4/4390</td>
<td>2/6040</td>
<td></td>
<td>7/32593</td>
<td></td>
</tr>
<tr>
<td>I</td>
<td>2/9728</td>
<td>2/5502</td>
<td>1/11859</td>
<td>5/27089</td>
<td></td>
</tr>
<tr>
<td>K</td>
<td>1/6396</td>
<td>1/5191</td>
<td>1/28030</td>
<td>3/39617</td>
<td></td>
</tr>
<tr>
<td>M</td>
<td>3/11807</td>
<td>1/2849</td>
<td>1/2871</td>
<td>5/17527</td>
<td></td>
</tr>
<tr>
<td>N</td>
<td>4/9372</td>
<td>4/14366</td>
<td>2/5909</td>
<td>11/43322</td>
<td></td>
</tr>
<tr>
<td>O</td>
<td>2/9125</td>
<td>4/15462</td>
<td>3/12269</td>
<td>9/57470</td>
<td></td>
</tr>
<tr>
<td>P</td>
<td>2/8927</td>
<td>2/7490</td>
<td>3/13914</td>
<td>8/46596</td>
<td></td>
</tr>
<tr>
<td>Q</td>
<td>2/8646</td>
<td>2/6266</td>
<td>3/10466</td>
<td>8/46869</td>
<td></td>
</tr>
<tr>
<td>S</td>
<td>1/5684</td>
<td>2/8866</td>
<td>1/4081</td>
<td>4/18631</td>
<td></td>
</tr>
<tr>
<td>T</td>
<td>3/23217</td>
<td>2/9792</td>
<td>3/16816</td>
<td>9/73982</td>
<td></td>
</tr>
<tr>
<td>W</td>
<td>1/7105</td>
<td>1/6105</td>
<td>1/28003</td>
<td>3/41213</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>1/6215</td>
<td>1/7979</td>
<td>3/17386</td>
<td>6/50567</td>
<td></td>
</tr>
</tbody>
</table>
The keywords derived from each period sub-corpus were then compared to the whole corpus semi-technical terms and those items that were present in three out of the four periods qualified as semi-technical language that had a constant presence throughout the academic year.

### 4.4 Data Analysis in the Present Study

#### 4.4.1 Parameters for identification of semi-technical language for the whole corpus

The first step was to build a list of semi-technical language across all the subjects for the whole corpus. This will be called the Whole Corpus Semi-technical List (WCSL). The texts were processed in raw text form (Sinclair 2004a: 191) which meant that footnotes were included. This is because the footnotes not only contained formulaic citations (which were excluded) but also additional text by the authors. This follows the practice of Langton (2002: 23) who also included footnotes in her corpus of students’ legal problem question texts. To identify the WCSL it was first necessary to deal with the following issues:

#### 4.4.1.1 Reference corpus

The reference corpus used was the British Academic Written English (BAWE) corpus. The 6.5m word corpus was chosen because it is based on university student assignments ranging from 500 to 5000 words in length across thirty main disciplines. With such an academic focus, it was felt that it was a more appropriate reference corpus than the much larger, but also more the general in terms of language, British National Corpus (BNC). The BNC was more likely to give not just keywords that were particular to legal academic
writing, but also reveal terms typical of academic writing in general which was not within the scope of the present research project. Given the BAWE’s more narrow focus it was more suited to filtering out the commonly shared writing features across disciplines and revealing keywords that had a distinctively English for academic legal writing (EALW) character.

Of course another issue raised by the BAWE was its size as a reference corpus, particularly if one looks at the much larger 100m BNC. In Berber-Sardinha’s (2002: 12) study on the value of large versus relatively small reference corpora when dealing with WordSmith’s KeyWord procedure, it showed that the reference corpus needs to be no more than five times the size of the study corpus as after that point the larger reference corpora provide only a marginal increase in the number of keywords identified. Given the study corpus of post-graduate academic legal writing stands at a maximum at 930,000 words and the BAWC 6.5m, it would appear to be suited quantitatively and as noted in the previous paragraph, also qualitatively.

4.4.1.2 Frequency thresholds
As the focus is on semi-technical language and given the limited size of the study corpus, the thresholds set for the KeyWord analysis are quite conservative. Vongpumivitcha et al. (2009) set their limit for the frequency of single word expressions at 50/1.5m words. I decided to keep the same ratio for single and two word expressions for the PGALW study corpus which is a little under 1m words. As it will only be the higher frequency KeyWord items that will be analysed, these conservative limits are unlikely to have much of an impact on any qualitative analysis to be done. Then for 3 and 4 word clusters the limit was set at 25/1m which is slightly higher than Hyland’s (2008) 20/1m for his 3.5m corpus. Finally, the limit for the 5-8 cluster category was set at 10/1m. How these minimum frequencies transpire in real terms is shown in Table 4.8 below.
Table 4.8 Minimum KeyWord frequencies for each sub-discipline

<table>
<thead>
<tr>
<th>Subject area frequency:</th>
<th>Business Law Sub-corpus (normalised frequencies)</th>
<th>Criminal Law Sub-corpus (normalised frequencies)</th>
<th>Misc Law Sub-corpus (normalised frequencies)</th>
<th>HR Law Sub-corpus (normalised frequencies)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single and 2-word expressions set at 50/1m</td>
<td>15</td>
<td>14</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>3 - 4 lexical bundles set at 25/1m</td>
<td>7</td>
<td>7</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>5 - 8 lexical bundles set at 10/1m</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

Over 50% of the expressions of the subject sub-corpora WordLists were not in the BAWE. A comparison between the reference and study sub-corpora showed that the latter contained many references to cases, proper noun phrases (with perhaps Irish names) and just that longer lexical bundles seem to be more common in the legal sub-corpora, an issue that will be addressed in more detail in Chapter 6.

4.4.1.3 Text range

Both Hyland’s and Vongpumivitcha et al.’s criteria of expressions having a minimum spread in 10% of texts was in response to the danger of words or clusters occurring in an inordinately small quantity of texts. However, as this study corpus is constructed in a way that some authors contributed multiple texts it is necessary to confront what Cameron and Deignan (2003: 151) referred to “the possibility that one particular speaker’s idiosyncratic use may dominate the citations for a particular word.” This means a KeyWord expression

---

14 The calculation is as follows: minimum frequency for single and 2-word expressions is 50/1m, which is 0.00005 of the corpus size. The business sub-corpus has 301925 tokens. 301925 x 0.00005 = 15.09625 and this is rounded off to 15.
must not meet the criteria for spread among texts, but spread among authors. This screening is only applied once a definitive list of semi-technical terms is derived and has been checked against the keywords generated for each period. If particular terms satisfy the criteria of a constant presence throughout the academic year, then the author test will be run. To qualify as a semi-technical term the expression will have to be used by two-thirds of the authors writing in those periods where it is found. Further details will be found in Sections 4.4.5 and 4.4.6 below.

4.4.2 Procedure for identification of semi-technical language in study corpus

If we define semi-technical language as law-related terms that are common across all sub-disciplines, to arrive at such a list it is first necessary to set up WordSmith KeyWord files for each of the four discipline sub-corpora. The KeyWord analysis means comparing the study corpus to the BAWE reference corpus. Excluding negative values, the output will reveal the word types that occur at a rate in the legal texts that is above the norm for general student academic writing. The assumption is that these items are a symptom of what distinguishes post-graduate student legal academic writing from other student academic writing. The defining features should therefore include legal technical and semi-technical terms.

In this instance, all the files for each relevant subject area are used, which means there may be some that will not be used in the later individual period analysis because their author did not have the necessary dispersion of texts. However, the focus here is just to give as comprehensive as possible a representation of the language that is key to a subject area. The sub-disciplines’ KeyWord files are then converted into Excel files and each of the four sub-discipline lists is colour-coded. The four sub-discipline Excel files are then merged into one main file and by putting the file in alphabetical order it is possible to see the expressions that are shared across subject groups. Table 4.9 shows a short sample of this main file.
Table 4.9 Sample of merged Excel file containing colour-coded KeyWord terms

Colour codes: Orange - Misc law

Black - Business law

Blue - HR law

Red - Criminal law

<table>
<thead>
<tr>
<th>Keyword Expression</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPINION</td>
<td>101</td>
</tr>
<tr>
<td>OPINION</td>
<td>74</td>
</tr>
<tr>
<td>OPINION</td>
<td>104</td>
</tr>
<tr>
<td>OPINION</td>
<td>103</td>
</tr>
<tr>
<td>OPINION FROM THE</td>
<td>5</td>
</tr>
<tr>
<td>OPINION FROM THE</td>
<td>5</td>
</tr>
<tr>
<td>COMMISSION</td>
<td></td>
</tr>
<tr>
<td>OPINION IN</td>
<td>15</td>
</tr>
<tr>
<td>OPINION IN BOSMAN</td>
<td>9</td>
</tr>
<tr>
<td>OPINION IS THAT</td>
<td>4</td>
</tr>
<tr>
<td>OPINION OF</td>
<td>38</td>
</tr>
<tr>
<td>OPINION OF</td>
<td>8</td>
</tr>
<tr>
<td>OPINION OF</td>
<td>24</td>
</tr>
</tbody>
</table>

4.4.3 Delimitations for inclusion/exclusion of semi-technical terms

Before screening the terms according to the minimum author/text range thresholds an additional issue of representativeness first needed addressing, which was that spread among sub-disciplines. While Table 4.10 below shows that the expression *a breach of* is common
to all four disciplines, due to the uneven distribution of tokens among the subject area sub-corpora and given the small size of the whole corpus, it was decided to adopt a less rigid approach to the minimum subject threshold set by Fuentes (2001). Instead of setting a minimum presence across a certain number of sub-disciplines, the terms selected had to come from sub-corpora that, when put together, represented over half the total tokens of the whole corpus. However, this also meant that if an expression was coloured blue (HR) and one other colour, then it could not reach the limit. This appeared to discriminate against the HR subject group, not recognising language it shared with another sub-corpus as being potentially semi-technical. The size of the HR sub-corpus was somewhat problematic; it was considerably smaller than the business and criminal law sub-corpora and yet too big to be put into the misc law sub-corpus. Therefore, in the case that an expression that did not make the cut due to the HR corpus limitation, if it had a presence as a non-KeyWord in another sub-corpus then it could be accepted into the semi-technical list (assuming we do not have a situation where there are just 2 or 3 instances in the sub-corpus compared to 70 or 80 in the two sub-corpora where it is key). This guaranteed that all terms came from a minimum of two out of the four subject area sub-corpora as well as representing the majority in terms of tokens in the whole corpus. An illustration of the process is in Table 4.10 below.

Table 4.10 Example of selection process stage which is based on subject spread

<table>
<thead>
<tr>
<th>Keyword Expression</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>a breach of</td>
<td>16</td>
</tr>
<tr>
<td>a breach of</td>
<td>25</td>
</tr>
<tr>
<td>a breach of</td>
<td>11</td>
</tr>
<tr>
<td>a breach of</td>
<td>7</td>
</tr>
<tr>
<td>a criminal offence</td>
<td>11</td>
</tr>
<tr>
<td>a criminal offence</td>
<td>5</td>
</tr>
</tbody>
</table>

The term ‘a breach of’ satisfies the criterion of representing over 50% of the 933,435 word corpus and therefore become a part of the Whole Corpus Semi-technical List (WCSDL). On the other hand, the term ‘a criminal offence’, while present in criminal law and HR law sub-corpora, does not immediately reach the 50% threshold. A search in the other two sub-
corpora shows that it does not appear at all in either and therefore does not make the semi-technical list.

To briefly summarise the above, the Whole Corpus Semi-technical List (WCSL) is now comprised of terms that either come from subject area sub-corpora that represent over 50% of the total corpus tokens, or when the terms are shared between HR and another discipline, their inclusion depends on whether such terms appear as non-key items in the other sub-corpora in a numerically significant manner. This WCSL file, which has a total of 1,922 terms, will become the benchmark against which the semi-technical terms for each period will be derived. Table 4.11 shows an excerpt from the WCSL file.

**Table 4.11 Section of the WCSL file**

<table>
<thead>
<tr>
<th>A BREACH</th>
<th>IN THE INTERESTS OF THE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A BREACH OF</td>
<td>IN THE IRISH</td>
</tr>
<tr>
<td>A CASE</td>
<td>IN THE LAW</td>
</tr>
<tr>
<td>A CONSTITUTIONAL RIGHT</td>
<td>IN THE LIGHT</td>
</tr>
<tr>
<td>A CONSTITUTIONAL RIGHT TO</td>
<td>IN THE LIGHT OF</td>
</tr>
<tr>
<td>A COURT</td>
<td>IN THE LIGHT OF THE</td>
</tr>
<tr>
<td>A DECISION</td>
<td>IN THE NEXT</td>
</tr>
<tr>
<td>A DISPUTE</td>
<td>IN THE PUBLIC</td>
</tr>
<tr>
<td>A EUROPEAN</td>
<td>IN THE PUBLIC INTEREST</td>
</tr>
<tr>
<td>A MEMBER STATE</td>
<td>IN THE US</td>
</tr>
<tr>
<td>A MENTAL</td>
<td>IN THIS AREA</td>
</tr>
<tr>
<td>A NEED FOR</td>
<td>IN THIS REGARD</td>
</tr>
<tr>
<td>A PARTY</td>
<td>IN THIS RESPECT</td>
</tr>
<tr>
<td>A PARTY TO</td>
<td>IN VIEW OF</td>
</tr>
<tr>
<td>A PATENT</td>
<td>IN WHICH IT</td>
</tr>
<tr>
<td>A PERSON</td>
<td>INFORM THE</td>
</tr>
</tbody>
</table>

104
The table above contains some clearly legal terms such as “in the public interest” and “a party to” without necessarily being deemed as technical terms, in the sense that they cannot be clearly linked to a specific sub-discipline. Nevertheless, it is still possible that such expressions may come from only a minority of authors, belong to just the essay genre or, due to the nature of task rubrics in a single period, appear just in one part of the year. Therefore, further filtering is required if such expressions are to qualify as semi-technical language.

4.4.4 Period analysis: Why do a period analysis?

While longitudinal surveys have normally been used to trace language development (Reppen 2001, Leki 2001, Perdue et al. 2002, Klapper and Rees 2003, Derwing et al. 2007) this research seeks to exploit the time aspect in order to track language use that is repeated throughout the year. While the WCSL already shows common keywords between the four sub-disciplines, this corpus may include terms that peak due to sub-discipline concentrations at certain times in the year, or even due to the rhetorical effect of task rubrics in a given period. As an extreme example, we could take the word ‘legal’, which may occur in two of the four sub-discipline sub-corpora as a keyword but at two different times in the year. This will in turn register as a keyword in the WCSL so long as the two sub-corpora represent over 50% of the whole corpus. However, if we break up the academic year into periods, the term ‘legal’ may not appear if it does not reach the minimum quantity of periods (set at three out of four). Therefore, while it is semi-technical in terms of sub-discipline commonality, it still lacks a certain regular usage element. Finding vocabulary that appears throughout the year could be considered to be a sub-set of the WCSL, but with the additional feature of regularity in written discourse. Furthermore, the period analysis allows for the screening of expressions according to a minimum number of authors (and therefore texts) which is a dispersion test that has yet to be applied. When comparing Tables 4.1 and 4.7 above, the size of the combined period sub-corpora is smaller than the total corpus used to derive the WCSL. Nevertheless, it could be argued that this renders the period sub-corpora a more accurate reflection of what the semi-technical language for the target field really is as it has removed an element of randomness by focussing on consistency among contributors. In a nutshell, the WCSL is subject-driven
while the period semi-technical language analysis subsequently interprets that corpus in terms of author distribution over time.

### 4.4.5 Building the period sub-corpora

As the data did not always permit the ideal scenario of an author having a text or texts from each of the four periods, it was decided to set the threshold of each author having at least one text in a minimum of three out of the four periods (see Table 4.7 in Section 4.3.5 for a breakdown of the contributing authors and texts in each period). Once this had been settled, it was possible to address the issue of the nature of the texts the authors contributed. The division of tokens between Periods 1 to 3 and Period 4 is 56%:44%. Since, with the exception of 5 texts, the main genre in Periods 1 to 3 is essays, we can say that percentile ratio for essays to theses is of a size which prevents one genre from dominating the corpus. The potential bias of the greater size of the individual thesis texts is neutralised by the higher number of the smaller word-count essays. Regarding the 5 texts, it has to be asked whether these constitute a threat of distortion to Aston’s (1998) recommendation for homogeneity in the corpus, whether they behave as “rogue texts” (Sinclair 2004b). The texts in question are task focussed in that the rubric requires the students to give a legal opinion on a real-life issue in business law. What these texts have in common with the essays and theses is that the students are still required to outline what the law is and they also point out grey areas that have a bearing on what a course of action should be. With the potentially ‘rogue’ texts having more in common with the essays and theses than displaying sharp contrasts in terms of rhetorical functions, it was felt that their inclusion would not have a distorting effect.

### 4.4.6 Period semi-technical language

Using the texts listed in Table 4.7 above, a KeyWord analysis (1 – 8 words long) is then done for the periods Oct-Dec, Jan-March, April-May and end of year theses (hereafter referred to as Periods 1, 2, 3 and 4 respectively) and each one is converted into an Excel file. Each period file is then compared with the WCSL Excel file to identify what sub-discipline based semi-technical terms are present in each period. These terms are put into an Excel file called ‘Periods’ semi-technical language’, one page per period. To obtain
these four lists it is necessary to first colour the WCSL Excel file red and then copy it below each individual period KeyWord list Excel file. Then, once each combined list is sorted alphabetically, anything in this list that is not duplicated is manually deleted. To further tidy the file, using the data tab in the Excel programme, the duplicates are deleted (which should delete all the red coloured WCSL expressions which, because they were copied in below the Period list, will be read as the ‘duplicate’ by the computer) and what is left are the periods’ semi-technical expressions. The first twenty lines in order of frequency for each period can be seen in Appendix F (see p.375).

The next step is to manually check the four lists and isolate terms that appear in at least three of the four periods. The period check also incorporates a check against genre bias. While appearing in three of the four periods is the goal, those three periods must include Period 4, which is where all the theses are located. This helps avoid any potential bias that the essay genre, which exclusively occupies Periods 1 to 3, might contain. At this stage it is now possible to identify whether these terms are spread among two-thirds of the authors in each period thus ensuring a widespread commonality in use. A high threshold of use by two-thirds of the authors in any given period was set as it was felt that the initial threshold relating to the WCSL could have been open to criticism for not setting a higher corpus representation level than 50%. Hyland (2008) and Vongpumivitcha et al. (2009) both set text limits at 10% which is much lower than the level set here, even if we adopt the scenario of each author just having one text where an expression is found (see Table 4.7 for the number of authors in each period). Therefore such a high threshold for range among authors/texts should further strengthen the claim of representativeness in the student legal academic writing context.

In selecting what expressions to analyse two additional key indicators have been considered: frequency and keyness. While the high frequency terms usually have a fairly low keyness value, it was felt that they nevertheless merit analysis given their ubiquity in the corpus. The top keyness terms, while having a clearly legal flavour, at times lack frequency levels to stand alone as representative of the genre. Looking at the top 20 frequency items and top 20 keyness items in each period (see p.375-376, Appendix F and G) there is indeed some overlap between the two but what sets them apart is that the frequency list has more function words while the keyness list has a strong concentration of content expressions.
This trait becomes even more pronounced when vocabulary common to three of the four periods is identified. Shortened versions of Appendix F and Appendix G are shown respectively in Tables 4.12 and 4.13.
Table 4.12: Semi-technical language based on highest keyness values

<table>
<thead>
<tr>
<th>Period 1 semi-technical</th>
<th>Freq.</th>
<th>Authors</th>
<th>Keyness</th>
<th>Period 2 semi-technical</th>
<th>Freq.</th>
<th>Author</th>
<th>Keyness</th>
<th>Period 3 semi-technical</th>
<th>Freq.</th>
<th>Author</th>
<th>Keyness</th>
<th>Period 4 semi-technical</th>
<th>Freq.</th>
<th>Author</th>
<th>Keyness</th>
</tr>
</thead>
<tbody>
<tr>
<td>COURT</td>
<td>525</td>
<td>13</td>
<td>2250.8</td>
<td>LAW</td>
<td>956</td>
<td>15</td>
<td>2693.11</td>
<td>LAW</td>
<td>562</td>
<td>14</td>
<td>1249.89</td>
<td>ARTICLE</td>
<td>957</td>
<td>13</td>
<td>3132.3</td>
</tr>
<tr>
<td>CRIMINAL</td>
<td>435</td>
<td>12</td>
<td>1949.56</td>
<td>CRIMINAL</td>
<td>463</td>
<td>12</td>
<td>2026.38</td>
<td>CRIMINAL</td>
<td>217</td>
<td>11</td>
<td>642.068</td>
<td>COURT</td>
<td>884</td>
<td>14</td>
<td>2974.01</td>
</tr>
<tr>
<td>LAW</td>
<td>748</td>
<td>14</td>
<td>1947.26</td>
<td>JUSTICE</td>
<td>363</td>
<td>14</td>
<td>1163.13</td>
<td>ARTICLE</td>
<td>212</td>
<td>12</td>
<td>567.768</td>
<td>COMMISSION</td>
<td>770</td>
<td>11</td>
<td>2775.95</td>
</tr>
<tr>
<td>JUSTICE</td>
<td>422</td>
<td>12</td>
<td>1535.63</td>
<td>COURT</td>
<td>336</td>
<td>14</td>
<td>1139.05</td>
<td>IRELAND</td>
<td>125</td>
<td>13</td>
<td>548.327</td>
<td>ACT</td>
<td>900</td>
<td>14</td>
<td>2064.98</td>
</tr>
<tr>
<td>RIGHTS</td>
<td>473</td>
<td>13</td>
<td>1426.55</td>
<td>IRELAND</td>
<td>229</td>
<td>12</td>
<td>1138.81</td>
<td>EUROPEAN</td>
<td>237</td>
<td>11</td>
<td>451.898</td>
<td>LAW</td>
<td>1106</td>
<td>14</td>
<td>1871.25</td>
</tr>
<tr>
<td>IRELAND</td>
<td>236</td>
<td>12</td>
<td>1230.63</td>
<td>IRISH</td>
<td>167</td>
<td>12</td>
<td>780.838</td>
<td>LEGAL</td>
<td>194</td>
<td>13</td>
<td>412.395</td>
<td>IRELAND</td>
<td>403</td>
<td>11</td>
<td>1679.29</td>
</tr>
</tbody>
</table>

Table 4.13: Semi-technical language based on highest frequency

<table>
<thead>
<tr>
<th>Period 1 semi-technical</th>
<th>Freq.</th>
<th>Authors</th>
<th>Keyness</th>
<th>Period 2 semi-technical</th>
<th>Freq.</th>
<th>Author</th>
<th>Keyness</th>
<th>Period 3 semi-technical</th>
<th>Freq.</th>
<th>Author</th>
<th>Keyness</th>
<th>Period 4 semi-technical</th>
<th>Freq.</th>
<th>Author</th>
<th>Keyness</th>
</tr>
</thead>
<tbody>
<tr>
<td>OF</td>
<td>5524</td>
<td>14</td>
<td>97.2666</td>
<td>OF</td>
<td>5749</td>
<td>15</td>
<td>28.5733</td>
<td>ON</td>
<td>880</td>
<td>14</td>
<td>49.9198</td>
<td>OF</td>
<td>12457</td>
<td>14</td>
<td>27.576</td>
</tr>
<tr>
<td>THAT</td>
<td>1729</td>
<td>14</td>
<td>31.9379</td>
<td>IN</td>
<td>3298</td>
<td>15</td>
<td>24.0728</td>
<td>OR</td>
<td>573</td>
<td>14</td>
<td>50.609</td>
<td>THAT</td>
<td>4274</td>
<td>14</td>
<td>80.8084</td>
</tr>
<tr>
<td>ON</td>
<td>943</td>
<td>14</td>
<td>61.9337</td>
<td>THAT</td>
<td>1852</td>
<td>15</td>
<td>25.3046</td>
<td>LAW</td>
<td>562</td>
<td>14</td>
<td>1249.89</td>
<td>ON</td>
<td>2000</td>
<td>14</td>
<td>26.8582</td>
</tr>
<tr>
<td>LAW</td>
<td>748</td>
<td>14</td>
<td>1947.26</td>
<td>LAW</td>
<td>956</td>
<td>15</td>
<td>2693.11</td>
<td>THAT</td>
<td>366</td>
<td>14</td>
<td>48.1252</td>
<td>OR</td>
<td>1852</td>
<td>14</td>
<td>428.519</td>
</tr>
<tr>
<td>AT</td>
<td>697</td>
<td>14</td>
<td>139.721</td>
<td>OR</td>
<td>756</td>
<td>15</td>
<td>123.768</td>
<td>MAY</td>
<td>309</td>
<td>14</td>
<td>48.513</td>
<td>NOT</td>
<td>1801</td>
<td>14</td>
<td>79.5667</td>
</tr>
<tr>
<td>OR</td>
<td>675</td>
<td>14</td>
<td>106.686</td>
<td>CRIMINAL</td>
<td>463</td>
<td>12</td>
<td>2026.38</td>
<td>BY THE</td>
<td>249</td>
<td>13</td>
<td>39.2167</td>
<td>AN</td>
<td>1771</td>
<td>14</td>
<td>141.871</td>
</tr>
</tbody>
</table>
Consequently, rather than concentrating on the content words which dominate the high keyness values list, the semi-technical language selected for analysis is that which has high frequency levels thus representing a stratum of language that is defined by its relative ubiquity but not immediately identifiable as legal in nature. Given the required usage of two-thirds of the authors in any period, it meant that single word expressions dominate as their cluster derivatives did not meet the minimum author requirement. An advantage of having to settle for single word expressions was the need to move down the semi-technical lists to find them and therefore gain a better coverage of the corpus as those multi-word expressions higher in the list are often incorporated into these core words. Of course, it is now necessary to follow Hancioglu et al. (2008) and unearth the subtleties behind these expressions. Their ability to come through Wordsmith KeyWord analyses and distribution tests should imply a legal flavour to the rhetorical structures they support, though it remains to be seen what type of legal rhetoric is commonly used among students.
Chapter 5: The Use of ‘Or’

This chapter reviews the use of the ‘or’ in the study corpus. The prevalence of the coordinator has to be first set against the backdrop of how it has been used in legal and general English texts along with its syntactic nature in order to determine to what extent post-graduate legal academic writing follows the practices already observed by previous researchers. The chapter will also discuss the type of relations that the coordinator can facilitate and thereafter investigate which relations are prevalent in the corpus. However, it is not sufficient to merely identify the type of relations being used, but more importantly the data analysis will give primary focus to the rhetorical functions that the ‘or’ coordinator facilitates and indeed whether its use differs according to the source of the proposition.

5.1 Literature Review

5.1.1 The phenomenon of binomial and multinomial constructions

According to Mellinkoff (1963: 148) ‘or’ appeared as a conjunction in written English in the 13th century (as the short for ‘other’ which originally meant ‘one of two’ and not ‘either’). In the 14th century ‘either’ (which originally meant ‘each of two’) also came to mean ‘or’. Therefore, ‘or’ could connect alternatives, equivalents or even emphasise alternatives when prefaced in the construction ‘either … or …’ Moving up to the present day, in terms of frequency Biber et al.’s (1999) analysis of multiple registers of English found that few nouns were connected with the coordinator ‘or’, but when they did, the function was to combine opposites to show that the proposition was true in all circumstances (e.g. “an area is determined by the vegetation, that is, the presence or absence of plants” – Biber et al. 1999: 1033). They also found that ‘or’ was more common in academic prose where they noted the rhetorical function was that of providing further examples or terms to clarify a concept (p.82). Malkiel (1959), on the other hand, emphasised more the alternative focus that comes into play with an ‘or’ binomial (e.g. “all or nothing” – Malkiel 1959: 130). To close with an example of verbs in a legal context, Bazlik (2007) was of the opinion that ‘or’ fitted better in contexts where a potential act is
being described (e.g. “the Bank shall have the right to appoint or constitute one or more individuals...” – Bazlik 2007: 93), while the other main binomial coordinator ‘and’ was more appropriate to describe acts already accomplished (e.g. “The Mortgagor hereby appoints and constitutes the Bank as ...” – Bazlik 2007: 93).

The phenomenon of binomials in legal English has already been noted by many researchers. For example, the challenge the construction presents for legal translators has been discussed by Carvalho (2007) and Bazlik (2007). Danet (1985: 283) highlighted the elaborate use of parallel structures in legal English and considered binomials to be a special case of such parallelism. Indeed, Gustafsson’s (1975) study found that binomials were four to five times more frequent in her legislative texts, a genre not analysed by Biber et al. in their 1999 study, than in the other genres of her corpus, which included novels, newspapers, magazines and popular scientific literature. Binomials have been defined as “the sequence of two words pertaining to the same form-class, placed on an identical level of syntactic hierarchy, and ordinarily connected by some kind of lexical link” (Malkiel, 1959: 113). Norrick (1988) explored further the reality of binomials, particularly in the context of conversation, and found several applications which revealed how flexible and more complex the construction can be. For example, he observed how nominal expressions such as ‘hammer and tongs’ are actually used as adverbs, the adverbial phrase ‘few and far between’ has an adjectival function expressing rarity, and that the definition provided by Malkiel, which emphasised a two-word sequence, failed to take into account expressions that involved more than two words but were nevertheless binomial in style (i.e. ‘the birds and the bees’ or ‘by hook or by crook’). Malkiel (1959: 120) did however dedicate space to the phenomenon of multinomials, of which he considered trinomials to be a particularly prevalent member of the category. While many of his examples pertain to obligatory sequences such as ‘Tom, Dick and Harry’ or the German language ‘God, King and Fatherland’, perhaps importantly for legal language he did recognise that the changing conditions of life, which resulted in increased complexity, could have a transforming effect on the use of multinomial expressions. New elements, reflecting the world we live in, required to be added to previously standard binomial expressions (i.e. his example was extending ‘on land and on sea’ to ‘on land, on sea or in the air’; though today it could be the addition of ‘the internet’ to ‘radio and television’).
One issue that the data analysis in section 5.3 below will need to show is whether binomials and multinomials in legal academic English provide a necessary or superfluous reflection of the complexity which requires the attention of the law. The superfluous nature would confirm Mellinkoff’s (1963) comment about some “worthless doubling of synonyms” (p.349) or alternatively, the necessity of such constructions will confirm Koskenniemi’s view (1968) that the use of binomials is “for the sake of precision and not rhetorical emphasis” (p. 78). If one considers a typical legal binomial such as ‘null and void’ one maybe be persuaded by the cogency of Mellinkoff’s “worthless doubling” comment. However, the majority of researchers seem to agree that the role played by binomials in legal writing is a more practical one. Bhatia (1993) saw the role of binomials as enabling precision and all-inclusiveness, Bazlik (2007) was also of the opinion that primarily it was to make “the meaning more precise, unambiguous” (p.91) and Norrick (1988) concluded from his analysis that binomials “are rarely really superfluous” (p.80). If we follow Danet’s view that the function of legal language is to create the illusion of certainty in an uncertain world and that words are meant to control that environment (1980: 554), then Malkiel’s (1959) view of binomials in general could have relevance here. He maintained that the structure helped tidy up loose ends and that elusive facts could “fall into tidy patterns, complex and partially overlapping” (p.160), which should certainly enable the objective of the language of law as described by Danet. Finally, to return to the binomial ‘null and void’ as a possible example of worthless doubling, even here Danet (1980) found, upon consultation with a discipline specialist, that the two terms are strictly speaking not pure synonyms. The former implies the creation of conditions as if the entity had never existed while the latter cancels from a particular point in time onwards.

As to the origins of binomials in legal English, Hiltunen (1990: 25) noted the prevalence of ‘poetic adornments’ in Anglo-Saxon laws through the use of alliteration, assonance and parallelism; something that also belongs to today’s language as Wang’s (2005) study of repetition and reduplication highlighted the preference for regular sound patterns in such constructions. While the origins of binomials or indeed multinomials help explain the presence of some expressions in legal texts today (see Section 3.2), the conditions of the past are perhaps less relevant now and hence, in light of Malkiel’s observation above about the construction having the flexibility to adapt to changes in society, it is necessary to
identify the functions that binomial-type constructions can have that may explain their continued presence.

5.1.2 Semantic and syntactic features of binomial and multinomial forms

Malkiel’s (1959) study of binomials was not restricted to the field of legal English, nor did it limit itself to the English language, but nevertheless the observations about the relations between the terms do set a framework for further analysis. Malkiel (1959: 126 -129) identified five relations:

i) Use of the same word (*step by step*) or a derivative form (*bag and baggage*)

ii) The terms are near-synonyms (*checks and balances*) or mutually complementary (*full and equal*)

iii) One is the opposite of the other (*assets and liabilities*)

iv) One is a sub-division of the other (*dollars and cents*)

v) One is a consequence of the other (*shoot and kill*)

While the relations between terms will be discussed in greater detail in Sections 5.1.3, 5.1.4 and 5.1.5, the effect of points i) and ii) above could be seen to reflect Leisi’s (1947: 134) claim that such constructions helped achieve emphasis of a point in a text. Similarly, Gustafsson (1975: 15) looked upon the same constructions as a means of intensification. The Point iii) example of *assets and liabilities* touches on the frozen nature of certain binomials and Point v) can be extended to what Bazlik (2007: 92) noted as concurrently running events. Malkiel’s list is by no means exhaustive, to cite just two, Bendz (1967) saw the three main relations as synonymous, enumerative (i.e. being members of a group such as men, women and children) and antonymous; Gustafsson’s (1975) work included no less than 32 different semantic relations for binomial constructions, some of which will be outlined in Sections 5.1.3 and 5.1.4. At a more general level, for legal English binomials Gustafsson (1984) gave two broad reasons for their use, the first she considered to be the need for technical accuracy, the second was that the semantically vague first member of the binomial set required a more precise term to accompany it.

However, Malkiel’s examples provided at the start of this section and indeed the relations that Malkiel established are based on what Gustafsson (1975: 9) referred to as “formulaic
binomials” (‘irreversible binomials’ for Malkiel). Such binomials are fixed combinations in the language, though as Gustafsson’s analysis showed, many binomials occur just once (84% of all binomials in Gustafsson’s 1975 study occurred just once). Biber et al. (1999: 1031) also noted that recurrent binomial phrases were not common in their corpus. However, Gustafsson’s 1984 analysis of just legislative texts indicated some degree of repetition with terms occurring on average 2.3 times. Though not to the same degree, this higher level of repetition is also evident in the present study corpus as Section 5.2 will show. In terms of syntactic features, both Gustafsson (1975) and Biber et al. (1999) found that the most common combination was between nouns, though as already noted through Norrick (1988) in Section 5.1.1, the use may be for adverbial purposes. It appears that for legal documents the preference is to place the binomial construction in the rhyme part of the sentence as both Gustaffson (1984) and Dámová (2007) provided similar findings. This tendency would indicate its role as a carrier of new information in the text. The semantic relations held within binomial and multinomial expressions point to a complex set of interdependencies which enable the expression of a multitude of perspectives. It is now necessary to determine what these relations can be in order to better understand how ‘or’ functions in legal academic writing.

5.1.3 Semantic relations: Synonymy

One type of relation enabled by the ‘or’ node is that of synonymy and indeed Gustaffson (1984) observed in her study of binomials in legislative texts that synonyms were the most common type of relation. Harris (1973) defined synonymy as “the sameness of meaning of different expressions” (p.11), though he went on to point out that there is always “some reason for denying that the meaning is ‘the same’” (p.13) and indeed Murphy (2010) appears to be of a similar view when she observed that “it is easy to see that very few words are absolute synonyms” (p.110). Carter and McCarthy (1988: 29) concluded that context is critical in assessing the extent of a synonymous relation and at times the differences in meaning generated by different contexts can be crucial. Therefore, moving away from the ideal of absolute synonymy, Murphy (2010) identified other categories of synonyms which incorporated the idea of context. She identified sense synonyms as those expressions that share some common meanings but not all (i.e. in certain contexts ‘funny’ is synonymous with ‘comical’, in others it is closer to ‘peculiar’). While such synonyms may
have the same denotation, Murphy’s (2010: 111) *near synonyms* (or *partial relations* – Cruse, 1986: 96) do not have the exact same denotation and hence cannot replace each other in certain contexts (e.g. ‘fake’ v ‘false’). Therefore, ironically, synonymy’s expression in real language appears to require an awareness of not just how and when items can be similar, but also discerning the contrastive nature of them in order to ensure effective use. Cruse (2011: 145) accepts the difficulty in categorising relations as near synonyms rather than fully contrastive terms, though he did propose the following categories which could cater for minor differences:

i) Adjacent position on scale of degree (e.g. fog/mist, weep/sob)

ii) Certain adverbial specialisations of verbs (e.g. drink/quaff)

iii) Aspectual distinctions (e.g. ‘calm’ for state but ‘placid’ for disposition)

iv) Difference of prototype centre (e.g. ‘brave’ for physical but ‘courageous’ for intellectual and moral factors) (p.145)

Murphy, while less prescriptive, took the stance that two items could be considered as synonyms so long as “their differences are slight enough that, in context, the two words’ meanings contribute to the same context-relevant information (2003: 150).

In terms of understanding the rhetorical function of synonyms, Storjohann (2010: 86) devised three main categories of construction patterns. The *coordinated synonymy* joined synonyms through the use of ‘and’, ‘or’ or ‘as well as’. Her analysis indicated that these constructions signalled inclusiveness and exhaustiveness as the framework enabled the conveying of as much information as possible through the slight semantic shades between the synonyms. *Clusters* she considered to be a sub-class of coordination with its main role being that of enumeration. An interesting feature of this construction is that it allows for the use of multinomials in the creation of synonym sets; one example she gave was “*der Deutschen muss beweglicher, flexibler, agiler werden*” (the Germans must become more mobile, flexible, agile) (2010: 88). Storjohann’s definition of synonymy was “a relation of two lexical representations that map onto similar concepts” (2010: 92). This was certainly the idea that was pursued by Gustafsson (1975) through her category of *semantic*
The relations she iterated are briefly outlined as follows in Table 5.1.

**Table 5.1 Main categories of Gustafsson’s (1975) semantic complementation**

<table>
<thead>
<tr>
<th>Binomial Category</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sequence or logical order</td>
<td>‘come and stay’, ‘appear and testify’</td>
</tr>
<tr>
<td>Result</td>
<td>‘seize and detain’</td>
</tr>
<tr>
<td>Complement</td>
<td>‘flesh and blood’ (blood relative)</td>
</tr>
<tr>
<td>(the two component members could be replaced by another single term)</td>
<td></td>
</tr>
<tr>
<td>Part</td>
<td>‘cups and tableware’</td>
</tr>
<tr>
<td>(the idea singled out through one member could be represented by the other)</td>
<td></td>
</tr>
<tr>
<td>Representativeness</td>
<td>‘bed and board’ (accommodation)</td>
</tr>
<tr>
<td>(binomial members are the core elements of the concept)</td>
<td></td>
</tr>
<tr>
<td>Specificity</td>
<td>‘defame, degrade or incriminate’</td>
</tr>
<tr>
<td>Routine</td>
<td>‘eat and drink’</td>
</tr>
<tr>
<td>Attitude</td>
<td>‘quickly and glibly’</td>
</tr>
<tr>
<td>(one of the binomial members will display the opinion of the speaker)</td>
<td></td>
</tr>
</tbody>
</table>

In light of the extensive and at times seemingly overlapping classifications provided by Gustafsson in the paragraph above (see complement and representativeness categories), one which she made clear was “necessarily arbitrary as most binomials can be approached from a number of different angles” (1975: 106), it would appear that to provide a definitive list could be well beyond the realms of any researcher. If one starts from the point where there is general agreement that pure or absolute synonyms are extremely rare, if they exist at all, then synonymy implies a degree of lexical contrast. Does this mean that synonyms are marginal antonyms? Certainly there is a connection between the two types of semantic relations. Storjohann (2009: 2145) argued that it is usual to use near synonyms to illustrate
contrast as well as equivalence (hence she uses the term *plesionymy* to highlight this more comprehensive reading of the relations) and indeed Murphy *et al.* (2009) were of the view that “lexical contrast implies lexical similarity” (p.2137). This again shows how these semantic relations must live cheek by jowl and perhaps the pragmatism shown by Miller and Fellbaum (1991) best reflects the close proximity, yet important differences, between the semantic groupings:

Synonymy is simply one end of a continuum on which similarity of meaning can be graded

(Miller and Fellbaum 1991: 202)

While a continuum certainly indicates the possibly overlapping nature between semantic relations, it is nevertheless necessary to outline the characteristics that can set antonymy and hyponymy apart from synonymy.

5.1.4 Semantic relations: Antonymy

The definition of antonymy has been subject to different interpretations throughout the years as academics wrestled with its basic notion of oppositeness. Perhaps at the broadest level, Lyons (1977: 272) cites Katz (1964, 1966) who considered lexemes such as ‘tree:dog’ to be antonyms. Lyons himself (1977: 279) restricted the term ‘antonym’ to *gradable opposites* such as ‘big:small’ as he favoured the property of polarity which did not exist for *ungradable opposites* such as ‘male:female’, a category he preferred to call *opposites* or *complementarity*. Carter and McCarthy (2006) described *gradable opposites* as “the upper and lower parts of an open-ended scale” (p.442) stressing that there is no maximum or minimum on the scale and modification is possible (i.e. big, very big, incredibly big). On the other hand, ungradable opposites cannot be modified in the literal sense (i.e. ‘very male’ would imply certain characteristics of a person but not that there is a literal 70-80-90% ‘male’ in existence); there are no intervening values and the choice of one term implies the exclusion of the other – if one is ‘dead’, then they cannot be ‘alive’. Jeffries (2010: 19) referred to this as *mutual exclusivity*, Saeed (2009: 324) *binary antonyms* and Cruse (1986: 198) described this class of relations as *complementaries*. Jones did not draw a distinction between opposites and antonyms (2002: 2) arguing that, while the whole field encompasses a multitude of relationships (as will be explained in the section to follow below), there is a basic commonality in that one recognises that indeed there is a sense that one expression
stands in opposition to the other. Perhaps Murphy’s (2010: 118) observation that people like to be able to contrast items best explains the origins of antonymy in the Jones sense. Lyons (1968: 469) appears to be also in agreement when he observed that we tend to first think in opposites when confirming or denying a state of being (e.g. whether a film was ‘good’ or ‘bad’) and thus invoke the use of his complementarity (1968: 460), in that we have a clearly polarised contrast. However, if such polarisation does not satisfactorily describe our experience then we opt for his second level of categorisation, his antonym set of gradable expressions. However, the contrasts that people choose, boy:girl, boy:man, happy:sad, happy:angry, imply that people activate what Willners and Paradis (2010: 16) referred to as a conceptual domain in that the domain establishes a common identity for the terms. This notion of relatedness can also be seen in Lyons (1977) when he argued that most, if not all opposites “are drawn along some dimension of similarity” (p.286). This in turn is related to Storjohann’s (2009) view of plesionymy, where speakers can choose a contrastive or equivalent relationship in that also here she argues that there is a process of “activating knowledge about specific concepts and sub-concepts that are brought into a relationship with one another” (p.2148).

It would appear that one needs to understand what implicit conceptual constructs are being invoked if a remedy is to be provided for what Jeffries (2010: 121) referred to as the difficulty in dealing with opposites that appear to be ill-defined yet clear to speakers. Therefore, mindful of the difficulties of deriving an all-encompassing definition, it is perhaps best to follow Jones’s (2002) view that “antonymy is a phenomenon best suited to exemplification than definition” (p.9). The next section will explore the ways in which the various antonymy relations can be realised.

Beyond the two basic categories of relations, gradable opposites and the mutually exclusive complementaries, there are many antonym pairs that are used for a variety of functions. Cruse (1986) developed a comprehensive list which included the following:
<table>
<thead>
<tr>
<th>Antonym Relation</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Interactives/Counteractives</em></td>
<td><em>request:grant:refuse</em> / <em>charge:refute:admit</em></td>
</tr>
<tr>
<td>(a stimulus-response relation)</td>
<td></td>
</tr>
<tr>
<td><em>Satisfactives</em></td>
<td><em>try:succeed:fail</em></td>
</tr>
<tr>
<td>(a stimulus-response relation involving just one party)</td>
<td></td>
</tr>
<tr>
<td><em>Reversive complementarity</em></td>
<td><em>born:live:die</em></td>
</tr>
<tr>
<td>(triplets whose extremes constitute a binary pair with the middle term related to both)</td>
<td></td>
</tr>
<tr>
<td><em>Pseudo-comparatives</em></td>
<td><em>the box is light but it’s heavier than this one</em> - ‘heavy’ already includes the idea of lightness and hence can be used in the same scale</td>
</tr>
<tr>
<td>(the two members can correspond to each other rather than one of the members automatically excluding the other)</td>
<td></td>
</tr>
<tr>
<td><em>True comparatives or equipollent antonyms</em></td>
<td>The sentence ‘this tea is hot but it’s colder than your coffee’ sounds somewhat odd</td>
</tr>
<tr>
<td>(one member cannot be matched with the opposite member)</td>
<td></td>
</tr>
<tr>
<td><em>Overlapping antonyms</em></td>
<td>‘John is a dull lad, but he’s cleverer than Bill’ (the quality of being dull can incorporate ‘clever’) \v \v ‘John is a clever lad, but he’s duller than Bill’ (this doesn’t work because the quality of being clever does not incorporate ‘dull’)</td>
</tr>
<tr>
<td><em>Converses</em></td>
<td>‘in front of:behind’</td>
</tr>
<tr>
<td>(derived from the concept of spatial opposites)</td>
<td></td>
</tr>
<tr>
<td><em>Reversives</em></td>
<td>‘enter:leave’ or ‘appear:disappear’</td>
</tr>
</tbody>
</table>
Expanding on Cruse’s list, Jones’s (2002) review of antonymy also included *multiple incompatibility*: a taxonomy for what Carter (1987) described as “relational contrasts between items in a semantic field” (p.19) though Cruse did not categorise this as an antonymous relation. Co-taxonyms are expected to be incompatible in that a member cannot occupy more than one state of being (e.g. musical instruments, or in the field of law the hierarchy of courts). Further derivations of multiple incompatibility include Lyons’ (1977: 286) *orthogonal* and *antipodal opposition*. The former places ‘man:woman:boy:girl’ on a square shaped plot and man:girl and boy:woman are diagonal to each other. Moving only along the sides of the square one can see the antonymous relation between ‘boy:man’ and ‘boy:girl’ but it is impossible for ‘man:girl’ and ‘boy:woman’ to come into contact with each other. *Antipodal opposition* on the other hand shows contrasts between pairs only as any ‘north:south:east:west’ compass illustrates.

However, Jones (2002) primarily had three categories for antonymy. The first two, *ancillary* and *coordinated antonymy*, accounted for approximately 77% of his corpus occurrences and will be explained below. Another seven categories constituted the remaining 23% which, due to their disparate nature and small individual shares, will not be discussed further. His *ancillary* antonym features an antonymous pair (in bold below) which work to highlight the contrast between another pair, perhaps co-hyponyms and underlined in the example: “I *love* to cook but I *hate* doing the dishes” (p.45). His *coordinated* antonym is of more relevance to the corpus analysis to follow in section 5.3 as it examines the role of ‘or’. He noted that the ‘or’ coordination contrasted with the ‘and’ coordination in that it didn’t simply account for each antonym without accounting for all in between, but that it was intended to symbolise an entire range, and this could be done with gradable or ungradable antonymous pairs. He summed up the contrast as follows: “those linked by *and* can be seen as ‘inclusive’; those linked by *or* as ‘exhaustive’” (p.63). Also, he noted that syntactically the ‘or’ construction was more likely to post-modify a noun head (e.g. “he showed no disloyalty, *privately* or *publicly*”). This also matches the point made in
Section 5.1.2 about the binomial preference for the rheme position in a sentence (Gustafsson 1984, Dámová 2007).

Finally, Gustafsson (1975) developed categories to explain the binomial relations that had antonym-like behaviours in her corpus. Using the broad category of *semantic opposition* (p.87) she noted *morphological opposition* (e.g. ‘fortunate or unfortunate’) and also included here opposition by syntactic means (e.g. ‘to love and to be loved’). However, in her corpus the majority of cases did not explicitly express opposition but rather adopted what she called “an inherent opposition” (p.88). One category of this type was *animate*, where the division is either between animate and inanimate entities (e.g. ‘persons or things’) or to distinguish between plants and other living things or even to distinguish humans from other living things. *Sex* was another category which in some ways is familiar to Cruse’s *complementaries*, particularly for gender distinctions, but also *multiple incompatibilities* for semantic sets such as priests and nuns whose roles are defined by gender. *Generation* drew differences on the basis of age (e.g. father and son) though here we gain an insight into the overlapping interpretations an antonymous pair can have as the same pairing get assessed under Lyon’s *orthogonal opposition*. For non-human stages she introduced *time* (e.g. ‘day and night’) and for non-chronological rhythms and cycles she used *phase* with examples such as ‘ebbing and flowing’ and ‘waxing and waning’. The *direction* category can be linked to Cruse’s *reversives* and her examples include ‘raise and lower’, ‘to or from’ and ‘entering or leaving’. *Reciprocity* is when there is active participation by both parties in a composite action (e.g. ‘give and take’, ‘supply and demand’) which differs from her *active* category where one binomial member is active and the other passive (e.g. ‘drivers or passengers’, ‘activity and rest’). A variation of Cruse’s *satisfactives* is her *result* category which just focuses on possible outcomes (e.g. ‘success and failure’, ‘victory or defeat’) though she also includes here binomials where one member is the result of the other (e.g. ‘plant and reap’). *Emotion* operates on positive and negative poles such as ‘elation and despair’ while she uses *quality* to describe objects or concepts (e.g. *dryness* and *wetness* of the tropics’ and ‘man’s *physical* and *spiritual* evolution’ (p.94)). Gustafsson’s last antonymous category is that of *universe*, which represents polarisations and which she maintains indicates people’s tendency to seek binary representations when communicating.
Again, some of her examples, such as ‘north and south’ have been given the alternative categorisation of *antipodal opposition* by Lyons.

What Lyons, Cruse, Leech, Jones and Gustafsson show is that the phenomenon of antonymy is a wide and varied one and open to a multitude of interpretations. Their work is not exhaustive, though that may not be the point. The examples they provide certainly seem to confirm that antonyms are the product of associations made by the speaker in a given context which can involve more than one scale of contrast. Stability of relations between words does not seem to be a feature of these constructions. Even for a scale or dimension that is bisected, Lehrer (1985: 922) noted that some words can name a large part of the scale and the opposite term only a small part (perhaps particularly appropriate for Jones’ *ancillary antonyms* where if one picks a noun that is typically, say, large, such as a mountain, then it is more likely that ‘high’ and its modifications ‘very high’, ‘quite high’, even ‘not so high’ will first be used before opting for the antonym ‘low’). Carter and McCarthy (1988: 24) may have explained this particular tendency when noting that ‘high’ already contains the notion of ‘low’ but ‘low’ cannot contain the notion of ‘high’, hence also the use of the question form ‘how high is it?’, which communicates a more neutral line of enquiry than the more restricted ‘how low is it?’. However, a prescriptive approach to antonymy, while explaining individual clusters of cases, may lead one to an infinite list of categories and practices. McCarthy (1988) argued that “terms in opposition will be locally determined” (p.197) which would seem to confirm the need to first understand the context in which an utterance is made and then tease out the rhetorical significance of the antonym relation, along with the nature of its syntactic construction.

### 5.1.5 Semantic relations: Hyponymy

Lyons (1963) defined hyponymy in terms of “unilateral implication” (p.69) and used the example that ‘X is scarlet’ will be understood to imply that that ‘X is red’, but not conversely. Therefore, as Partington (1998: 32) observed, the truth value of a phrase is not altered if the hyponymous term is replaced by its superordinate, though the opposite vector does not hold (X may be red but it doesn’t mean it’s scarlet, it may be crimson). Another view can be seen in Hearst (1992) who interpreted it to mean that “a lexical item LØ is said to be a hyponym of the concept represented by a lexical item L1 if native speakers of
English accept sentences constructed from the frame ‘An LØ is a (kind of) L1’” (p.539). However, Cruse (1986: 90) noted that hyponymy definitions can run into difficulty in a variety of instances; one such instance is when something turns scarlet - it may not entail that it turns red if it already started off as a variety of red. Therefore, we can see that hyponyms indicate a non-symmetrical relationship though the workability of this relationship has to be tested in context.

Hyponymy can also at times interact with the spheres of synonymy and antonymy. Jones (2002: 54) highlighted in his ancillary antonymy the need to use antonyms to put into sharp contrast co-hyponymous pairs when the stressing of their dissimilarity was the purpose of the proposition (e.g. one of his sample sentences stated that it was ‘illegal to buy a bible on Sunday ... but perfectly legal to buy pornographic magazines.’ The printed materials are co-hyponyms and the ‘legal/illegal’ antonyms are used here to accentuate their differences.). Jeffries (2010: 111) argued that apparent antonyms ‘stride:stroll’ were in fact not so as they are both hyponyms of ‘walk’ and hence closer to synonymy than antonymy. This fine line of distinction led Storjohann (2010: 83) to emphasise the closeness between a hyponymous relation and a meaning equivalent relation, particularly when one deals with abstract contexts. However, for Murphy (2003: 139) the labelling of such relations was not of paramount importance since awareness of semantic closeness and semantic specificity were the issues that required the attention of the speakers in the situation of use. Certainly in the legal corpus below the role of such an awareness seems to be frequently required when interpreting the at times subtle differences between members of the binomials and multinomials provided in the texts.

Hyponymy, as shown in the preceding paragraph, appears to be a difficult concept to capture in its purity. Indeed, Cruse (2011: 135) pointed out that hyponyms can have multiple memberships of semantic sets (e.g. dogs as pets, dogs as mammals, dogs as sport). Carter and McCarthy (1988: 26) explained quasi-hyponymy as the need to search beyond a grammatical class to find an appropriate superordinate and illustrated this with the adjectives ‘bitter, sweet, sour’ which are hyponyms of the noun ‘taste’. They also referred to a more lax type of hyponymy called pseudo-hyponymy which drew on taxonomy-like relationships that enabled a seemingly disparate set of members (e.g. watches, ties, books
and playstations) to be members of the same semantic set (gifts). In effect, what Carter and McCarthy pointed out was the ability of words to be different in sense but nevertheless not be incompatible, all the members have what Lyons (1968) described as a “dimension of sameness” (p.459). Lyons further remarked that for some semantic sets there may be no conventional superordinate at all (p. 456), something which can also be observed in the legal corpus analysis of Section 5.2. Again, in common with the concluding views of antonyms, the importance of context when drawing up and understanding relations appears to be the invisible hand that determines how links are established.

Lyons (1968: 455) outlined what perhaps could be one of the key functions of hyponymy as that of enabling us to be more general, by using the superordinate, or more specific, by using the hyponym, as circumstances dictate. Another feature which hyponymy enables and which was touched upon in the explanation of pseudo-hyponymy is the phenomenon of taxonomy. Cruse (2011) considered taxonomy to be a subset of hyponymy and distinguished it from other hyponyms because to be a taxonomy it must “engage with its superordinate in a particular way, by further specifying its core characteristics” (p.137). He appears to focus on characteristics that are unique to a particular superordinate by citing the example of a mustang (which cannot belong to another breed of animal) being a type of horse and is therefore a taxonomy. On the other hand he argues that “a stallion as a type of horse” represents a hyponym as the male gender is something that is not unique to horses. It could be argued that at a very abstract level, hyponymy is closer to synonymy than antonymy. This is so because hyponymy seeks to bring together the elements that help illustrate a more generic concept. The relationship is vertical and one-way only, though nevertheless the vertical emphasis is on ‘likeness’ rather than antonymy’s ‘difference’. Therefore, two main rhetorical functions can be observed for binomials, the extension of scope being primarily represented through the use of antonyms and degrees of clarity being expressed through synonymy. Hyponymy on the other hand is able to straddle both these functions through the superordinate providing varying degrees of scope and the hyponyms adding clarity.


5.2 Data Analysis

This corpus analysis would therefore appear to place postgraduate academic legal texts alongside Gustafsson’s (1975) legislative texts as genres that have a high occurrence of binomial constructions. Table 5.3 shows the high level of frequency across all four periods.

Table 5.3: ‘Or’ position on list of highest frequency keyword items

<table>
<thead>
<tr>
<th>Period 1</th>
<th>Freq.</th>
<th>Authors</th>
<th>Period 2</th>
<th>Freq.</th>
<th>Authors</th>
<th>Period 3</th>
<th>Freq.</th>
<th>Authors</th>
<th>Period 4</th>
<th>Freq.</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>OF</td>
<td>5524</td>
<td>14</td>
<td>OF</td>
<td>5749</td>
<td>15</td>
<td>ON</td>
<td>880</td>
<td>14</td>
<td>OF</td>
<td>12457</td>
<td>14</td>
</tr>
<tr>
<td>THAT</td>
<td>1729</td>
<td>14</td>
<td>IN</td>
<td>3298</td>
<td>15</td>
<td>OR</td>
<td>573</td>
<td>14</td>
<td>THAT</td>
<td>4274</td>
<td>14</td>
</tr>
<tr>
<td>ON</td>
<td>943</td>
<td>14</td>
<td>THAT</td>
<td>1852</td>
<td>15</td>
<td>LAW</td>
<td>562</td>
<td>14</td>
<td>ON</td>
<td>2000</td>
<td>14</td>
</tr>
<tr>
<td>LAW</td>
<td>748</td>
<td>14</td>
<td>LAW</td>
<td>956</td>
<td>15</td>
<td>THAT</td>
<td>366</td>
<td>14</td>
<td>OR</td>
<td>1852</td>
<td>14</td>
</tr>
<tr>
<td>AT</td>
<td>697</td>
<td>14</td>
<td>OR</td>
<td>756</td>
<td>15</td>
<td>MAY</td>
<td>309</td>
<td>14</td>
<td>NOT</td>
<td>1801</td>
<td>14</td>
</tr>
<tr>
<td>OR</td>
<td>675</td>
<td>14</td>
<td>CRIMINAL</td>
<td>463</td>
<td>12</td>
<td>BY</td>
<td>249</td>
<td>13</td>
<td>AN</td>
<td>1771</td>
<td>14</td>
</tr>
</tbody>
</table>

In order to determine the main characteristics that could be observed from the ‘or’ sub-corpus, the first 50 lines were analysed in the randomly sorted Period 1 and the features there were sketched. Thereafter, every tenth line was analysed to see if the initial features identified repeated themselves or new trends emerged. For Period 2, every tenth line was again selected with this time the 50 lines from the second quarter of that randomly sorted sub-corpus. Period 3 sub-corpus supplied 50 lines from its third quarter and every tenth line outside this block. As the patterns did not vary significantly from one period to the next, it was decided to take just every tenth line from Period 4 which repeated what was previously observed. The main features, on which the rest of this section is based, were the following:

i) Syntactic
- Whether it belonged to a list or just part of a binomial.
- Whether it connected whole clauses or phrases.
- The word forms it combined

ii) Source
- Whether it was a tool used mostly by the student writer or sources other than the writer.
iii) Rhetorical function

- What rhetorical functions it enabled and whether these functions had any particular linguistic features.

At this point it is important to note that for synonymy, antonymy and hyponymy, the role of context, which has already been emphasised in Sections 5.1.3, 5.1.4 and 5.1.5, was deemed to be a critical factor in determining the nature of the relationship between binomial or multinomial members. This is not directly analysed in the three features listed above as explaining all contexts covered in the texts would be an enormous undertaking. Nevertheless, a step has been taken in that direction in that ‘source’ may indicate how overriding patterns of relations may be preferred by different parties when using bi- or multinomials, regardless of the context in which these relations are set.

While the points above should reveal characteristics pertaining to the internal features of the texts in the study corpus, there is one feature that was mentioned in Section 5.1.2 which dealt with recurrence of binomials in general English corpora and merits further attention here. While Gustafsson’s (1975) and Biber et al.’s (1999) reviews showed the low frequency of recurring binomials across genres from a wide spread of registers, the legislative texts in Gustafsson’s corpus did not follow this trend with binomials occurring on average 2.3 times. Similarly for the present study corpus it is possible to see a trend for repeated use of binomial expressions. Of the 3850 tokens, 1174 or 30% were repeated at least twice; a sample of which is shown in Figure 5.1.
This does not match Gustafsson’s rate of repetition but it nevertheless sets academic legal writing apart from the binomial behaviours in other registers that together could be said to represent general English. Perhaps one reason why the rate is not as high is that legislative texts are a more structured and formal genre and hence lend themselves to an increased recurrence of expressions. Two features worth noting about the student texts are that in many cases the binomials are used in the context of directly proclaiming or indirectly explaining a law’s content or the procedure of its application. However, what is also evident is that the same binomials tend to be used by the same author and often in the same
text. One could say that this represents the stylistic preferences of the student writer, though
given that in many instances the student is reporting on or explaining a law, the main
motivator is most likely to be the subject material of the text and particularly the relevant
legal sources that are required for the analysis. Hence, Gustafsson’s legislative texts could
be seen to represent a more extreme end of a cline of binomial use and with post-graduate
academic legal writing accommodating such sources of law in its texts, it too has a higher
recurrence of binomials when compared to general English texts.

5.2.1 Syntactic features
The most common trend was for ‘or’ to be used in a binomial:

The State has never, traditionally or in recent legislature, expanded the State to
include providing for health care.  

Mitigation measures have been defined as measures “aimed at minimizing or even
cancelling the negative impact of a plan or project...”

In each of the periods this was the preferred structure with 75-80% of occurrences per
period conforming to the pattern (based on a sample of 520 concordance lines). This is
illustrated in Figure 5.2 below.
In terms of scope, students appear to be using the construction at a phrasal rather than a more extended clausal level. The lines in Figure 5.2 all show that ‘or’ is often used to connect the immediately preceding word or expression with what immediately follows. This certainly helps avoid ambiguity, but also emphasises the need to articulate all relevant aspects of a proposition rather than letting the reader assume an understanding that may not be desired, or is even in disagreement with what the law or the student writer’s view actually is. As the sample lines show above, Jones’s (2002: 63) view that the ‘or’ construction tends to be used to exhaust all possibilities when antonyms are used does not appear to be applicable here, mostly because the student writers prefer to use near synonymous or co-hyponymous relations that share a scale or semantic set (lines 1, 5, 7, 10, 11, 12, 16, 17, 18) to attain a coverage that, if not exhaustive, is certainly close.
The point of being exhaustive however does appear to be conclusive when ‘or’ belongs to a list; though again it is arguable if the lists in Figure 5.3 below represent just antonym relations.

**Figure 5.3: Sample corpus lines for ‘or’ as a part of a list**

N Concordance
1 such as death, desertion, separation or divorce. Many had a family member
2 proceedings of which will uphold, modify or reverse the panel report. A “guilty”
3 the use of loud rap music, yelling or loud white noise.59 Furthermore, one
4 as offensive, discriminatory, defamatory or bullying towards another. Balancing
5 order the person holding, recovering or disposing of the waste to (a) take
6 by party control, rules of evidence, or technical issues of pleading and
7 Cohen: “A condition, episode, person or group of persons emerges to become
8 significant pause or hesitation, gesture or facial expression can be readily
9 related rights 16 and attempt, aiding or abetting.17 As can be seen from
10 because of cognitive, linguistic or other difficulties such as anxiety or
11 the movements of persons, vehicles or things they should be required to
12 to the purpose of distorting, preventing or restricting competition and it is for
13 (a) No examination, cross-examination or re-examination of any witness in
14 monopolize, or attempt to monopolize, or combine or conspire with any other
15 way of summary, redacted documents or anonymised statements then any
16 such expressions that “offend”, “shock”, or “disturb.”78 Nevertheless, the Court
17 being resolved by refund, free repair or compensation to the consumer. 24%
18 at the time when such oath, affirmation or admonition was administered or such

In certain instances (lines 2, 5, 13) we see examples of Cruse’s *reversive complementarity* and again near-synonymy plays a more visible role (lines 3, 4, 9, 12, 14, 16, 17) and there is even evidence of Bendz (1967) *enumeration* or what Storjohann (2010) later described as *synonym clusters* (lines 1, 7, 11, 18). The use of lists with ‘or’ is particularly common in triplet form with approximately 80% of lists conforming to this format, thus confirming Malkiel’s (1959) view that trinomials did indeed dominate the multinominal category.

Again, as with binomials, the conceptual meaning, of which the ‘or’ structure plays a part, is at a very local level in that the constituent elements are (mostly) beside each other rather than relying on whole clauses to communicate a proposition.
The binomial and trinomial forms account for over 90% of all structures used with ‘or’. Alternatives include longer lists as lines 1 and 7 in Figure 5.3 illustrate and there are also cases where ‘or’ acts as a connector between longer clauses:

... the customer could be bound by the terms if s/he knew the terms or the company took reasonable action to make him/her aware of them. (Period 4)

A final syntactical feature worth noting is the symmetry of word type around the ‘or’ node. While the node can be used predominately with nominal forms, pronouns, adjectives, adverbs and verbs, once the word form preceding the node has been chosen, the same form will most likely appear after the node as the examples below will show:

It also includes those who suffer or have suffered from mental illness or mental disability and on account of that disability is either resident in hospital or similar institution. (Period 1)

However, Norrick’s (1988) qualifications of Malkiel’s (1959) original definition, which was restricted purely two word sequences from the same form-class, can be seen in the first and last binomial set above, with the same form-class of words being subject to modification in some way. The division of concordances among the different word-forms was based on a random sample of 200 occurrences. Table 5.4 shows the percentage share of that sample between these word-forms.

**Table 5.4 Distribution of word-forms**

<table>
<thead>
<tr>
<th>Word-form</th>
<th>% share of occurrences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nominal</td>
<td>45%</td>
</tr>
<tr>
<td>Adjective</td>
<td>19%</td>
</tr>
<tr>
<td>Verb</td>
<td>19%</td>
</tr>
<tr>
<td>Pronouns</td>
<td>5.5%</td>
</tr>
<tr>
<td>Adverbs</td>
<td>2.5%</td>
</tr>
<tr>
<td>Other</td>
<td>9%</td>
</tr>
</tbody>
</table>
Table 5.4 confirms both Gustafsson’s (1975) and Biber et al.’s (1999) findings that nouns are the most common type of combination to be found with binomials, though other forms constitute a significant presence.

### 5.2.1.1 Nominal forms

Nominal forms were the most common type of word-class to be used, representing just over 45% of the concordances sampled. A number of options are available to the writer with the use of nominal forms:

i) One can remain with the same noun and modify it with an adjective:

> Part IV of the Act also provides for the competence of the *spouse* or *former spouse* of an accused as a prosecution witness.  

(Period 1)

ii) One can use synonyms or near synonyms:

> The *king* or *ruler* of a certain jurisdiction was typically seen as within the system of custom.  

(Period 3)

iii) Antonyms:

> ... but to conduct its own enquiries into the case in order to satisfy itself of the *guilt* or *innocence* of the accused.  

(Period 3)

iv) Co-hyponyms (the list below all belong to forms of punishment):

> ... *the composition pénale* allows the procurer to propose a range of measures such as a *fine*, *community service* or the *suspension of the offender’s driving licence*.  

(Period 3)

What is also interesting to note about this last example is that it illustrates and yet again confirms the flexibility of bi- or multinomial word-form relations as originally revealed by Norrick (1988). In the trinomial above we have a noun, then a compound noun and end with a noun phrase.
5.2.1.2 Adjectives

Adjectives share the position of second most common type of relation with 19% of occurrences. Adjective members can also be presented as having:

i) An antonym-like relation:

...should we use narrow or broad time frames of the act, broad or narrow views of the defendant... (Period 2)

ii) A hyponym-like relationship where a superordinate concept (wrongful in the example below) is accompanied by a subordinate member (discriminatory):

Federal constitutional rights provide “no shield against merely private conduct, however discriminatory or wrongful.” (Period 2)

Or co-hyponymous in the sense that both adjectives, while different to each other, belong to a broader category:

A “derogation clause” allows partial or complete suspension of certain human rights in situations of public emergency. (Period 1)

The example above uses the adjectives to differentiate between different applications of the broader category of ‘derogation clause’, though one could also argue that there are varying degrees of intensity governing the noun ‘suspension’. Either way, the effect is to provide for and highlight the range of options available. The example below uses the adjectives to identify groups who, for different reasons, ultimately share the end result of exempting themselves from jury service:

...there have been concerns that juries are not representative of the population. Large sections of the population are either ineligible or excusable. (Period 1)

iii) Or adjectives combined with a determiner can be used to cover all members of a given class by illustrating the key aspects and then incorporating a superordinate term:
...where a child witness cannot communicate effectively because of cognitive, linguistic or other difficulties such as anxiety or stress. (Period 4)

Example iii) would appear to be attempting to achieve what Jones (2002: 63) referred to as the exhaustive role of the ‘or’ coordinator by specifying the co-hyponyms ‘cognitive’ and ‘linguistic’ before closing with the modified superordinate ‘other difficulties’ (which are again exemplified by the writer). The desire to illustrate so clearly could on one side to be interpreted as the student displaying for the discipline expert the required awareness of likely scenarios in the given context. Alternatively or in parallel, it may also reflect the common law student’s awareness of the necessity to explicitly state all possible situations and thus close any loopholes that could be exploited by similarly trained adversaries.

It should also be noted that the adjectives often work as pre-modifiers of a noun:

... acceptable or permissible behaviour... acoustic or electronic vibrations...
identical or similar signs... serious or irreversible damage.

(Periods 1-4)

As one will note when it operates as a pre-modifier, the choice of adjectives mostly has the effect of bringing into sharp focus the modalities of interpretation of the head noun. Jones (2002: 66) noted that antonyms, when used with ‘or’, were more likely to be used as post-modifiers, but as the evidence for the mostly synonymous pre-modifiers above shows, this does not extend to other types of relations.

5.2.1.3 Verbs
Verbs also share second position with 19% of occurrences. Antonym-like relations in the form of Cruse’s (1986) reversive complementarity were observed:

A respondent member may appeal against the report findings to the Appellate Body, the review proceedings of which will uphold, modify or reverse the panel report.

(Period 1)

It could be argued that the example above also illustrates verbs being used in hyponym-like relations. Miller and Fellbaum (1992) used the term troponymy (p.216) to describe verb co-hyponyms. They claimed that it is the most frequently found relation among verbs and the
focus of the hyponym verb relation is the manner in which a superordinate term is elaborated. Applying this definition to the above, the superordinate term could be ‘Appellate Body decisions’ and ‘uphold, modify or reverse’ represent the manner in which these decisions can be made. Similarly, the example below displays a list of acts which are different to each other but nevertheless have a hyponym-like relation to the overarching theme of ancillary offences. This example cannot be aligned to reversive complementarity in that the scale of activities do not move from one pole to the opposite end, though it does fit well with troponymy:

...and in relation to ancillary offences such as attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of sexual or violent offences. (Period 4)

What the two examples above also show is the prevalence of what Carter and McCarthy (1988) referred to as quasi-hyponymy. In both cases it is not possible to find a suitable superordinate verb and it is necessary to cross over to the noun domain to find a term within which the verbs can operate in a coherent manner.

There is also some evidence of synonymous verbs:

This would indicate that the children were not being encouraged or supported and were simply being allowed to wait for time to pass. (Period 2)

though the dominant use is that of the hyponym-like or troponymy behaviour.

5.2.1.4 Pronouns
With 5.5% of all occurrences, the choice of pronouns most often has a gender focus and applies the principle of Lyons’ (1977) ungradable opposites:

...while at the same time allowing the defendant his or her right to challenge the accusation made against them. (Period 4)

As Jones (2002: 68) pointed out, while in the past the male gender pronoun would have been considered neutral or unmarked and hence sufficient to represent both forms, social forces and, as we will see in Section 5.2.3.5 below, also developments in case law have led writers to now include both genders.
5.2.1.5 Adverbs

Adverbs were not very frequent with just 2.5% of occurrences. In the sample sub-corpora those present tended to avail of hyponym-like relations:

Examples of operational risk include the risk of systems breaking down or people acting incompetently or fraudulently. (Period 3)

Once again, it is possible to see a relation demonstrating a degree of intensity, this time in terms of seriousness in the eyes of the law for the superordinate term ‘unapproved non-standard practices’. Other similar cases of degree of intensity from Period 3 include predominantly or exclusively and improperly or illegally. The last example appears to display features of Cruse’s (1986: 193) grade terms which means the boundaries between the terms can be vague though this is less marked when they are explicitly contrasted with each other.

5.2.1.6 Other

Of the final 9%, the main component is the use of ‘or’ to join whole clauses; indeed this accounts for 7% of all occurrences in the sample. As the example below shows, the clauses serve to provide more details, though as the previous categories demonstrate, the preference is to restrict bi- or multinomial phrases to single or short phrasal expressions:

...and so these considerations are not enough to rule out any outcomes or to provide more specific advise [sic] on how to play the game. (Period 4)

5.2.1.7 Summary comments

The recurring use of binomials, trinomials and the embedding of ‘or’ nodes in longer lists all point to the preoccupation with naming details for the reader - clearly defining the scope of a proposition plays an important role in academic legal writing. However, as the relations between the words preceding and following the ‘or’ node illustrate, defining scope can mean using combinations to emphasise contrast, replication, some form of membership of a given class or position on a scale. To say whether synonyms, antonyms or hyponyms dominate risks getting into a debate on the perception of relations, though is what unarguably clear is that the ‘or’ node operates mostly at a phrasal rather than clausal level.
5.2.2 Source

As already noted in Section 5.1.1, the introduction of the French language to legal English in the 12th century led to another layer of binomials on top of Hiltunen’s (1990) Anglo-Saxon ‘poetic adornments’ with the consequence that, as Gustafsson (1984), Bážlik (2007) and Carvalho (2007) confirmed, it is now a well established linguistic structure of legal documents representing the sources of law. However, it remains to be seen whether there has been an imitation of this practice by students when making an academic analysis of the law. Thus, there is a need to assess to what degree the law, in terms of its source documents such as legislation or judgements, is present in the texts in its original form and also, if used by students, is it to summarise the law for the reader in a similar style or do they apply the structure in a different way when making propositions of their own? As already discussed in the introduction of Section 5.2, it is not possible in this study to analyse all the contexts in which the binomials are set though the following analysis may provide an insight into whether particular parties seek to impose particular sets of relations on the contexts their binomials describe.

An initial count of a sample of 520 corpus lines showed that approximately 25% of the occurrences of ‘or’ involved an attribution to an external source with the remaining 75% originating from the student writer. A further analysis of these two basic divisions will now follow.

5.2.2.1 External sources

External sources are most easily identified when they come as either:

i) Quotations in the main text:

   ...the court held that “secret surveillance over... telecommunications is under exceptional conditions necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime.”

   (Period 3)

ii) Are prefaced by the source and then a list of bullet points is provided:

   Article 10 of the ECHR provides:

   1. ...
2. The exercise of these freedoms, since it carries with it duties and responsibilities,... for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.  

(Period 4)

iii) Appears as a footnote or appendix:

48 LRC Recommendation no.1; The existing enactments making a spouse of a party competent or compellable in civil proceedings should be repealed or replaced by a provision stating... See LRC 13-1985 at 35.  

(Period 1)

Figure 5.4 shows a list of sample concordance lines.

**Figure 5.4 Sample concordance lines for ‘or’ as originating from external sources**

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>of information received in confidence, or for maintaining the authority and</td>
</tr>
<tr>
<td>16</td>
<td>, for the protection of health or morals, or for the protection of the rights and</td>
</tr>
<tr>
<td>17</td>
<td>that claimants with a primarily personal or financial interest in bringing a claim of</td>
</tr>
<tr>
<td>18</td>
<td>necessary provisions, technical, legal or financial, necessary to implement the</td>
</tr>
<tr>
<td>19</td>
<td>whenever needed for either football or financial reasons. If this freedom is</td>
</tr>
<tr>
<td>20</td>
<td>purely administrative, actuarial and/or financial character. Processing and</td>
</tr>
<tr>
<td>21</td>
<td>to prevent his committing an offence or fleeing after having done so; d) the</td>
</tr>
<tr>
<td>22</td>
<td>that the car is of merchantable quality or fit for purpose. Safety may also be an</td>
</tr>
<tr>
<td>23</td>
<td>by a provision stating that a present or former spouse of a party to civil</td>
</tr>
<tr>
<td>24</td>
<td>the enjoyment or exercise of any right or freedom recognized by virtue of the</td>
</tr>
</tbody>
</table>

The main feature here is that approximately 90% of the sources used are those that make the law, therefore primarily appeal courts, legislation, executive bodies and treaties. Not surprisingly, how these entities use the ‘or’ construction is to specify alternatives in relation to:

i) Parties:

*The existing enactments making a spouse of a party competent or compellable in civil proceedings should be repealed or replaced by a provision stating that a present or former spouse of a party to civil proceedings shall be a competent and compellable witness.*  

(Period 1)
ii) Conditions that have a bearing in decisions:

In deciding whether the statement is reliable the court shall have regard to—

... (i) any explanation by the witness for refusing to give evidence or for giving evidence which is inconsistent with the statement. (Period 4)

iii) Duties:

...neither the judge, nor the barrister or solicitor concerned in the examination of the witness, shall wear a wig or gown. (Period 4)

iv) Rights:

“No provision of this Convention shall be interpreted as ... restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party. (Period 1)

While the above outlines the broad areas in which such legal documents apply the ‘or’ coordinator, the nature of the relations between the bi- or multinomial members does not appear to have a clear pattern. There are examples of near synonyms (e.g. “basic or fundamental fairness” – Period 1), Gustafsson’s result-type antonyms (e.g. “committing an offence or fleeing after” – Period 4), pseudo-hyponyms (e.g. “a condition, episode, person or group of persons” – a Period 3 enumeration of elements that can induce moral panic in society), ungradable antonyms (e.g. “his or her pre-trial statement” – Period 1) and longer clauses explaining troponymy to describe the manner in which a superordinate concept can be achieved (e.g. “refusing to give evidence or for giving evidence which is inconsistent with the statement” – Period 4).

The above analysis has revealed that some level of consistency exists in terms of what areas of activity or participants the external sources tend to focus on when using binomial structures. However, the nature of the relations that they seek to highlight appears to be less predictable. Perhaps another point of note that can be taken from the analysis is the fact that students rely more on the law itself rather than academics’ analyses of the law when
combining ‘or’ with external sources. This appears to suggest the need to integrate into one’s text the precision of legal documents when writing for the legal academic community.

5.2.2.2 Student writer as source

The remaining 75% or so of the uses of ‘or’ can be seen as originating from the student writers. Figure 5.5 shows a sample of these concordance lines.

Figure 5.5 Sample concordance lines for ‘or’ as originating from the student writers

An analysis of a sample of 170 occurrences which were marked as propositions originating from the student writers themselves revealed three main areas of focus. Two were linked to external sources and were identified as such because they either belonged to an integral citation or the proposition that contained the binomial was followed by a footnoted reference. The external sources employed by the student writers were used either to report the law (or to be more precise, provided an explanation of a particular law) or, though to a much lesser extent, report the observations of academics or quasi-academic bodies such as review boards. These two areas of focus represented 30% of all occurrences in the subsample. The other 70% of occurrences were non-sourced or autonomous and appeared to be the complete property of the student writer. If the views of academics or quasi-academic bodies are excluded, then student explanations of a particular law and student autonomous comments together accounted for 90% of all occurrences in the subsample and these two
categories will be the focus here. Concordance lines for both these categories can be seen in Figures 5.6 and 5.7.

**Figure 5.6 Sample concordance lines for student descriptions of a particular law**

<table>
<thead>
<tr>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  his six month completion requirement or for a judgement of dismissal if he</td>
</tr>
<tr>
<td>2  the purpose of bringing a person to trial or for the purpose of executing a</td>
</tr>
<tr>
<td>3  the manufacturer is obliged to discard or for which the intended use is</td>
</tr>
<tr>
<td>4  authorisation of the discharge of dredge or fill material must first be avoided and</td>
</tr>
<tr>
<td>5  substances (eg pesticides, drugs or food additives) are deemed initially to</td>
</tr>
<tr>
<td>6  information about all business matters or forward all business documents.19</td>
</tr>
<tr>
<td>7  criminal proceedings.65 The spouse or former spouse66 of an accused is</td>
</tr>
<tr>
<td>8  to travel between member states, or freedom to provide information on</td>
</tr>
<tr>
<td>9  , human error or malfeasance or fraud. This is identified as a</td>
</tr>
<tr>
<td>10 denying making the original statement or for refusing to testify altogether. This</td>
</tr>
</tbody>
</table>

**Figure 5.7 Sample concordance lines for student autonomous comments**

<table>
<thead>
<tr>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  a basis for a reasonable suspicion or for the Gardai to have reasonable</td>
</tr>
<tr>
<td>2  whether he is for the prosecution or for the defence. Neither the lawyer for</td>
</tr>
<tr>
<td>3  . Games may repeat for a finite period or, for all practical intents and purposes,</td>
</tr>
<tr>
<td>4  propose that the “validity” of a law, or for that matter a legal system,</td>
</tr>
<tr>
<td>5  of “own funds” a credit institution or financial institution should have in</td>
</tr>
<tr>
<td>6  that stone by using it as gravel or filling material. The leftover stone</td>
</tr>
<tr>
<td>7  the word ‘unborn’ referred to the embryo or foetus in the womb, with the specific</td>
</tr>
<tr>
<td>8  are of the type such as buying a car or forming a business agreement.</td>
</tr>
<tr>
<td>9  as a field of study was never envisaged or fostered. The difference now however</td>
</tr>
<tr>
<td>10 down or people acting incompetently or fraudulently. This is an increasingly</td>
</tr>
<tr>
<td>11 charge as long as there is no bad faith or fraud on the part of the chargee. On</td>
</tr>
<tr>
<td>12 escape the media in some shape or form. As Paul Mason, writing</td>
</tr>
</tbody>
</table>

A cursory look at Figures 5.6 and 5.7 indicate no dramatic changes in behaviour of choice of expressions around the ‘or’ node. Indeed, given that ‘or’ has been demonstrated to be used by sources of law in Figure 5.4, it does beg the question as to whether we are
witnessing Fairclough’s (1992: 104) ‘intertextuality’ in the sense that we find traces of one text in a later produced text. What needs to be determined here is the degree of influence the sources of law language may have on what the students themselves produce.

In assessing whether the language used in the sources of law exert an influence on the students’ choice of language it is necessary to look more closely at the phenomenon of Swales’ (1990: 148) integral citation. Integral citation means that the source is not placed in brackets but actually is an active agent in the sentence. Taking an example of an indirect report of an academic’s proposition:

Aden views the creation of Europol as elitist because it involves a relatively small number of high ranking or highly specialised police officers. (Period 3)

What is not clear with the example above is whether the high ranking or highly specialised expression comes directly from the author Aden, or has been adapted in some way by the student. The same can be said for non-integral citations, which frequently come in the form of footnoted references:

...the scientific knowledge available is not capable of ruling out certain adverse effects or fully identifying all possible risks, the precautionary principle allows public authorities to act without conclusive evidence, as waiting for full information it may ultimately be acting too late.[6] (Period 3)

The footnote [6] refers to the European Environmental Agency note 4 and again it is difficult to say whether note 4 is constructed in a similar manner to what is in the student’s text. Lines 6 and 7 of Figure 5.5 above perhaps shed some light on this issue. Both lines use the same words yet one is taken from a thesis in Period 4 and the other an essay assignment from Period 1. Both report on what is allowed by Section 16 of the Criminal Justice Act 2006 though it would appear that the influence of the original text is very strong indeed. In fact, if one looks at the Act itself, the very same words are used though they are set out in bullet points.15 The same behaviour arises with the following example:

15 See http://www.irishstatutebook.ie/2006/en/act/pub/0026/print.html#sec16
The juvenile’s parent or guardian should be informed as soon as is practicable; that
the juvenile is in custody, the nature of the offence and that the juvenile is entitled to
a solicitor.51

(Period 4)

The footnote 51 refers to Section 58(1) of the Children Act 2001 and if one goes to the Act
itself one finds the following:

…the member in charge of the station shall as soon as practicable—

(a) inform or cause to be informed a parent or guardian of the child—

(i) that the child is in custody in the station,...16

This lends credence to the view that students, when describing the law from a particular
source, are very likely to adopt the style of language that is present in the original
document. Therefore, the original criteria to identify external sources in Fig 5.4 above
would appear to be not fully representative. It seems that the student writers also dedicate
quite an amount of effort to explaining the law and consequently adopt expressions that are
used in the original sources. While it is more difficult to demonstrate that this is also the
case for the students’ autonomous comments, since no external texts are explicitly
mentioned, it should at least be possible to identify whether students prefer to use the ‘or’
construction in particular rhetorical contexts and whether these are shared, or are different
to, how the sources of law use the ‘or’ node. This will be analysed in Section 5.2.3 below.

5.2.2.3 Summary comments

If the external sources’ 25% of all occurrences is combined with instances where the
students give indirect reports of the law (30% of the remaining 75% of total occurrences),
then the phenomenon of explicitly referring to legal sources either through direct or indirect
reporting reaches 47.5%. Granted that some of these instances refer to the views of
academics, but overall it nevertheless points to a forceful presence of the language of the
law in postgraduate academic legal writing. Suffice it to say that bi- and multinomials
display a strong affinity to the written law and the production of postgraduate academic

texts without such a presence is, based on the corpus evidence provided here, difficult to conceive.

5.2.3 Rhetorical function

A common theme running through the syntactic analysis of the use of ‘or’ was the role that synonyms, hyponyms and antonyms played in the constructions. While the functions enabled by these forms will be discussed below, it is clear from their use that the student writers place a lot of emphasis on articulating details for the reader rather than leaving space for interpretation. Another rhetorical feature of the use of ‘or’ is that it appears to be mostly used for non-experiental events. What is meant by this is that what is reported is not in relation to an individual event which has actually occurred, but instead frameworks, conditions or criteria are provided mostly to deal with what might occur, or to describe how scenarios are currently dealt with:

For land damage, contaminants must be removed such that there is no longer a significant risk to human health, having regard to the current or future uses of the land. (Period 1)

In this way, much emphasis is placed upon the judicial investigation and resolution of issues during the pre-trial phase, the trial serving as the final examination or hearing, rather than the focus of debate. (Period 3)

..."person skilled in the art" within the meaning of Article 56 EPC, for example by construing this term to include business experts or practitioners in other non-technological fields (Period 4)

The three examples above can be contrasted with the following experiental report by a student:

Fifty inmates attended one of the two gyms and there were 88 prisoners in either the main school or the medical unit school. (Period 3)

Being a report of an event that has happened, there is little room for abstraction and the writer has little control over the variables around the ‘or’ node (though in this instance they both happen to be two educational establishments). Of the 3850 corpus lines for ‘or’, less
than 30 refer to experiential events. Despite the fact that some texts do recount historical events, the ‘or’ construction is rarely used to relate such happenings. Instead, the ‘or’ construction occupies a space that enables the student writer or external source of the proposition to exercise more control over what precedes and follows ‘or’. The evidence and observations above would appear to be in line with Bázlik’s (2007: 93) view that ‘or’ fitted better in contexts where a potential act is being described and indeed the instances discussed point to even more scenarios in which ‘or’ can be seen to operate on a non-experiential basis.

With the description of non-experiential events being the main field of operation for ‘or’, Table 5.5 below elaborates this context by showing the five main rhetorical functions being applied in the texts and their approximate percentage of use between student and external sources. When explaining the rhetorical functions it is important to understand that the categories are not mutually exclusive and as they are subjectively based, are thus open to interpretation. Nevertheless, as Table 5.5 below shows, the evidence provided by the sample concordance lines should demonstrate why such categories were derived.

Table 5.5 Main rhetorical functions for the ‘or’ construction

<table>
<thead>
<tr>
<th>Rhetorical function</th>
<th>% of concordance lines</th>
<th>Share between student and external sources</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Student</td>
</tr>
<tr>
<td>Temporal/staged relation</td>
<td>5%</td>
<td>2%</td>
</tr>
<tr>
<td>Maximum scope</td>
<td>10%</td>
<td>7%</td>
</tr>
<tr>
<td>Reinforcement</td>
<td>10%</td>
<td>7%</td>
</tr>
<tr>
<td>Degree of intensity</td>
<td>20%</td>
<td>18%</td>
</tr>
<tr>
<td>List of members of a semantic set</td>
<td>50%</td>
<td>34%</td>
</tr>
</tbody>
</table>

17 Based on a sample of 520 concordance lines
18 The division between the student and external sources categories was based 100 random concordance lines
5.2.3.1 Temporal/Staged relation

This is a minor rhetorical function representing approximately 5% of occurrences across the four periods. Figure 5.8 has sample concordances for temporal relations.

Figure 5.8: Sample concordance lines for temporal relations

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>and 58 that a particular person causes or is likely to cause environmental</td>
</tr>
<tr>
<td>2</td>
<td>person under 17 years of age is giving, or is to give, evidence through a live</td>
</tr>
<tr>
<td>3</td>
<td>or disposed of in a manner that causes or is likely to cause environmental</td>
</tr>
<tr>
<td>4</td>
<td>whose occupational activities entitle or will entitle him/her to retirement</td>
</tr>
<tr>
<td>5</td>
<td>person under 18 years of age is giving, or is to give, evidence through a live</td>
</tr>
<tr>
<td>6</td>
<td>of, waste, in a manner that is causing, or has caused, environmental pollution”,</td>
</tr>
<tr>
<td>7</td>
<td>grounds to suspect of having committed or being about to commit an “arrestable</td>
</tr>
<tr>
<td>8</td>
<td>is holding, recovering or disposing of, or has held, recovered or disposed of,</td>
</tr>
<tr>
<td>9</td>
<td>, not because he or she has done or intends to do anything wrong, but</td>
</tr>
<tr>
<td>10</td>
<td>a jury. It also includes those who suffer or have suffered from mental illness or</td>
</tr>
</tbody>
</table>

It can be constructed to include present and future actions (i.e. lines 1 – 5), or present and past actions (i.e. lines 6, 8 and 10). The effect is to widen the range of criteria which fall under some remit of the law and indeed this focus on the parameters of the law is reflected in the fact that the construction is embedded most (90%) of the time in contexts where the student quotes what the law is or describes it in his or her own words. While the sample lines above emphasise the temporal nature, there are also examples that imply a time aspect but perhaps are better described as ‘staged’:

Lawyer must obtain the informed consent of client (current / former /or prospective) before accepting or continuing representation or pursuing a course of conduct.  
(Period 3)

... a trader may apply to the Circuit Court for an injunction to stop another trader from engaging in, or continuing to engage in, a misleading or prohibited comparative marketing communication.  
(Period 4)

The writers here seek to include cases where an activity has yet to begin or is already in process. Due to the reliance on verbs in this binomial it is already going to have a limited scope given that verbs account for just 19% of all binomial constructions. In relation to the
two staged examples, Miller and Fellbaum (1992: 219) argued that since one action necessitated the engaging in the other (one must start an activity before continuing it), there was an entailment relationship between the binomial members. However, as all the examples above, both staged and temporal relations, emphasise the temporal nature of a single action, it is the time scale that dominates. Cruse (1986: 193) had devised similar scales for degree terms of a temporal nature, though he did not provide any examples with verbs.

5.2.3.2 Maximum scope

Perhaps the easiest rhetorical function to identify is where the ‘or’ node accommodates antonyms, antonym-like expressions or where the meaning is intended to cover both extremes of a continuum. Maximum scope examples are shown in Figure 5.9.

Figure 5.9 Sample corpus lines for ‘or’ enabling maximum scope

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>nature or crimes in which the victim or perpetrator is already known to the</td>
</tr>
<tr>
<td>2</td>
<td>devices, whether by public authorities or private individuals or bodies, must be</td>
</tr>
<tr>
<td>3</td>
<td>and combating crime, organised or otherwise, in particular terrorism,</td>
</tr>
<tr>
<td>4</td>
<td>this method that attempts, successful or otherwise, can be made to combat</td>
</tr>
<tr>
<td>5</td>
<td>may subsequently affect, wittingly or otherwise, their final decision. The</td>
</tr>
<tr>
<td>6</td>
<td>have stated that the mother’s consent or refusal is final, even if this means that</td>
</tr>
<tr>
<td>7</td>
<td>makes an offer which is either accepted or rejected by Betty. If Betty accepts,</td>
</tr>
<tr>
<td>8</td>
<td>precise rules create injustice? Broad or narrow constructions on legal matters</td>
</tr>
<tr>
<td>9</td>
<td>concerns regarding unnecessarily broad or narrow interpretations of the Policy</td>
</tr>
<tr>
<td>10</td>
<td>countries: war. The BATNA may or may not be attractive, but it still exists</td>
</tr>
<tr>
<td>11</td>
<td>that in order to consider whether or not there had been the abuse of a</td>
</tr>
<tr>
<td>12</td>
<td>of whether such evidence is allowed or not. The protections in Section 1(f)</td>
</tr>
<tr>
<td>13</td>
<td>cameras, whether in the public street or on premises, such as shopping</td>
</tr>
<tr>
<td>14</td>
<td>Síochána.73 The decision whether or not to prosecute on indictment is a</td>
</tr>
<tr>
<td>15</td>
<td>if they are contrary to Community law or not. Would Member States have to</td>
</tr>
<tr>
<td>16</td>
<td>that whether a material is waste or not depends on the specific factual</td>
</tr>
<tr>
<td>17</td>
<td>is absent from the document, whether or not it is intended as a deterrent to</td>
</tr>
<tr>
<td>18</td>
<td>are confusingly similar to trade marks or not. A rationale provided for the</td>
</tr>
</tbody>
</table>

This rhetorical function accounts for a little over 10% of all uses of ‘or’ in the study corpus. There appears to be two main approaches taken in achieving this function. The first invokes the concept of Lyons’ (1995: 128) *complementaries* (polar opposites) as lines 1, 2, 6, 7, 8
and 9 illustrate. In a little over 70% of such cases this was the construction used by students when making their own propositions or explaining an external source. The second is to precede the use of ‘or’ with ‘whether’. The effect of this structure can be as with the first approach, to concentrate on two opposite ends of a continuum through the articulation of both antonyms. This is illustrated in lines 1, 2, 4, 6, 7, 8, 12, 13, 14 and 15 of Figure 5.10.

Figure 5.10 Sample concordance lines for ‘whether’ + ‘or’

```
N Concordance
1 of its own shares “whether directly or indirectly and whether by means of a
2 on whether and when to settle or go to mediation. Table 1 60 Part Two:
3 means whatsoever, whether technical or otherwise. The use of means such as
4 pain or suffering, whether physical or mental, is intentionally inflicted on a
5 representation of fact, whether in words or otherwise . Section 19. Application
6 may give evidence, whether from within or outside the State, through a live
7 Amy filed against him. Whether he wins or loses in court, he loses in life. My
8 or members, whether direct or indirect, natural or legal persons, that
9 evidence (whether by testimony in court or otherwise), to be provided with such
10 . Cases of sexual abuse, whether ritual or otherwise, involving young children
11 , whether there are less drastic or restrictive means available in order to
12 . Consequently, any fears, whether real or imaginary, that the middle classes
13 agent that changes law, whether legally or illegally, is a “source,” provided it is
14 determine whether the charge is fixed or floating. A fixed charge attaches to
15 on whether it should be voluntary or mandatory could be alleviated by
16 of the proceedings (whether financial or otherwise); and that (2) practically
17 when assessing whether deterioration or disturbances to a site would be
```

External sources and instances when students indirectly reported what external sources said accounted for approximately 60% of all occurrences. While lines 11 and 17 show that the structure can also accommodate synonym-like expressions and thus the narrowing of parameters of meaning, the dominant trend of enabling a widening of scope to the maximum. Indeed this trend echoes Jones’ (2002: 74) analysis that ‘whether X or Y’ was one of the significant markers of antonymy in his corpus. The construction also reflects a stylistic preference. In many of the concordances lines above the meaning of the proposition is not changed if one drops ‘whether’ from the sentence. Another feature of this construction is the use of ‘otherwise’, which appears in lines 3, 5, 9, 10 and 16 and it is used to exemplify a concept already provided:
In this section “statement” includes any representation of fact, whether in words or otherwise.

...the beneficiary of a PCO should have no private interest whatsoever in the outcome of the proceedings (whether financial or otherwise).

The act of exemplifying again underlines the practice of articulating for the reader what the interpretation should be, and ‘otherwise’ is particularly useful if listing both antonyms (or hyponyms) would be insufficient to cover all variants than could occur beyond the named one. It could also be argued that ‘otherwise’ is a suitable alternative if a clear polar opposite doesn’t exist (such is the case for ‘words’) or the effect of explicitly naming a binary opposite may not have the desired exhaustive effect (i.e. line 9 in Figure 5.10, “whether testimony in court” would not combine well with ‘or not testimony in court’ and may be open to misinterpretation). This structure fits well with Rosch’s (1975) prototype theory in that the most easily identified member of the class is named and ‘otherwise’ acts as an umbrella for all other members. Approximately 65% of the occurrences of ‘or otherwise’ were used for the direct and indirect reporting of external sources. ‘Or otherwise’ can also be used without ‘whether’ as lines 3, 4, 5 in Figure 5.9 illustrated. Again it has the same rhetorical effect of providing an umbrella for all possible scenarios within a given context.

While ‘or otherwise’ allows for the unspecified expansion of options to be considered, the form ‘or not’ is closely linked to the named member of the binomial as Figure 5.11 shows below.
Figure 5.11: Sample concordance lines for ‘or not’

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>is subject to it, whether they want to be or not. On the other hand, the racism</td>
</tr>
<tr>
<td>2</td>
<td>of whether such evidence is allowed or not. The protections in Section 1(f)</td>
</tr>
<tr>
<td>3</td>
<td>on whether the website is interactive or not. As for incorporation of terms,</td>
</tr>
<tr>
<td>4</td>
<td>assess whether the game is repeated or not such that they better fulfill their</td>
</tr>
<tr>
<td>5</td>
<td>that they had a choice to be a juror or not. It would therefore be reasonable</td>
</tr>
<tr>
<td>6</td>
<td>, logical, legal] system exists or not. He is busy deciding cases, with</td>
</tr>
<tr>
<td>7</td>
<td>are confusingly similar to trade marks or not. A rationale provided for the</td>
</tr>
<tr>
<td>8</td>
<td>of Ireland 75 Casey, G., “To Intervene or not to Intervene?” (25 Years of</td>
</tr>
<tr>
<td>9</td>
<td>fact that a doctor must decide whether or not it is within his capacity to perform</td>
</tr>
<tr>
<td>10</td>
<td>is absent from the document, whether or not it is intended as a deterrent to</td>
</tr>
<tr>
<td>11</td>
<td>in section 16 have been complied with or not. With regard to the out-of-court</td>
</tr>
<tr>
<td>12</td>
<td>.148 Section 5 is silent on whether or not there is a duty to disclose that a</td>
</tr>
</tbody>
</table>

‘Or not’ occurred a total of 104 times in the ‘or’ sub-corpus, which makes it the highest occurring construction after ‘or the’, ‘or a’ and ‘or to’. It was also a structure favoured by the students when making autonomous propositions, they accounted for 75% of occurrences with this function. This time, one proposition is explicitly named and its direct opposite elides through the use of ‘not’. This has the effect of placing the focus firmly in the binary nature of the relation between the two binomial members. Jones (2002) believed that this generated “a very strong sense of exhaustiveness” (p.73), though in contrast to ‘or otherwise’, the exhaustiveness is clearly limited in scope. When ‘or not’ is not immediately preceded by ‘whether’ the syntax positioning is more flexible in that half of those 54 occurrences ended their sentences with ‘or not’ and the other half put it in a medial position:

*They are unlikely to care if they are contrary to Community law or not.*  (Period 2)

*Whatever the reason, and whether it is fair or not the bottom line is that the laws allows [sic] it.*  (Period 2)

Figure 5.12 below shows that such flexibility does not exist for ‘whether or not’, which is never in the end position.
‘Whether or not’ occurred a total of 51 times and ‘whether’ was present 71 times when checking among the five words preceding the ‘or not’ node. As Figure 5.12 shows above, ‘whether or not’ acts as a signal for two options of which one will be explicitly signalled in the following clause. Syntactically, ‘whether or not’ tends to function with a verb while the option ‘or not’ can encapsulate a wider range of word forms (see lines 1, 3, 5 of Figure 5.11). A common function attached to ‘whether or not’ bundle is that of deciding on how to proceed, lines 128, 130, 132, 134, 136 and 137 are all concerned with making a decision about engaging in further action or not. Again, this was a structure favoured by students when making autonomous propositions as they accounted for roughly 65% of occurrences. A final point of interest in the construction of maximum scope is that in many cases the antonyms, while not completely canonical pairings (Jones et al. 2012: 2), nevertheless could be seen as quasi-canonical, given the reliance on ‘or otherwise’ or ‘or not’ to contrast with the properties assumed by the other binomial member.

5.2.3.3 Reinforcement relation

This relation, representing 10% of occurrences in the ‘or’ sub-corpus, relies on the use of synonym-like relations to carry out its rhetorical function. Figure 5.13 shows some concordance lines for the reinforcement relation.
Figure 5.13 Sample concordance lines for the reinforcement relation

![Concordance](image)

Figure 5.13 returns us to the question of whether the expressions above are used “for the sake of precision and not rhetorical emphasis” (Koskenniemi 1968: 78). At first sight, there appears to be little added through using two terms to refer to one idea and indeed the meaning of the proposition would not seem to be interfered with by removing the second synonym. However, in some instances the student writer appears to be using the structure to show that he or she is aware of the number of ways in which the discourse community refers to a concept or entity:

...the amount and type of impact that is associated with [the] permit” equates directly to the ideal of like-for-like or ‘targeted compensation’ in the EU.

(Period 4)

...this paper initially mentions the objectives of IHL, which is also known as the Law of Armed Conflict or the Law in War (ius in bello)...

(Period 1)

Looking beyond such instances, expressions such as frivolous or vexatious proceedings or harmful or undesirable material might be seen as non-exact synonyms but nevertheless contain sufficient overlap to mark their interchangeability. However, it could be argued that the approximation of the overlap is not key but that there appears to be the intention to
achieve a greater degree of clarity through the use of this binomial structure. As Murphy (2010: 110) observed, it is indeed often difficult to find an exact replicate term but the overall effect would seem to be that of reinforcing an idea or term through the ‘or’ construction and in the process mark it out as important for the reader. While the effect may not be exhaustive when one considers how antonyms are used, it is nevertheless difficult to insert further subtle differences between the two binomial members already listed. Hence, it could be argued that there is an exhaustive effect at a local level on the scale of near synonyms and this would certainly strengthen this type of binomial’s claim to enable precision. It is a practice which appears to be used in both camps, approximately 66% of occurrences were used by students to make autonomous propositions or explain an external source’s proposition and 34% of uses were in the context of direct reporting of external sources, mostly detailing some aspect of a law, or to a lesser extent the views of an academic.

5.2.3.4 Degree of intensity relation
The degree of intensity relation, which accounts for almost 20% of all occurrences in the ‘or’ sub-corpus, is when the student writers describe states or activities that exist on a cline and can move towards or from the minimum and maximum of the condition. This is illustrated in Figure 5.14.

**Figure 5.14: Sample concordance lines for degrees of intensity**

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>he knows who the accused is related to or friendly with. Another concern would</td>
</tr>
<tr>
<td>2</td>
<td>of ruling out certain adverse effects or fully identifying all possible risks, the</td>
</tr>
<tr>
<td>3</td>
<td>, even those who explain, justify or glorify terrorism. This would do more</td>
</tr>
<tr>
<td>4</td>
<td>propose that the “validity” of a law, or for that matter a legal system,</td>
</tr>
<tr>
<td>5</td>
<td>down or people acting incompetently or fraudulently. This is an increasingly</td>
</tr>
<tr>
<td>6</td>
<td>, human error or malfeasance or fraud. This is identified as a</td>
</tr>
<tr>
<td>7</td>
<td>cause shown should either be abolished or else significantly reduced. However, if</td>
</tr>
<tr>
<td>8</td>
<td>to amend the existing legislation or enact new legislation in a short time</td>
</tr>
<tr>
<td>9</td>
<td>young as 9 or 10 when they misbehave or do not act in accordance with the</td>
</tr>
<tr>
<td>10</td>
<td>is likely to give rise to deterioration or disturbance or habitats or species,</td>
</tr>
<tr>
<td>11</td>
<td>a remedy and the seller refuses to act or does not act within a reasonable time,</td>
</tr>
<tr>
<td>12</td>
<td>the others. This behaviour includes tacit or express collusion, and may or may</td>
</tr>
<tr>
<td>13</td>
<td>which nearly 1/3 are globally threatened or Extinct. Vié et al, note 5.</td>
</tr>
<tr>
<td>14</td>
<td>it permits states to refuse assistance or extradition for acts they have not</td>
</tr>
<tr>
<td>15</td>
<td>such a law poses of undermining or even destroying democracy on the</td>
</tr>
<tr>
<td>16</td>
<td>information about an emergency or, even more seriously, a total inability</td>
</tr>
<tr>
<td>17</td>
<td>may continue over a period of months or even years. Therefore the victim</td>
</tr>
<tr>
<td>18</td>
<td>of a new site the same size as or even twice the size of one that is to</td>
</tr>
</tbody>
</table>
In this instance, the writer explicitly states both conditions. It does not appear to matter whether the more extreme of the two choices can precede ‘or’ (see lines 1, 7 and 11) or follow it (see lines 2, 3 and 13). The effect of the use of this construction is again to extend the scope of the proposition though beyond the local level identified in the reinforcement relation. The expressions belong to the same semantic set but are not synonymous, nevertheless their relationship reflects the varying degrees of intensity they confer, even if the methods adopted by each, or the outcome effected, can differ. These degrees are linear in fashion, which means they can be mapped on a continuum:

However the definition given to harm under the regulations is “an act which actually kills or injures wildlife.”

... the application of domestic or agreement-based provisions designed to eliminate or lessen economic double taxation of dividends.

In both of the examples above we have verbs (kills and eliminate) which represent the most extreme scenarios in their respective contexts. These are accompanied via the ‘or’ construction with verbs that stop short of the objective achieved in the extreme verb scenario, but nevertheless represent a step towards that objective.

The last four concordance lines of Figure 5.14 give one a glimpse of how the use of ‘or even’ to indicate surprise or emphasis is one way in which the student can combine stance and at the same time intensify the proposition to follow. Indeed, the rhetorical function of intensity is more commonly used by students to make their own propositions with roughly 75% of occurrences representing student autonomous statements and a further 15% for when they explain external propositions.

5.2.3.5 List of members of a semantic set

This represents the main use of the ‘or’ structure with just under 50% of occurrences. Based on a random sample of 100 concordance lines, the rhetorical functions of semantic sets operate 68% of the time in the domain of student propositions, though one-third of these were made up of students explaining a law or the views of academics. The remaining 32% of the occurrences belonged to the external sources, of which the formal sources of law dominated.
The semantic set is derived from the general focus of the proposition in the sentence as the following example illustrates:

...the victim should be kept informed of any change in circumstance of the offender, bail application, any release from prison, parole, escape or temporary release. (Period 2)

The underlined words are actually a part of a longer list that deals with the state of incarceration of an accused or convicted person. The expressions that precede and follow ‘or’ are not antonyms and indeed the whole list cannot be regarded as a temporal representation of the stages toward release. However, they do represent a semantic set and their articulation specifies what features are of relevance. The superordinate term could be considered to be ‘penal administration’ with all the individual conditions constituting what ‘penal administration’ might mean. The details provided would appear to conform to Cruse’s (2011: 137) criteria for a taxonomy, in that they represent features unique to the superordinate. What is not clear is whether the list is exhaustive or not, though given the attention to detail one might be led to assume that the purpose is to be exhaustive rather than exemplary. It is also noticeable in Figure 5.15 below that a higher number of the sample concordance lines are a part of a multinomial set (lines 7, 8, 9, 10, 17, 18), though the taxonomies may be more of an ad-hoc nature, depending on the contexts which they must describe.
The effect of these semantic sets is usually to extend the scope of a proposition. In most cases the student writers actually name the conditions or entities that can be applied or included (see for example lines 1, 3, 5, 8 and 15). The expressions that precede ‘or’ and those that follow it tend to share a hyponym relationship to a superordinate entity:

*Article 16 which allows Member States to provisionally prohibit or restrict the use or sale of a product on its territory where it has justifiable reasons that it constitutes a risk to human health or the environment.*

(Period 3)

*It does so in the absence of any considered debate about the actual threats posed by such individuals, the suitability of extraordinary provisions in the circumstances, or the impact on due process values in general.*

(Period 4)

The first example cites two members of the ‘living organisms under threat’ superordinate, the second, of which the ‘or’ binomial is embedded in a longer list, describes elements to be considered when enacting legislation that promotes zero tolerance in the face of crime. The latter example deals with more abstract issues; nevertheless, if one adopts the shell noun phrase ‘factors to be considered when enacting zero-tolerance legislation’, then the three
can be considered constituent members. In both cases, the proposition is served through the use of co-hyponyms to illustrate what could otherwise be a rather nebulous superordinate concept. These two examples also lend credence to Lyons’ (2008) view that for some semantic sets there are no conventional superordinates at all. However, to arrive at the conclusion that a hyponymous relation exists, no matter how unconventional or ad-hoc, we can use Lyons’ (1963: 69) “unilateral implication” to see how the hyponymous relations can be established:

If

X (a Ferrari/red/skyscraper) IS Y (a car/colour/building)

BUT

Y (a car/colour/building) MIGHT NOT BE X (a Ferrari/red/skyscraper)

then,

*the suitability of extraordinary provisions in the circumstances* IS one of the factors to be considered when enacting zero-tolerance legislation

BUT

a factor to be considered when enacting zero-tolerance legislation MIGHT NOT BE *the suitability of extraordinary provisions in the circumstances*.

Therefore, for hyponym-like relations, the readers may be required to take the cue for establishing the semantic relationship somewhere in the preceding co-text or they will have to rely on signals that hyponym-type expressions can provide around the ‘or’ node. The former approach can be seen in the zero-tolerance legislation example just discussed. Four sentences before the one quoted above, the writer refers to ‘legal safeguards’, which ultimately is the response to the factors listed in the example.

Another issue that the student writers deal with is whether it is absolutely necessary to name all the components that constitute a given proposition. It would appear that, in some cases there this necessity for the sake of clarity and accuracy:
...it makes provision for children under 12 who commit what would otherwise be a criminal act to be taken to their parents or to the HSE if the apprehending Garda Diversion Programme is a possibility (Period 1)

This section empowers the relevant authorities to monitor the movements of persons, vehicles or things using a tracking device for up to 4 months (Period 4)

This is particularly the case when a specific law is being outlined, as both examples above do.

Looking at specific uses within the semantic set category, one sub-element is the structure that can serve to exemplify a shell noun (as line 14 does with ‘premises’ in Figure 5.14) through the use as ‘such as’ and this occurs 53 times in the ‘or’ corpus. Further examples can be seen in Figure 5.16 below.

**Figure 5.16 Sample concordance lines for ‘such as + or’ performing an exemplary function**

```
N  Concordance
1  other legitimate governmental concerns, such as the prevention or detection of
2  barriers over which they have no control, such as economies of scale119 or even
3  if they so wish. A person with a disease such as Alzheimer’s or dementia will
4  of the crimes committed against them such as abuse, sexual and/or physical,
5  and advice of an extra-legal kind”19 such as psychiatrist’s reports or
6  . Some had had family disturbances such as death, desertion, separation or
7  it protect users of webmail services such as Gmail or Hotmail. In addition,
8  issues more than just legal rights, such as future deals or jobs, mediation
9  the Security Council.144 True sanctions such as economic penalties, expulsion,
10  because they receive state funding, such as Medicare or Medicaid.78
11  for some contact between undertakings such as meetings or information
12  was the sole judge and other factors such as psychiatric, economic or social
```

This construction clearly has an illustrative purpose rather than achieving clarity and precision and is volunteered by the writer rather than he or she being obliged to specify parameters deemed necessary by a law. Therefore, it would appear that it serves to show the reader that the student is aware of what exactly a non-explicit noun superordinate can
mean. The students’ autonomous propositions account for almost 75% of these occurrences and reaches almost 90% if student explanations of other sources are included.

There is also another way in which the student writers use the ‘or’ structure for illustrative purposes:

*With written constitutions or other obligations the legislative body is limited by the courts, but only to specific fundamental principles.*  
(Period 3)

*A barrister may excuse him or herself by pleading Rule 2.14 (lack of expertise in that area or conflict of interest or other special circumstances)...*  
(Period 2)

In both of the examples above we have the construction ‘or + other + shell noun’ which is another sub-element in this category and occurs 56 times in the ‘or’ sub-corpus. Whereas in Figure 5.16 above the trend was to name the shell noun and then illustrate it with examples using the ‘or’ node, this time it is the reverse with the specific example coming before the ‘or’ node and the shell noun following. Another point to note is that, unlike in Figure 5.14 where the expressions around the ‘or’ node shared a hyponym relationship to a superordinate identified or inferred somewhere else in the text, in this instance the superordinate is represented by the shell noun itself. Examples are provided in the following Figure 5.17.

**Figure 5.17: Sample concordance lines for ‘or + other’**

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,404</td>
<td>that reference to goods on labels, or other descriptive matter, may form</td>
</tr>
<tr>
<td>1,405</td>
<td>methods, rules for playing games or other systems, insofar as they are of</td>
</tr>
<tr>
<td>1,406</td>
<td>(which includes the society itself or other societies with which it</td>
</tr>
<tr>
<td>1,407</td>
<td>be useful; or a case where injunctive or other relief is essential to protect the</td>
</tr>
<tr>
<td>1,408</td>
<td>methods, rules for playing games or other systems,” but was still qualified</td>
</tr>
<tr>
<td>1,409</td>
<td>his movements, communications or other activities to be monitored by</td>
</tr>
<tr>
<td>1,410</td>
<td>, to be able to apply prosecution or other police powers itself (such as</td>
</tr>
<tr>
<td>1,411</td>
<td>that will be without bias, prejudice or other human failing. Will a jury</td>
</tr>
<tr>
<td>1,412</td>
<td>to be conducted through an interpreter or other person approved by the court</td>
</tr>
<tr>
<td>1,413</td>
<td>Member States, the rigidity of prices or other circumstances suggest that</td>
</tr>
</tbody>
</table>
Bázlik (2007: 99) noted that the function of the ‘or + other + shell noun’ was to cover all eventualities but perhaps more significantly, the hyponym of the superordinate represented the most typical member of the concept. The sample corpus lines appear to confirm this view, the scope enabled by the use of this construction is very wide indeed, though one could infer that the principle point is the one being made through the more precise expression preceding the ‘or’ node. What follows ‘or’ would appear to serve as an umbrella expression that should cover any related activity, state or member outside the principle one or ones just mentioned. This particular construction is strongly represented by the external sources, which account for 50% of occurrences, and even for student propositions 50% of them are in the context of indirectly reporting a law.

An alternative to widening the scope of a proposition is to simply increase the quantities of interested parties. Two features are worth noting here, one is that ‘or more’ in the quantitative rather than adverbial sense (i.e. ‘or more importantly’) is always preceded by a number:

\[\text{Article 82 expressly applies to \textit{one or more undertakings} occupying a dominant position.}\] \hspace{1cm} \text{\textit{(Period 4)}}

\[\text{...in participation in the form of ownership, direct or indirect, of 20\% or more of the capital or voting rights.}\] \hspace{1cm} \text{\textit{(Period 2)}}

The other is that this numerical emphasis seems to be particularly common in the field of business law with 50% of occurrences pertaining to this sub-discipline and the remaining half being dominated by human rights and criminal law. In business law its role appears to be that of setting parameters within which certain actions are permitted or prohibited by law:

\[\text{Also \textit{close links} must be investigated because \textit{close links} involve situations where two or more persons, natural or legal, are linked.}\] \hspace{1cm} \text{\textit{(Period 2)}}
“Qualified holdings” are direct or indirect holdings in the bank that represent 10% or more of the capital or voting rights, or, in the opinion of the IFR, effectively have a dominant influence over management. (Period 2)

Finally, returning to Figure 5.15, line 19 represents a phenomenon that occurs 86 times in the corpus, either as ‘he or she’ or ‘his or her’. Concordances lines for these binomial forms are in Figure 5.18.

Figure 5.18: Sample concordance lines for ‘he or she’ or ‘his or her’

| Concordance                                                                                   |
|                                                                                               |
| 1. He or she learns a unique language, is trained to be the voice of the client.              |
| 2. “absolutely independent” (Rule 2.5), he or she is working in a market driven model is turned upside-down – he or she is the object of free movement. |
| 3. if the person has a mental disorder and he or she must also interview the                  |
| 4. witness confirmed, if it was proved that he or she made it or if the court was              |
| 5. to the child, who is capable of forming his or her own views, the right to                  |
| 6. parent would do in the case of his or her own child; the court,                            |
| 7. of Article 3 if the victim is humiliated in his or her own eyes.58                          |
| 8. Thirdly, it is does not result in any diminution of his or her personal rights recognised by |
| 9. which is materially inconsistent with his or her pre-trial statement.29                     |
| 10. In its which is materially inconsistent with                                                                                                     |

This construction is used for student autonomous propositions roughly 45% of the time, external sources account for about 40% and student explanations of external source propositions take up the remaining 15%. Being gender inclusive, it could be seen as a reflection of student political correctness though given its existence in formal legal documents (as was also the case for Carvalho’s (2007) corpus), there is also likely to be a legal underpinning. This last point is not only another demonstration of intertextuality but case law has also ruled on the issue of gender inclusiveness. The absence a woman’s
presence in areas such as being a party to a contract where the family home was being used as collateral actually does have legal consequences\textsuperscript{19}.

5.2.3.6 Concluding summary

The ‘or’ node is applied in a variety of rhetorical functions. It plays multiple roles as can be seen just by taking the ‘members of a semantic set’ category. Here, it serves as an exemplary role (in conjunction with the use of ‘such as’ and using explicit rather than general references either side of the ‘or’ node), a gender inclusive role (‘he or she’), an expansion of scope role (‘or other’ and numerical references) and as an embedded construction in multinomials, which tend to be exhaustive in terms of function.

Overall, it appears that student and external sources share many of the rhetorical functions with the exception of the relatively minor temporal/staged function, which was dominated by the external sources and a student preference for degree of intensity relations. Therefore, it could be argued that since the rhetorical functions exist in the already produced legal sources, then the students using the ‘or’ node in a similar way demonstrates the level of influence these genres have in academic writing.

Finally, while accepting the possibility of overlapping between the individual rhetorical function categories, it is also important to reflect at a more general level on the functions in terms of marking what semi-technical language is used for in student academic legal writing. Primarily, the corpus shows that the ‘or’ node serves to identify key elements in a proposition and this can be done by explicitly naming the elements preceding and following ‘or’. This desire for clarity could be linked to common law’s roots set in judicial precedent and the courts’ traditional dislike of vagueness which could invite them to infringe upon the functions of the executive or parliament, and hence undermine the principle of the separation of powers (Wilson \textit{et al.} 2011: 10). The relationship between the elements can be one of a degree of intensity, which perhaps indicates the efforts of the law to govern not just extreme outcomes in society and the relation enables students to display their

\textsuperscript{19} See Lloyds Bank Ltd. v Bundy. [1975] QB 326. A Mr Bundy defaulted on a debt with the bank. The house was the security but the contract was made just with Mr Bundy and not his wife. The court however ruled that Mrs Bundy also had claim to the matrimonial home and the bank had no right to gain possession of the whole property as she had legitimate claim to a portion of it. It meant that in future the banks required that all loan contracts using the family home as collateral were to be signed by both spouses.
awareness of the complexities of issues in society which laws try to regulate. Alternatively, the effect of naming elements is to expand the scope of a proposition, and even more so when either what precedes or follows the ‘or’ node represents a general concept. The node also serves to display two courses that are available when making a decision. To sum up, the rhetorical functions predominately point to difference across the ‘or’ node and the apparent desire that both elements do not merely replicate each other – differentiation, in one form or another, is what is being emphasised when writing in a student academic legal context.

5.3 Discussion

There are certainly many elements in the literature review that can be reflected in the analysis of ‘or’ in the present study corpus. Biber et al.’s (1999) observation that ‘or’ binomials are most common in academic prose is certainly true here with academic law making the node one of its most frequent keyness expressions. The most common word form used with the construction is the noun form which was what both Gustafsson (1975) and Biber et al. (1999) found, though the present corpus also revealed a significant combined presence of non-nominal forms. Evidence of Gustafsson’s (1975) specificity was also to be seen as were Storjohann’s (2010) synonym clusters, particularly in Section 5.2.3.5’s analysis of semantic sets. Cruse’s (1986) converse antonyms were particularly evident in the prevalence of the use of gender inclusive combinations such as ‘he or she’ and there was plenty of evidence to support Jones’s (2002) view that coordinated binomials play an exhaustive role, though again this needs to be qualified in that this was evidenced not just by antonyms, as advocated by Jones, but also through the use of near synonym and hyponym relations.

One recurring feature across the corpus that was particularly noticeable was that the ‘or’ structure operates largely within the field of non-experiential events. As already noted in the introduction of Section 5.2.3, not using the structure to report on actual single events means the authors can exercise more control over the variables that are used either side of the ‘or’ node. Therefore, they are able to dictate what the parameters of a proposition are. In light of this, then perhaps it is quite fitting that the documents that proclaim the law exercise considerable influence over the texts that the students produce. These particular
documents have the formal authority to determine the scope of any law, convention or treaty and therefore it would appear that the ‘or’ structure is an important enabler of this function. The students regular use of ‘or’ for non-experiential events demonstrates the degree of cross-over from proclamations of the law to post-graduate academic legal writing, not only in terms of syntactical structure, but also the practice of setting clear parameters for the scope of a proposition.

The binomial relations in the corpus appear to largely focus on degrees of contrast. This can have the effect of extending the scope of a proposition or indeed serving to exhaust all alternatives. How this is achieved can vary. Near synonyms appear to have the effect of ensuring exhaustion at a local level, while the use of antonym and hyponym relations deliver a more extensive level of coverage. With the achievement of the goal of varying degrees of exhaustion, a side- or parallel effect of this is that the texts also offer more precision to the reader. The articulation of multinomial members or specifying what sort of opposites should be considered in turn enables the writer to direct the reader to the contextual construct that should be activated in order to fully comprehend the proposition.

The binominal members are the manifestation of the nature of the local context, which makes a choice of opposites seem appropriate (McCarthy 1988). At a more general level, they may be the only explicit features of relations in the immediate co-text which represent important paint strokes on a context’s or concept’s canvass (see the discussion in Section 5.2.3.5). Indeed, Jeffries (2010) comment on the selection of opposites as appearing “ill-defined yet clear to the speakers” (p.121) could be extended to the wide range of relations, synonymous, hyponymous and taxonomic, that are invoked in the students’ texts to create a picture for which an umbrella or superordinate term may not be easy to describe.

The reliance on understanding context when constructing relations has been emphasised by many authors (Cruse (1986) for hyponyms, McCarthy (1988) for opposites, Murphy (2003) for synonyms, Storjohann (2009) for contrastive and equivalent relationships, Jeffries (2010) for opposites and Storjohann (2010) for hyponyms). As already mentioned in the previous paragraph, what appeared in the study corpus here was the prevalence of relations constructed around abstract concepts that don’t lend themselves to widely recognised categories but instead appear to be constructed on an ad hoc basis to suit the context being
discussed. Hence the presence of phenomena such as Miller and Fellbaum’s *troponymy* (Section 5.2.1.3) among the verbs used with the node and *pseudo-hyponymy* as explained by Carter and McCarthy (1988) (see Section 5.1.5), which enables the uniting of seemingly disparate elements into a coherent semantic set. Alternatively, as with the construction ‘or other X’ the shell noun represented by X required the preceding relation to help clarify what field the general noun form represented. This again all points to how the ‘or’ construction plays an important illustrative role to help the reader to comprehend a context which may otherwise remain at an impossibly vague level and hence frustrate what Danet (1985) saw as law’s desire for certainty in an uncertain world.

In light of the discussion above, it is perhaps fitting that the legal discipline has also exercised itself about the semantic possibilities surrounding these binomial forms. The doctrine of *noscitur a sociis* is applied when the meaning of one word is unclear, so the other accompanying words in the list are referred to in order to clarify the intention of the drafter (mostly of statutes or contracts). An example would be from the case Pengelly v. Bell Punch Co. Ltd [1964] 1 WLR 1055, where the court had to decide if a floor used for storage came under the Factories Act of 1961 which required that 'floors, steps, stairs, passageways and gangways' had to be kept free from obstruction. The court decided that it didn’t, as all the other words indicated passage and a floor for storage was not designed for such a function. While *noscitur a sociis* deals with specific words, *eiusdem generis* is used to define general words. This doctrine, whose direct translation is ‘of the same type’, means that if a general word is used after two or more specific words, then it can only apply to things similar to the specific words. In Powell v. Kempton Park Racecourse Co. [1899] AC 143 the House of Lords had to decide if an outdoor area of a racecourse contravened s. 1 of the Betting Act 1853, which prohibited the keeping of a 'house, office, room or other place' for the purpose of betting. As a house, office and room were all clearly indoor venues, applying the doctrine of *eiusdem generis* the court ruled that an outdoor location did not fall within the remit of ‘or other place’. Finally, there is the rule of *expressio unius est exclusio alterius*, which means that to express one thing means to exclude others. In the case R v. Inhabitants of Sedgley (1831) 2 B & Ald 65 a tax was levied on occupiers of 'lands, houses and coal mines'. The court held that in light of the wording, owners of other types of mines were exempt from the charge. These three examples all refer to a list of members of a
semantic set, the selection of which would appear to be something that should not be taken lightly, particularly if the document is going to have legal effect. Given the high profile that such word combinations have had in the courts of law, it would seem eminently appropriate that students of law adopt the practice as preparation for their eventual entry into the professional field.

5.4 Conclusion

It would appear that the use of the ‘or’ construction in the study corpus does indeed have a role to play beyond Melinkoff’s (1963: 349) “worthless doubling” and has come a long way from the “poetic adornments” (Hiltunen, 1990: 25) function it fulfilled in Anglo-Saxon England. The five main rhetorical functions identified in Section 5.2 all point to a use of the structure to provide greater clarity in order to avoid confusion. As was demonstrated, this clarity can be expressed through showing what degrees of a proposition are relevant, adopting a temporal view of events if the scope in that range is required, the grouping of entities or ideas according to a common denominator, the illustration of shell nouns and the reinforcement of a concept whose hazy boundaries require the use of near synonyms to capture better its limits. The achievement of these objectives requires a syntactic flexibility which Norrick (1988) had already pointed out as being in existence in everyday language. Given its keyness and high frequency, bi- and multinomials undoubtedly thrive in the post-graduate academic legal writing environment. Perhaps the prevalence of its use does have something to do with Malkiel’s (1959) “tidy patterns” which the form can provide and hence shore up the semblance of clarity which is so desired by the stakeholders in common law.

Finally, turning to the relations expressed by the binomial structure, much has been said about the effect of synonymy, hyponymy and antonymy and evidence thereof has been sought in the study corpus. However, while the labelling is useful from an analytical point of view, the pragmatic view of Murphy (2003) seems wholly appropriate when she emphasised the need for the speaker (and one should also include the listener/reader) to be aware of the semantic closeness and semantic specificity of the relations in the situation of use. Given the infinite amount of situations or concepts that one can perceive, the
synonymous and other relations provide a huge amount of flexibility with regard to how one wants to present the connection between two or more items. It was also interesting to note that the courts have ruled on the use of bi- and multinomial forms, which is an indicator that the construction taken very seriously by the discipline. While the student texts did not carrying such legal weight, it was not surprising to see the practice being imitated. In the study corpus, the connections most often provided varying levels of contrast, which in turn could extend the scope at a local level or indeed to cover the full horizon of possibilities. This extension of coverage and its accompanying increased clarity are the main results of the use of the ‘or’ structure in post-graduate academic legal writing.

One function of semi-technical academic legal language has now been addressed. Students use the ‘or’ structure to achieve clarity, precision and/or determine the scope of a proposition. This is done mostly at a phrasal level, which is also the preferred area of application for nominal forms, the subject of the next chapter.
Chapter 6: The Use of Noun Forms

This chapter will analyse the role that noun forms play in the construction of the corpus texts. The focus will be on the noun forms that have been derived from the high frequency keywords. In setting out the theoretical background to the analysis, it will be shown how aspects such as nominalisation and lexical bundles impact on academic writing and which of these features are relevant to the analysis at hand. The analysis itself will deal with the rhetorical functions that pertain to the keyword nodes and highlight their importance in numerical terms. Finally, the discussion of the findings will take a macro view of the dynamics uncovered and set out the broad rhetorical purposes of noun forms that are derived from high frequency keywords.

6.1 Literature Review

The following sub-sections define and trace the role of nominalisation and lexical bundles in academic writing. They highlight the typical outcomes that occur with the process of nominalisation, such as the facilitation of text development, the enabling of the writer to bring stance into the text and the creation of discipline-specific technical terms as a consequence of converting processes into noun forms. Lexical bundles are also described in terms of their largely metadiscoursal function in text organisation. How these noun forms reveal themselves in individual disciplines is also explored and in particular there is a review of noun forms in legal writing. It will also be pointed out which of the research frameworks developed to date are to be applied in the analysis of the student legal academic writing corpus in Section 6.2.

6.1.1 Background

The substantial amount of research that has been carried out into the nature and function of nouns and noun phrases in the field of academic writing is an indication of its key role in the linguistic construction of academic texts. Guillèn Galve (1998: 1) noted the noun phrase as a linguistic feature which characterised the written scientific English register, Bhatia (1992: 217) prefaced his analysis of nominal forms with the view that “complex nominal
expressions of various kinds are typically associated with academic and professional
genres.” Cortes’ (2004) analysis of lexical bundles (which she defined as extended
colloocations, sequences of three or more words that statistically co-occur in a register) led
her to the conclusion that “as lexical bundles are very frequent in published academic prose,
it is necessary to encourage students to use these expressions” (p.420). Gross et al.’s review
of the development of the scientific article from the 17th to the 20th century reported that
more information was packed into the shorter sentences of the 20th century through the use
of “complex noun phrases with multiple modifications in the subject position” (2002:186).
That the noun phrase has come to play such a dominant role is not surprising, given its
ability to occupy subject, object or complement position in a clause. Finally, the view of
Biber et al. (1999: 323) that “academic discourse is much more concerned with abstract
concepts than other registers” requires an enabling device which Martin identified as
grammatical metaphor, without which “technicality and abstraction would not be possible”
(1991: 315). The subsections that follow will explain first the transforming function of
grammatical metaphor and then other aspects of noun forms in order to better understand
the role they play in academic writing.

6.1.2 Grammatical metaphor and nominalisation
Banks (2005: 348) illustrated the difference between semantic metaphor and grammatical
metaphor where the former maintains its grammatical syntax but the meaning changes (‘at
the end of the night’ v ‘at the start of the day’), while the latter changes its grammar but the
meaning remains the same (‘the date by which you have to use the milk’ v ‘the milk’s use-
by date’). The ‘use-by date’ is in fact a nominalisation, which Halliday proposed as “the
single most powerful resource for creating grammatical metaphor” (2004: 656). He defined
nominalisation as “ideational metaphors where processes and qualities are construed as if
they were entities” (2004: 637). Biber et al. (1999: 325) used the term to describe the
process where “the content of a clause (stripped of tense specification and other deitic
elements) is compressed into a noun phrase.” Since the noun forms of the data analysed in
Section 6.2 are largely constituted of actors in the form of the law itself, its principles,
courts, cases or legal documents, and the description of the activities surrounding these
actors, this points to the ideational metaphor as clearly a key element in the construction of
student academic legal written discourse.
6.1.3 The effect of nominalisation on text development

The effect of nominalisation on text development has been highlighted by several authors. Charles (2007: 206) saw the device as enabling writers to move an argument on by nominalising the already familiar information and thus preparing the reader for new information. This complements Halliday’s (2004: Chapter 3) theme/rheme structure whereby the theme represents the point of departure of the message (given information or topic to be elaborated) which the rheme then develops (new information). Banks (2005: 350) set out three main benefits of nominalisation: the first was that when processes are nominalised they can then take on modifiers and qualifiers (‘the arrival of summer’ can be elaborated to ‘the much-hoped-for arrival of an Indian summer’), the second echoes Charles and Halliday above in that the possibility of nominalising the subject, complement or prepositional completive can help construct an argument through adopting the theme/rheme principle. Finally, Banks refers to the benefit of reification which is when “the process seems to acquire some of the quality of an entity” and the transformation into this “solidity … fixed factuality” fits better with the epistemology of scientific endeavour.

Baratta (2010b: 1020) identified two functions of nominalisation which were derived from the theme/rheme principle; one was that it enabled cohesion in the text by moving the rheme into the theme position in the following sentence (e.g. ‘The bank denied any involvement in the scandal. This denial was largely ridiculed in the media’). The other was retrospective labelling, a system also applied by Charles (2003) and developed by Francis (1994). Baratta saw this as enabling the writer to communicate an opinion or evaluation of a given subject in the text as an example by Charles illustrates:

The various attempts to connect the behaviour of middle powers to their capabilities have failed. . .

This failure means that the term is not much more than a self-description.

(Charles 2003: 321)

6.1.4 Technical terms

Baratta’s (2010b) analysis of undergraduate use of nominalisation was largely based on the works of Biber et al. (1999) and Francis (1994) with further refinements such as textual nominalisations which could incorporate attributions to previous research, theories or
findings; and the use of terms which have a particular relevance to the world of academia. Interestingly, Halliday (2004: 657) also noted that the nominalising metaphor allowed for the construction of a hierarchy of technical terms and Martin made a cogent defence of technical terms against accusations of being mere jargon:

They cannot be dismissed as jargon, because they do not stand in a one to one relationship with common sense terms.

(Martin 1991: 318)

Moon (1994), in dealing with fixed expressions in texts, also addressed this issue of perceived elitism through the use of fixed expressions that are not readily accessible to the non-specialist public. She did not see their function as a means to exclude, but instead offered the explanation that such language promoted a “certain cultural milieu” (p.121) which promoted agreement or preempted disagreement among members of that community. Indeed, as will be seen later in the data analysis section, the law students’ repeated formulaic references to entities of legal significance helps the reader realise the key elements the community relies upon when developing a legal perspective on the issues at hand.

6.1.5 Labelling functions of noun forms

Baratta (2010b) considered all nouns that communicated stance to be attitudinal in function. This was a unification of the two main semantic distinctions for stance nouns that had been identified by Biber et al. (1999), epistemic and attitudinal. Epistemic stance nouns (“‘but there is a real possibility of a split within the Lithuanian party’” (1999: 973)) modulate the certainty of a statement, while attitudinal stance nouns (“‘the attack left them with a fear of going out at night’” (1999: 975)) serve to communicate personal attitudes or feelings – this latter form also appears in the analysis in Section 6.2.1.3 and 6.2.2.2. Francis’ (1994) work on retrospective labels defined a range of categories for meta-linguistic head nouns; these were illocutionary (e.g. claim, observation, suggestion), language activity (e.g. example, illustration, summary), mental process (e.g. belief, notion, principle) and text nouns (e.g. page, passage, section). In common with Francis’ labels, Tadros’ (1994) work on predictive categories also illustrated the role of noun forms in bringing cohesion to the text, for example through the use of enumeration:
The term ‘question of law’ is used in three distinct though related senses... (Tadros 1994: 72)

And advance labelling:

This analysis leads us to make the important distinction between real income and money income. Money income measures ......., real income measures ...

(2014: 73)

Flowerdew’s (2006) study on signalling nouns was also concerned with text cohesion and unsurprisingly, given the academic context, he defined these nouns as “any [abstract] noun which is unspecific out of context, but specific in context” (2006: 348 – my italics). Schmid (2000) used the term shell nouns, and similar to Flowerdew, he saw a noun adopting shell noun characteristics only when its meaning was derived not from the characteristics inherent in the noun itself, but on its use, which was determined by the complementing clause. This phenomenon was also dealt with by Ivanic (1991) who referred to them as carrier nouns, Halliday and Hasan (1976) used the term general nouns and Winter (1977) had previously addressed them under the category of type 3 vocabulary. Both Flowerdew and Schmid’s analyses are adapted in Section 6.2.1.1 as their relevance seems to be particularly appropriate to the use of constructions that deal with legal frameworks,

6.1.6 Collocation and lexical bundles

The sections above emphasise the key role noun forms play in the packaging of information, with its concomitant effects of maintaining cohesion during text development, establishing stance and enabling the construction of a discipline-specific range of terms. However, there is another aspect to noun forms, in particular noun phrases, which has attracted the attention of researchers in their analyses of written texts and that relates to lexical bundles. The significance of these was noted by Biber et al. (1999: 992) when it was observed that in academic prose most lexical bundles served as “building blocks for extended noun phrases or prepositional phrases”.

In order to understand the construction of lexical bundles it is first necessary to look at Sinclair’s (1991) idiom principle and its opposite, the open-choice principle. The open-choice principle sees language construction as a series of atomised choices where selection is only restrained by “grammaticalness”. On the other hand, the idiom principle, inspired by Firth’s (1957) notion of collocation, sees the language user choosing from a number of
“semi-preconstructed phrases that constitute single choices, even though they might appear to be analysable into segments” (Sinclair 1991: 110). Collocation is significant here as, particularly in the advent of corpus analysis, it highlights “the relationship a lexical item has with items that appear with greater than random probability in its (textual) context” (Hoey 1991: 6-7), or as O’Keeffe et al. (2007) more colloquially put it on the construction of an expression, “collocation shows us the way we say it” (p.59). Long before the widespread use of corpus linguistic techniques Sinclair (1966: 429) had already noted the influence which register could have on possibilities for collocation. Therefore, when he referred to “the predictive power of items in a text” (p.412), it is to be assumed that register will condition what collocations are preferred by the writers. There is however a degree of flexibility in collocation, regardless of register. Carter’s (1998: 70) cline of collocational restriction ran from fixed (‘pitch black/ salt and pepper/accept defeat’) to semi-restricted which includes lexis such as ‘glass’ that has a semantic preference for the class of words relating to drinks (‘glass of wine/beer/water’) or a lexical item which attracts a particular semantic prosody (often of a negative connotation) such as Partington’s (1998: 66-67) analysis of ‘commit’, ‘happen’ and ‘set in’ (negative, rather than positive, events tend to ‘set in’). The other extreme of Carter’s cline was unrestricted collocation, which left lexical items open to a wide range of partnerships as he illustrated with ‘run’ (‘run a business/football team/car/shop/scheme’). As will be seen in Part d of Section 6.2, the more restricted elements of Carter’s cline are a prominent feature of the student academic legal writing corpus.

Moon (1997) categorised multi-word items as compounds, phrasal verbs, idioms, fixed phrases (‘you know/how do you do/at least’) and prefabs. Moon defined this last category as “preconstructed phrases, phraseological chunks, stereotyped collocations, or semi-fixed strings which are tied to discoursal situations and which form structuring devices” (p.47). The idea of semi-fixed strings could also be linked to Renouf and Sinclair’s (1991) work on frames where they identified sequences, usually three words long, in which the first and last were fixed. This idea of frames was also taken up by Biber et al. (1999: 1014) in their lists of four, five and six word bundles for academic prose. Biber et al. defined lexical bundles as:
They also found that most of the lexical bundles in academic prose served as building blocks for extended noun phrases or prepositional phrases. This was also confirmed by Hyland’s (2008: 9) investigation into bundles across four disciplines. In fact, in explaining the dominance of ‘of’ phrases in academic prose, Biber et al. (1999: 302) maintained that the post-modifying structure enabled greater clarity and also created more possibilities to qualify the dependent noun. For example, it is very difficult to provide a clear pre-modifier genitive-s alternative to “on the basis of” in the following sentence:

‘It is risky to make a final selection on the basis of a single year’s trial.’

(Biber et al. 1999:1018)

In line with the Biber et al.’s finding on the dominance of ‘of’ phrases it is perhaps of no surprise that the highest frequency keyword in the student legal academic writing corpus was ‘of’, with the construction ‘noun phrase + of + noun phrase’ accounting for over 90% of all hits. This can be linked to grammatical generalizations, inflexional or syntactic configurations highlighted by Carter and McCarthy (1988: 37) in their review of the work of Mitchell (1975).

6.1.7 The effect of lexical bundles on text development

In an effort to determine what lexical bundles actually do, Biber, Conrad and Cortes’ (2003) analysis led them to devise four functional categories for lexical bundles: referential bundles, text organisers, stance bundles and interactional bundles. Referential bundles dealt mostly with time and place, text organisers set up logical relationships between different discourse segments as well as providing a framework within which the object of study could be interpreted; stance bundles were, as discussed previously, concerned with epistemic and attitudinal aspects and interactional bundles served to organise conversational interactions. In addition to attitudinal stance bundles, the phenomenon of text organisers in the form of a framing bundle is also a featured in the analysis carried out in Section 6.2.1.2 as such a construction allows one to see how the law is applied in particular circumstances. Hyland (2008: 13) modified the Biber, Conrad and Cortes model
by setting up three broad categories, research oriented, text oriented and participant oriented. Elements of the final two are present in the data analysis section in that writers display participant oriented behaviour through the “affective judgements” (Hyland 2008: 18) executed with the bundle ‘the lack of’ and the text oriented resultative signals (2008: 14) displayed through ‘the fact that’. While the research papers in this paragraph clearly indicate the key role that lexical bundles play, such bundling could said to be in response to the dilemma of our brain’s vast storage capabilities but limited processing capacity. Kuiper (2004) emphasised the conventional nature of formulaic language, which would seem to fit with Biber et al.’s ‘building blocks’ metaphor for lexical bundles:

...formulaic speech enables us to harness these resources in an efficient way so long as what we wish to say does not need to be radically novel.

(Kuiper 2004: 52)

The particular nature of those building blocks in turn contribute to the ‘phraseological profile’ (Cheng 2007: 24) of a corpus, thus uncovering the characteristics of writing within any academic or indeed other register.

6.1.8 Discipline specific research on nominal forms

The research into the use of nominal forms in academic disciplines has highlighted a number of features that point to the heterogeneity of the field. Martin’s (1991) analysis of nominalisation in second level education texts for history and science (soft and hard disciplines respectively) drew a sharp distinction between the two in that fundamentally history “interprets” while science “invents” through its focus on defining, classifying and exemplifying (p.322). Cortes (2004) analysis of lexical bundles in expert and student papers for history and biology revealed that while the bundles in expert writing broadly shared the same functions, the number of structures employed by biology far outnumbered those used in history. She also found that the bundles used by students did not correspond to those in the expert papers. Hyland’s (2008) study of lexical bundles in research articles, PhD and Master theses across four disciplines showed a very limited range of common bundles with each discipline drawing on largely different sets of bundles when producing written texts. Charles also found disciplinary variation for stance noun patterns in her two studies of materials science and politics (2003, 2007). Tadros (1989) on the other hand noted that her predictive categories were transferrable from economics to law but the
degree of similarity of use depended on the function of each chapter (chapters whose function was to define the concept of wealth or define the nature of law were both likely to have a higher number of reporting constructions). However, research to date has highlighted more differences than similarities, and hence the prevalence of single discipline surveys such as Love (1993) for geology, Guillén Galve (1993) and Marco (2000) for medical research articles, Gledhill (2000) for cancer research articles, Baratta (2010b) for language, literacy and communication and Woodward-Kron (2008) for education.

6.1.9 The use of nominal forms in legal genres

As just mentioned, Tadros’ (1989) work on predictive categories (of which some included noun forms) was applied to a chapter from a legal textbook. What she noted was that the dominance of one category or absence of another depended on the rhetorical function of the chapter and therefore one could infer that as the same linguistic behaviour was observed in the field of economics and the field of law, it was less influenced by the discipline’s epistemology. Other research has not been of a comparative nature but has tended to focus on particular legal genres. Bhatia (1992: 227) noted the prevalence of nominalisation in legislative writing and explained its use on two grounds, the first being that repeating the nominalised terms was an aid to clarity and a better alternative to repeating lengthy descriptions. The second was that it enabled the reference to as many aspects of human behaviour as required and, at the same time, one could insert as many qualifications as was deemed necessary. Hiltunen (1990: 78), also referring to legislative texts, demonstrated how long nominal phrases can become through modification. In particular he noted the dominance of post-modification and of the varieties of post-modification the most commonly used was a preposition with a nominal group (i.e. “the principle of the randomness of the jury”). This phenomenon has already been noted above with regard to Biber et al.’s (1999: 302) findings on the dominance of ‘of’ phrases in general academic texts though more interestingly, this dominant pattern of use is also present in the academic legal writing corpus being analysed here. Gotti’s (2003: 67) analysis of the key syntactic features of the language of legal texts used by practitioners also noted the presence of nominalisation and the high number of content words. The issue of content words was similarly considered by Feng (2007: 3) as a defining feature of the language of contracts. The examples, which he referred to as ‘technical terms’, included ‘arbitration, rules of
procedure, losing party, arbitration expenses’ all point to the role of nominalisation. Nominal forms were highlighted by Badger (2003) in his analysis of newspaper law reports. Finally with regard to student writing, the high incidence of specialised legal technical lexis that Beasley (1994) had found in specific sections in the problem question genre was supported by Langton’s (2002: 27) study with the overwhelming majority of her corpus’s top 30 technical legal words being in nominal form.

6.1.10 The role of intertextuality in legal writing

Finally, research into legal writing has raised the issue of intertextuality. Lung’s (2008: 435) analysis of law cases revealed the reliance by judges on legal concepts, rules, acts and precedents when deriving a *ratio decidendi*. Many of these legal points of reference operate in a way similar to one possible feature of Flowerdew’s (2003: 330) signalling nouns in that they must be realised “through a mutual background knowledge” due to their often exophoric nature. Lung’s findings were also supported by Coulson (2009), who concentrated on published legal research articles:

...the vast majority of the sentence subjects in the subsample consist of references to legal materials such as laws, judicial opinions, and legal theories…

(Coulson 2009: 177)

In light of these findings it follows that one of the distinctive features of the corpus under analysis in Section 6.2 is also the use of particular keyword nodes to signal intertextual references.

6.1.11 Summary comments

Sections 6.1.9 and 6.1.10 indicate that technical terms and nominal forms are closely linked in the field of law, intertextuality permeates through a variety of genres and post-modifications of nominalised forms play an important role. It would also appear from the observations of Tadros (1989) that nominal forms are used to help maintain text cohesion. Nevertheless, the question remains as to what role nominal forms play in Masters level legal writing. There is a contrast with most of the research cited in this section in that the data to be analysed are not published material and the problem question, which was the only student legal writing genre studied above, is absent from the writing tasks assigned to
LLM students. Nevertheless, there does appear to be some common ground between the legal genres above and the essay/thesis genres that dominate the student academic legal writing corpus. Therefore, in addition to selected functions of lexical bundles and the textual or content role of signalling nouns, the role of intertextuality will be investigated as will the type of rhetoric used in post-modifications as there is a noteworthy presence of both features among the highest frequency keywords under analysis.

6.2 Data Analysis

The nodes which are of interest for this chapter are only those that facilitate the utilisation of noun forms in at least three periods; these are ‘of’, ‘that (the)’, ‘law’ and ‘on’. Table 6.1 below shows the period spread of these expressions.

Table 6.1 Frequency of keywords facilitating the use of noun forms in each period

<table>
<thead>
<tr>
<th></th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of</td>
<td>5524</td>
<td>5749</td>
<td></td>
<td>12457</td>
</tr>
<tr>
<td>That (the)</td>
<td>1729</td>
<td>1880</td>
<td>366</td>
<td>4274</td>
</tr>
<tr>
<td>On</td>
<td>943</td>
<td></td>
<td>880</td>
<td>2000</td>
</tr>
<tr>
<td>Law</td>
<td>748</td>
<td>956</td>
<td>562</td>
<td>1106</td>
</tr>
</tbody>
</table>

6.2.1 Analysis of ‘of’

‘Of’ resulted as key in three of the four periods. While it did not register as key in Period 3, that is not to say that the missing item was not present at all, indeed the level of frequency remained quite high at 4657 hits but not at a level above the norm for general academic writing. This node merits particular attention given that it has the highest frequency of all keywords. Also, of the three periods where it was key, in agreement with Biber et al. (1999: 575), the most common construction was ‘noun + of + noun phrase’ which was used in approximately 90% of the hits. Expressions with this construction that had a minimum of 10 hits accounted for 47% of total hits in Period 1, 45% in Period 2 and 53% for a normalised minimum occurrence of hits of 22 in Period 4. It is notable that most patterns
emerge through the noun preceding ‘of’ indicating that the head of the noun phrase is the more generic of the two noun groups. Indeed, of the 119 word types that represented the sub-sample of expressions with 10 hits or more in Period 1, 102 (85%) belonged to the British National Corpus (BNC) K1 and K2 lists (Cobb n.d., Heatley and Nation 1994). For Period 2, 104 (89%) of the 116 word types with 10 hits or more were from the BNC K1 and K2 lists and for Period 4, 122 (88.5%) of the 138 word types with 22 hits or more belonged to the BNC K1 and K2. The threshold is higher in Period 4 given the the greater word count for that period.

Given the high number of lines to be analysed, a further filtering was done. A limit of 30 hits or more was set for Periods 1 and 2, which constituted roughly 18% of the total number of hits for each period and, given the size of the number of hits for Period 4, this was proportionally increased to a limit of 62, which in turn constituted a slightly higher overall share of approximately 24%. The assumption here is that the rhetorical functions carried out by these high frequency expressions are likely to be also present among the lower frequency expressions. Therefore, the influence they wield over the text is greater than what the percentage share of occurrences in the corpus suggests.

However, as a consistent presence throughout the academic year was one of the criteria set for defining this semi-technical language, each expression was assessed for consistency. Those that were present in the three periods where the node ‘of’ was key would then be selected for analysis. The expressions in Table 6.2 below are the ones that met this criterion. The number of hits per period refers only to textual occurrences, that is, those lines that include course titles, the rubric of an essay question or a formulaic footnoted citation around which the student has written no additional text, are all excluded. The expressions have been categorised according to the rhetorical uses that they tend to cluster around as can be seen in Table 6.2.
Table 6.2 (* = singular and plural forms): ‘of’ based expressions occurring across the minimum of three periods

<table>
<thead>
<tr>
<th>Discipline related content</th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3 (was not a keyword)</th>
<th>Period 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Hits</td>
<td>Authors (total = 14)</td>
<td>Hits</td>
<td>Authors (Total = 15)</td>
</tr>
<tr>
<td><strong>Dealing with legal frameworks:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Principle* of</td>
<td>48</td>
<td>8/14</td>
<td>68</td>
<td>10/15</td>
</tr>
<tr>
<td>- Concept of</td>
<td>38</td>
<td>9/14</td>
<td>20</td>
<td>6/15</td>
</tr>
<tr>
<td>- Notion* of</td>
<td>24</td>
<td>9/14</td>
<td>11</td>
<td>7/15</td>
</tr>
<tr>
<td>- Rule* of</td>
<td>28</td>
<td>9/14</td>
<td>31</td>
<td>9/15</td>
</tr>
<tr>
<td><strong>Reference to the philosophical underpinnings of Western-style legal systems:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Right* of</td>
<td>62</td>
<td>12/14</td>
<td>58</td>
<td>10/15</td>
</tr>
<tr>
<td>- Protection of</td>
<td>30</td>
<td>8/14</td>
<td>36</td>
<td>9/15</td>
</tr>
<tr>
<td></td>
<td>Period 1</td>
<td>Period 2</td>
<td>Period 3</td>
<td>Period 4</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>----------</td>
<td>----------</td>
<td>----------</td>
<td>----------</td>
</tr>
<tr>
<td>Identification of stakeholders in the legal system:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Interest* of</td>
<td>30</td>
<td>7/14</td>
<td>34</td>
<td>7/15</td>
</tr>
<tr>
<td>Dealing with instruments of law:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Document citations</td>
<td>100</td>
<td>12/14</td>
<td>89</td>
<td>12/15</td>
</tr>
<tr>
<td>- Court of</td>
<td>51</td>
<td>9/14</td>
<td>56</td>
<td>10/15</td>
</tr>
<tr>
<td>- Case* of</td>
<td>51</td>
<td>10/14</td>
<td>56</td>
<td>12/15</td>
</tr>
<tr>
<td>- Provision* of</td>
<td>32</td>
<td>10/14</td>
<td>50</td>
<td>11/15</td>
</tr>
<tr>
<td>- Application of</td>
<td>27</td>
<td>9/14</td>
<td>27</td>
<td>8/15</td>
</tr>
<tr>
<td>Textual references:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Number* of</td>
<td>61</td>
<td>13/14</td>
<td>68</td>
<td>15/15</td>
</tr>
<tr>
<td>- One of</td>
<td>43</td>
<td>13/14</td>
<td>44</td>
<td>15/15</td>
</tr>
<tr>
<td>- Case* of</td>
<td>51</td>
<td>9/14</td>
<td>56</td>
<td>13/15</td>
</tr>
<tr>
<td>Attitudinal references:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of</td>
<td>46</td>
<td>9/14</td>
<td>43</td>
<td>13/15</td>
</tr>
</tbody>
</table>
Regarding the hits, some of the individual expressions belonging to the ‘Dealing with legal frameworks’ category do not reach the required thresholds but they have nevertheless been included in this analysis as they share a common rhetorical function and their pooled number of hits is comfortably above the threshold mark. Figure 6.1 below will illustrate some instances of where these expressions share a common semantic role or even the same lexis:

**Figure 6.1 Shared semantic meaning among expressions**

As can be seen above, post-modifier noun forms such as ‘punishment’, ‘random selection’ and ‘law’ can be prefaced by ‘principle’, ‘concept’, ‘notion’ and ‘rule’ without a significantly perceptible change in meaning, these terms are paradigmatically linked in meaning, as well as being syntagmatically linked. Also, lines 1 and 9 show pre-modifiers for ‘principles’ and ‘rules’ that again would indicate that both forms rhetorically refer to settled views on what form the law should have. It should be stressed that the synonymous relation here is at a local level (Carter and McCarthy 1988: 29) and while the corpus indicates that the terms are interchangeable, that is not to say that this relation is maintained across all contexts in which these terms could be found.
Returning to Table 6.2, ‘provision* of’ is also just one hit short in Period 4 but given that it is well above the required level in Periods 1 and 2 it was not eliminated. There is a similar anomaly for the number of authors, again in the Period 2 ‘Dealing with legal frameworks’ category where less than half of the authors whose texts appear in that period use the expressions ‘concept of’ and ‘notion of’. However, as already noted in Figure 6.1, there is a degree of overlap in the rhetorical functions of these expressions and if we combine the authors who avail of these two expressions, we end up with a total of ten. There is a similar issue with ‘interest* of’ in Period 2 but since it reaches the cut in Period 1 and with 12 out of 14 authors using it in Period 4, its borderline presence in Period 2 was deemed acceptable.

6.2.1.1 Discipline-related content

*Dealing with legal frameworks*

The following lines in Figure 6.2 are a sample of the expressions used in Period 1:

**Figure 6.2 Sample concordance lines for ‘of’ in Period 1**

N Concordance
1 could not be said however about the concept of compellability. 15 Claire
2 time and more importantly, under the concept of dual criminality, Mr. de
3 extradition are all aspects of the overall concept of jurisdiction. They are
4 disabled people when it examined the concept of representativeness of juries
5 and forum-shopping is the related concept of dual criminality. The notion of
6 the individual is liable” speaks to the notion of social boundaries and conveys
7 related concept of dual criminality. The notion of international co-operation and
8 current criminal justice system.’ The notion of a ‘criminal’ is and always has
9 victims in order to affirm a new notion of public good, of victimhood that
10 favours were granted freely and the notion of the accusation of rape was not
11 in this jurisdiction. It seems that the principle of the randomness of the jury
12 when “absolutely necessary”42; 4) The Principle of Legality ensures that all
13 to the customs and laws of war.” 8 The principle of proportionality is also part of
14 applied by the court are: 1) the Principle of Effectiveness, whereby the
15 and society on the other;41 3) The Principle of Necessity is similar to the
16 a kind of mid-accomplice? If so, do the rules of corroboration apply or are the
17 can be applied. It is regrettable that rules of law intended to regulate
18 the grounds of material violation of the rules of conduct, but the Appellate Body
19 to fully review the dispute settlement rules of the WTO within four years after
This cluster of expressions points to the organising principles of the law in specific contexts. Abstract ideas find their expression through the use of the shell nouns (Schmid 2000: 189) ‘principle’, ‘concept’, ‘notion’ and ‘rule’ which are then realised in the post-modifying noun or noun phrase in nominalised form:

*For example, in Glover v BLN Ltd, the Supreme Court held that the rules of audi alteram partem applied in the indisputably private law context of the dismissal of a company director.*  

The post-modifier is often of a technical nature if we accept Baratta’s (2010b) contention that such expressions have a greater currency in a particular field, which in this case is law:

*Article 24 provides for extradition in the event of offences committed under article 2 to 11 of the Convention, and the concept of dual criminality is again emphasised here.*  

Another significant aspect of the post-modifying nominalised forms is the ‘strategic imprecision’ (Tiersma 1999: 74) they can entail. This is illustrated with ‘the principle of necessity’ which is defined as follows:

*The Principle of Necessity is similar to the Proportionality test, requiring that the state only use the full weight of its force, legislative abilities or powers of derogation when “absolutely necessary”.*  

The final expression in inverted commas is a quote taken from a decision in a court case which reflects the practice in Common Law of leaving the courts have the final say on issues that must be dealt with in their unique contexts (Endicott 2005: 42).

One explanation for the need to refer to the abstract frameworks outlined in this section is offered by Bobbio (1997: 35). He argued that jurists do not adopt the empirical method of scientists when observing phenomena because the value of legal propositions lies in their correspondence to “certain ethical principles accepted as criteria to regulate action in a particular society.” Hence, even when the students use the seemingly vague term ‘the rule of law’ it is to be assumed that members of the discourse community are able to unpack the
ideal into concrete instances in the given context, though such a term may have a different meaning in another jurisdiction.

**Reference to the philosophical underpinnings of Western-style legal systems**

The reference to the philosophical underpinnings of Western-style legal systems is reflected in the use of the expressions ‘right/s of’ and ‘protection of’; sample concordance lines are shown in Figure 6.3.

**Figure 6.3 Concordance lines for expressions related to rights-based ideals**

<table>
<thead>
<tr>
<th>N Concordance</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>in the interests of the protecting the protection of the privacy and other rights</td>
</tr>
<tr>
<td>2</td>
<td>prevention of disorder or crime, for the protection of health or morals, for the</td>
</tr>
<tr>
<td>3</td>
<td>[A] State properly may consider the protection of child witnesses to be an</td>
</tr>
<tr>
<td>4</td>
<td>rules that are in place are sufficient for protection of biodiversity in Europe. In</td>
</tr>
<tr>
<td>5</td>
<td>as the danger of flooding and the protection of the coast did constitute</td>
</tr>
<tr>
<td>6</td>
<td>property rights to provide uniform protection of intellectual property rights</td>
</tr>
<tr>
<td>7</td>
<td>between the need to balance the rights of the accused as well as the</td>
</tr>
<tr>
<td>8</td>
<td>the rights of the accused as well as the rights of the witness. But does the right</td>
</tr>
<tr>
<td>9</td>
<td>on the private property and privacy rights of the individual for crime control</td>
</tr>
<tr>
<td>10</td>
<td>it stands, it is insufficient to protect the rights of the child under Article 12. In</td>
</tr>
<tr>
<td>11</td>
<td>one of the fundamental personal rights of the citizen which flow from the</td>
</tr>
</tbody>
</table>

These provide a focus which reflects an underlying philosophy in the less authoritarian government systems of the West. This is the view that the individual should be accorded more freedom and rights to prevent too much power resting with the organs of the state (Neuborne 2006). Again it is post-modification which dominates with nominalised forms for abstract entities or concrete nominal forms for mostly human agents, though this latter group is rarely accorded a proper noun but instead is more likely to be described in the more general common noun form (see Chapter 3.3.3.1 for the motivation for the use of the impersonal style in legislation and contracts). The human agents referred to are often perceived as the weaker members of society who require the protection of the law and the abstract entities are in some way vulnerable:
Thirdly, a ‘zero sum’ policy fails to take into account that the rights of the accused are potentially the rights of everybody rather than just a particular section of society. (Period 4)

... ‘the precautionary principle generally describes an approach to the protection of the environment or human health based around precaution even if there is no clear evidence of harm or risk of harm from an activity or substance.’ (Period 1)

**Identification of stakeholders in the legal system**

‘Interest/s of’ on the other hand is a more neutral device which serves to identify a stakeholder, be it an individual, institution or abstract ideal, and how it or its activities can be protected. Again, the impersonal style is prevalent as Figure 6.4 shows.

**Figure 6.4 Concordance lines for the protection of stakeholder interests**

| Concordance | 1 | to rely on public order and to act in the interests of society. Indeed it was found |
| 2 | Court to act with independence in the interests of justice: he must assist the |
| 3 | to limit his discretion as to how the interests of the lay client can best be |
| 4 | This also demonstrates how the interests of the public and the authorities |
| 5 | therefore, each must act in the best interests of the firm in order to optimise |
| 6 | are passed and they tend to protect the interests of the community rather than |
| 7 | and with loyalty to the best interests of their clients; by working to |
| 8 | by the higher courts in addition to the interests of the individual parties’.79 As |
| 9 | in a democratic society in the interests of national security, public |
| 10 | 8.6 states:- “The protection of the interests of the victim should be a more |

Its connection to the concepts of ‘rights’ and ‘protection’ in the preceding subsection is that it operates under the assumption that those it refers to may have rights that have to be upheld by the law or, at a more general level, that it refers to a favoured state of being for the parties involved:

*This also demonstrates how the interests of the public and the authorities tend to converge in the era of late modernity.* (Period 2)
Dealing with instruments of the law

However, post-modification does not always remain at the generic or abstract level and as will be seen below, specificity plays a dominant role when referring to the instruments of law. At a more applied level the instruments of law are identified through explicit reference to legal documents or through the use of ‘court of’, ‘provisions of’, ‘case of’ and ‘application of’. The first three represent the expression of law, a concretisation of the more abstract principles, concepts and notions in Section 6.2.1.1 above while ‘application of’ acts as a bridge between the law on paper and the world where those words are to have an effect.

i) Legal Documents

Perhaps in contrast to other fields, the practice illustrated in this corpus is that the work of other scholars does not dominate, but a significant body of references concern the sources of law such as court decisions, legislation and agreements. Figure 6.5 shows sample concordance lines for legislative-type references.

Figure 6.5 Concordances for legislative-type references

N Concordance

1 in Irish law is filled in. 1 Article 29.4.10° of Bunreacht na hÉireann provides that and young people under part 10 of the Children Act 2001. The most some extent it succeeded. Section 1 of the Act loosened somewhat the neglect of a child contrary to section 12 of the Children Act 1908 and despite a their Crown Court Study at para. 8.13. Of those asked did jurors try to get off of sexual or violent offences. S.13 of the Act allowed persons under 17 to 1992, a reality. In respect of Article 12 of the Convention, and the role of by the provisions of Article 40.1 of the Constitution, which allows the law to waters. Originally, section 10(1) of the Local Government (Water women did jury service. 20 Article 40.1 of the Constitution of Ireland 21 Supra body of water or not.15 Under s.12(1) of the 1977 Act, a local authority can 7 of the Juries Act 1976 refers to Part 1 of the First Schedule which lists those in Indonesia – Autos.25 Article 21.1 of the DSU requires members to 52 Supra note 1 53 Article 38.3.1 of The Constitution of Ireland 54 See are provided for under Article 3(1) of the Directive. Strict liability will be

In relation to legislation and agreements, there is a strong textual focus in the construction of the lexical bundles with the most dominant bundles being ‘section/article + (number) +
of’. While the function of these bundles matches Biber et al.’s (1999: 303) partitive relations category, in contrast to the ‘time/place/text-deixis’ bundles of Biber, Conrad and Cortes (2004: 395), the post-modifying noun here is always an expohoric reference.

Also, the noun group in the post-modifying clause is most likely to be a frozen expression as the students must refer to proper nouns in the form of titles of legal documents. This shows that that there is a highly prescriptive protocol for students to follow in dealing with these sources of law:

Cross-examination is also an essential element of the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights.

(Period 1)

Where there is not a reference to a specific part of a law making document, then students chose to express generality through the expression ‘determiner (modifier) + provisions + of’ as Figure 6.6 below shows.

**Figure 6.6 Sample uses of ‘provisions of’ and ‘provision of’**

Lines 1 to 7 show that this particular construction would appear to be peculiar to the field of law and represents on average 66% of the hits across the three periods under analysis. Its singular form, which also appeared in the corpus with a lower frequency of 33% across the
three periods, relates to the supply of support or aid in some way. What particularly defines the plural form as a legal term is its “restricted commutability” (Aisenstadt 1981: 57) in that it collocates with legal or regulatory documents only, while the singular form in the corpus shows a wider range of collocation possibilities:

...the provision of adequate nutritious foods/detention/schools/security/finance/services.

...the provisions of the human rights treaties/a double taxation agreement/the Convention/the FIFA Regulations/this Code of Conduct

In contrast to the section/article references for legislation and agreements, the level of generality implied by the ‘provisions’ bundle is also reflected in the post-modifying noun phrase which uses anaphor noun forms or general entities.

ii) Court and case references
Given the role that appeal courts play in deciding the law in Common Law countries, it is hardly surprising that the construction ‘the + (premodifier) + court + of’ features in each period. Samples of which can be found in Figure 6.7.

Figure 6.7 Court references

1 new product sought by consumers. The Court of First Instance (CFI) agreed with 2 through the rulings of the European Court of Justice (ECJ), 14 Consten and 3 Court in Guzzardi v. Italy 24 the Court of Appeal held that such orders 4 “methods of doing business” The U.S. Court of Appeals for the Federal Circuit 5 within their jurisdiction. 6 The European Court of Human Rights has stated, on 6 declared in this decision that the UK Court of Appeal’s decision in Macrossan 7 until the accused is found guilty in a court of law. The reasons for such rules 8 the view of the German Federal Court of Justice referencing Federal 9 Denham J giving judgment for the Court of Criminal Appeal and upholding 10 on the case law of the European Court of Human Rights which has proved 11 the 1st April 2009, the Constitutional Court of South Africa handed down 10
Similar to the references to legislation, the bundle ‘the + (premodifier) + court + of’ is also restricted in terms of post-modifiers as again students must refer to given institutions since hierarchy plays a key role in determining judicial precedent:

*The equivalent English stance on this matter was set out in the 1931 case of R v Lapworth in which Avory J of the Court of Criminal Appeal held...* (Period 1)

An alternative to identifying the court where a case was heard is to list the case itself. These instances are shown in Figure 6.8.

**Figure 6.8 Sample uses of ‘case of’ (1)**

As with the ‘court of’ bundle, the post-modifier, when referring to court cases uses the proper noun form. While the full case details may not be provided in terms of date, the court where it was heard and the law report where it can be found, it nevertheless leaves students with little choice in how to fashion the post-modifying noun phrase as the law community has very clear conventions regarding the citation of criminal and civil law cases (Holland and Webb 2003: 68):
It is clear that in the case of R v O’Connor the complainants’ right to privacy and right to a fair trial were invaded. (Period 2)

This was also noted by Lung (2008: 433) who highlighted that “this very standard and formulaic title” did not exist in the genre of business management cases.

However, as will be seen from the concordance lines in Figure 6.10, the construction ‘case/s of’ is not solely used to refer to court cases. Additional rhetorical uses of the construction will be discussed in the section on textual references.

Finally there is the bundle ‘(det) + (adj) + application + of’ whose concordance lines can be seen in the following Figure 6.9.

**Figure 6.9 Sample uses of ‘application of’**

<table>
<thead>
<tr>
<th>Concordance</th>
<th>Sample Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>that be should take note of the possible application of the decision in Lambert v</td>
</tr>
<tr>
<td>2</td>
<td>ground for abuse. It is clear from the application of the Ekimdzhiev safeguards</td>
</tr>
<tr>
<td>3</td>
<td>intended to circumscribe the scope of application of Article 6(4), so that only</td>
</tr>
<tr>
<td>4</td>
<td>economic, and political calm, the application of good governance is</td>
</tr>
<tr>
<td>5</td>
<td>not, in my view, accept any general application of such a procedure by the</td>
</tr>
<tr>
<td>6</td>
<td>limiting a legal system to mechanical application of rigidly defined rules is both</td>
</tr>
<tr>
<td>7</td>
<td>company director. Walsh J justified the application of these rules to the facts of</td>
</tr>
<tr>
<td>8</td>
<td>cases are quite different and thus the application of the general rule comes into</td>
</tr>
<tr>
<td>9</td>
<td>PCO cases in total every year. General application of such an approach would</td>
</tr>
<tr>
<td>10</td>
<td>84, the Commission shall ensure the application of the principles laid down in</td>
</tr>
<tr>
<td>11</td>
<td>competition law has been the application of Article 82 EC and the old</td>
</tr>
<tr>
<td>12</td>
<td>out that the natural conclusion of the application of Article 7 is that the</td>
</tr>
<tr>
<td>13</td>
<td>the Merger Regulation questioned the application of the “dominance” test and</td>
</tr>
<tr>
<td>14</td>
<td>ensure that in the interpretation and application of the Treaty the law is</td>
</tr>
<tr>
<td>15</td>
<td>brings clarity and precision to its application of the doctrine. It relies on</td>
</tr>
<tr>
<td>16</td>
<td>aside, it is submitted that the Court’s application of the precautionary principle</td>
</tr>
<tr>
<td>17</td>
<td>views of human rights and the uniform application of Convention values. The</td>
</tr>
<tr>
<td>18</td>
<td>is a serious question as to whether the application of the doctrine is consistent</td>
</tr>
</tbody>
</table>

Here we can see that the post-modifier noun phrase is usually anaphoric and frequently refers to either a particular instrument of law or policy. Hence, in the post-modifier position we frequently find articles, rules, conventions, treaties, doctrines etc. The presence of a ‘-tion’ suffix, along with ‘protection’ in Section 6.2.1.1 would appear to be in line with Biber
et al.’s (1999: 323) finding that such derivational suffixes are most common in academic writing. Rhetorically, the ‘(det) + (adj) + application + of’ construction complements nicely the reference to legal documents and court cases in that it can enable a critical assessment of how the law interfaces with reality:

While the application of competition law to such anti-competitive agreements is uncontroversial, difficulties arise when one tries to apply Article 81 to oligopolistic markets. (Period 4)

Summary comments
It is clear from the sub-sections above that ‘of’ plays a role in unveiling different layers of detail about the law; be that the outlining of specific references to sections of legislative documents, or the invoking of ideals which inform the formation and practice of law. The frequencies of the different rhetorical functions are highlighted in Table 6.3 and Chart 6.1 below.

Table 6.3 Total frequency occurrences for rhetorical functions related to disciplinary content based around the node ‘of’

<table>
<thead>
<tr>
<th>Rhetorical field: Discipline-related content</th>
<th>Total number of hits over for Periods 1,2 and 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dealing with legal frameworks:</strong></td>
<td></td>
</tr>
<tr>
<td>- Principle* of</td>
<td>148</td>
</tr>
<tr>
<td>- Concept of</td>
<td>108</td>
</tr>
<tr>
<td>- Notion* of</td>
<td>57</td>
</tr>
<tr>
<td>- Rule* of</td>
<td>102</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>415</strong></td>
</tr>
<tr>
<td><strong>Reference to the philosophical underpinnings of Western-style legal systems:</strong></td>
<td></td>
</tr>
<tr>
<td>- Right* of</td>
<td>263</td>
</tr>
<tr>
<td>- Protection of</td>
<td>138</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>401</strong></td>
</tr>
</tbody>
</table>
Identification of stakeholders in the legal system:
- Interest* of 143

Dealing with instruments of law:
- Document citations 704
- Court of 175
- Case* of 85 (including case-law references only)
- Provisions of 94 (including legislative references only)
- Application of 155
Total 1213

* = singular and plural forms

Chart 6.1 Percentage share of rhetorical functions related to disciplinary content based around the node ‘of’

<table>
<thead>
<tr>
<th>Discipline-related content</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ref to philosophical underpinnings of Western-style legal systems</td>
<td>18%</td>
</tr>
<tr>
<td>Identification of stakeholders in the legal system</td>
<td>7%</td>
</tr>
<tr>
<td>Dealing with legal frameworks</td>
<td>19%</td>
</tr>
<tr>
<td>Dealing with instruments of law</td>
<td>56%</td>
</tr>
</tbody>
</table>
The above shows that students have a clear orientation towards the articulation of the more concrete aspects of law and even within that category one can see the dominance of a high degree of specificity with over half of the hits referring to particular sections of legal documents (Document citations). This perhaps is not so surprising if one considers it more likely that the law ‘on the ground’ is going to manifest itself in a far wider variety of ways rather than the (necessarily) more stable principles and ideals that govern it. Nevertheless, the other three categories, while more abstract in outlook, all share the core function of articulating an aspect of law which usually concerns the well-being of a citizen or entity. Combining the various expressions of this ‘protective role’ means it covers 44% of all concordance lines analysed. Therefore, the rhetorical functions of the discipline-related content category are broadly just two: the more applied naming of the law on any issue, and to a lesser extent, the articulation of abstract ideals that promote the legal well-being of the subjects under scrutiny.

6.2.1.2. Textual references

These expressions have a text organising role. The most prominent members of this category are shown in Table 6.4.

Table 6.4 Frequencies and use by authors for textual reference expressions based around the node ‘of’

<table>
<thead>
<tr>
<th></th>
<th>Period 1</th>
<th></th>
<th>Period 2</th>
<th></th>
<th>Period 4</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Hits</td>
<td>Authors</td>
<td>Hits</td>
<td>Authors</td>
<td>Hits</td>
<td>Authors</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(total = 14)</td>
<td></td>
<td>(total = 15)</td>
<td></td>
<td>(total = 14)</td>
</tr>
<tr>
<td>Textual references:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Number* of</td>
<td>61</td>
<td>13/14</td>
<td>68</td>
<td>15/15</td>
<td>131</td>
<td>13/14</td>
</tr>
<tr>
<td>- One of</td>
<td>43</td>
<td>13/14</td>
<td>44</td>
<td>15/15</td>
<td>98</td>
<td>14/14</td>
</tr>
<tr>
<td>- Case* of</td>
<td>51</td>
<td>9/14</td>
<td>56</td>
<td>13/15</td>
<td>83</td>
<td>14/14</td>
</tr>
</tbody>
</table>

*= singular and plural form
The core bundles and derivative forms of ‘number* of’ and ‘one of’ also feature in Biber *et al.*’s (1999: 994) list of most common three word bundles in academic prose and these have a predominantly endophoric role. The bundle ‘case* of’ does not fulfil this function as Figure 6.10 illustrates below.

**Figure 6.10: Uses of ‘case of’ (2) and ‘cases of’**

<table>
<thead>
<tr>
<th>N Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 of the market players. Thus in the case of a benign oligopolistic market</td>
</tr>
<tr>
<td>2 of the control of concentrations, in the case of collective dominance, requires</td>
</tr>
<tr>
<td>3 courses of conduct interact, while in the case of an undertaking occupying a</td>
</tr>
<tr>
<td>4 by the accused be prohibited in the case of a sexual offence against a child,</td>
</tr>
<tr>
<td>5 of the manufacturer’s warranty. In the case of a dispute arising over such a</td>
</tr>
<tr>
<td>6 would not be able to do the same in the case of a person without a record. Here</td>
</tr>
<tr>
<td>7 .... There is no obvious BATNA in the case of a divorce, a labor-management</td>
</tr>
<tr>
<td>8 re-examination of the facts, even in the case of an acquittal. This is not</td>
</tr>
<tr>
<td>9 , the Commission shall investigate cases of suspected infringement of</td>
</tr>
<tr>
<td>10 those bystanders of their duties in cases of genocide, and of their pledge</td>
</tr>
<tr>
<td>11 in which PCOs can be harnessed in cases of general public importance</td>
</tr>
<tr>
<td>12 . However, section 16 is not limited to cases of intimidation, nor is it focussed</td>
</tr>
<tr>
<td>13 involved in the prosecution or defence of cases of child sexual abuse or sexual</td>
</tr>
<tr>
<td>14 directives can be more troublesome in cases of mentally impaired patients as</td>
</tr>
<tr>
<td>15 and exceptional after twelve months in cases of head injury.6 However it must</td>
</tr>
</tbody>
</table>

The use of ‘the case of’ has already been discussed from the point of view of its reference to court actions (see Figure 6.8). When the bundle is not used to refer to specific court actions or its plural form is used (‘in cases of’), and these applications account for approximately 60% of the hits, then the post-modifying noun phrase is less restricted and more general in terms of reference (the first example below) or it can function as a noun complement and invoke a hypothetical scenario (second example):

*...the Court of Criminal Appeal had indicated in People (DPP) v T that common law or statutory rules limiting compellability of the spouse may, at least in some cases of suspected child abuse, be unconstitutional.*

(Period 2)
Breastfeeding may be the best form of nutrition.....but can be dangerous or impossible.....in the case of a multiple birth or if the mother is absent.

(Period 2)

This form of use could be said to adhere to Biber, Conrad and Cortes’ (2003: 80) subcategory, the text organising ‘framing’ bundle. Its reference points are clearly exophoric and they can serve to qualify or exemplify a point being made. Nevertheless, the bundle itself has a metadiscoursal function in that it serves to direct the reader to categorise the information it carries in quite a specific manner.

Bundles with an endophoric role

The two forms that execute an endophoric role are ‘number of’ and ‘one of’; samples of which are shown in Figure 6.11.

Figure 6.11 Sample uses of ‘number/s of’ and ‘one of’
The use of ‘det + (adj) + number/s + of’ is used as a cataphoric reference similar to Tadros’ enumeration category of prediction (1994: 70), particularly when the determiner is the indefinite article and the noun complement is a plural countable noun:

> The Commission report “Company Taxation in the Internal Market” commented on a number of possible instruments which could be utilised. The first of these solutions was … (Period 1)

However, when the adjective is present or a definite article is used in the post-noun complement, it is more likely to be a ‘quantifying’ (Biber et al. 1999: 257) composite noun phrase which forms an autonomous group and does not set up a sequence that must be followed in the subsequent text. This represents about 50% of all the hits for this bundle:

> Therefore, not only has emergency expanded to an ever greater number of nations, but within the affected nations, it has extended its grip. (Period 1)

> …non-judicial officials have no authority to terminate a case reaching a level of evidentiary sufficiency, or even to determine the seriousness or number of the charges on which a defendant is ultimately tried. (Period 2)

The bundle ‘one + of + (det) + post-modifying noun phrase’ tends to operate as an anaphoric reference which enables the writer to elaborate the noun in the subject position of the sentence or clause:

> Walsh J in People (DPP) v T when he implied that the Criminal Law (Rape) Act 1981 under which the accused was charged was one of the pieces of post-1924 legislation falling within the McGonagle decision. (Period 1)

When ‘one of’ is used as a cataphoric reference, then it focuses on one aspect or member of a group and provides new information about it:

> One of the greatest achievements of progressive democracies in the last century is to have recognised the rightful place of the child in the societal fabric. (Period 1)
The use of ‘one of’ above is an explanatory cataphoric reference which establishes a link across clauses though the meta-text ‘distance’ (Bunton 1999: 48) does not often go beyond sentence level. The post-modifier in ‘one of’ below is not explanatory but has the role of specifying one of the agents that has already been referred to in the text. This functional use of the bundle represents less than 20% of all hits:

“Adjudicative” is defined here as relating to any decision requiring a choice between seemingly equal claims of right that will have negative impact on one of the claimants. (Period 1)

Summary comments
The total number of occurrences for the main textual markers is shown in Table 6.5.

Table 6.5 Total frequencies for textual reference expressions

<table>
<thead>
<tr>
<th>Rhetorical field: Textual references</th>
<th>Total number of hits over for Periods 1, 2, and 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Number* of</td>
<td>130</td>
</tr>
<tr>
<td>- One of</td>
<td>185</td>
</tr>
<tr>
<td>- Case* of</td>
<td>105</td>
</tr>
<tr>
<td>Total</td>
<td>420</td>
</tr>
</tbody>
</table>

The overall lower level of frequency of these textual markers when compared to the discipline-related content lexical bundles is most likely a reflection of the data analysis process. The keyword ‘of’ lends itself to a particular legal style that is obviously not replicated in the BAWE corpus. This legal style is, to date, more focused on discipline-related content issues rather than textual issues or, as we will see below, issues of stance.

6.2.1.3 Author stance
With a total number of hits at 173, this rhetorical use represents the least common use for ‘of’. Table 6.6 shows the hits recorded in each period.
Table 6.6 Frequencies and author use of ‘lack of’ in each period

<table>
<thead>
<tr>
<th></th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Hits</td>
<td>Authors (total = 14)</td>
<td>Hits</td>
</tr>
<tr>
<td>Attitudinal references:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of</td>
<td>46</td>
<td>9/14</td>
<td>43</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>84</td>
</tr>
</tbody>
</table>

While one could argue that the construction ‘det + lack + of’ belongs to Biber et al.’s quantifying noun category (1999: 254) in that it specifies the absence or limited availability of something (e.g. ‘a mass of detail’ v ‘a lack of detail’), its semantic prosody (Sinclair 1991: 70) would indicate that it implies a negative evaluation and is hence more suited to Hyland’s (2008: 14) participant oriented stance features. Figure 6.12 has sample concordances lines for the expression.

**Figure 6.12 Sample uses for ‘lack of’**

N Concordance
1. to understanding the subsequent lack of action from the legislature, which
2. of such measures because of the lack of empirical evidence to support the
3. by the delay. This, accompanied by the lack of reason for the buyer to inspect
4. of questioning is combined with the lack of a right to legal representation
5. over the others in so far as the lack of a past record would deny
6. rule’ may be added a witness’s lack of veracity and a witness’s physical
7. treatment to deliver the baby, but the lack of treatment would ultimately be the
8. is hugely undemocratic. In addition, the lack of legislation means that laypersons
9. enforced solitude or conversely, lack of privacy, lack of meaningful
10. local health services on the grounds of lack of adequate security, a practice has
11. have continually raised the issue of the lack of suitable treatment for mentally ill

Through the use of this construction the student writer is able to introduce a critical stance on a particular issue. This *averral* (Sinclair 1986, Tadros 1993, Hunston 2000) can be with the writer making the evaluation, which is the preferred use of the construction, with 55%
of all occurrences in this corpus, or, alternatively, with the writer quoting an external source (an average of 25% across the three periods, the remaining 20% appears to be a more neutral application of the form)

Writer averral:

*In addition, the lack of legislation means that laypersons and lawyers alike cannot decipher what the law says and as a consequence cases are unnecessarily being brought to the courts for approval.* (Period 4)

Attribution to others:

*This proposal was rejected by the Working Party for the lack of clarity and precision appropriate for a definition.* (Period 4)

What is also evident from the corpus lines above is a strong trend to refer to processes or abstract concepts in nominalised form.

### 6.2.2 Analysis of ‘that’

‘That’ appears as key in Periods 1, 2 and 4. ‘That’ is not a keyword in Period 3 but ‘that the’ was, as Table 6.7 below shows.

<table>
<thead>
<tr>
<th></th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>That</td>
<td>1729</td>
<td>1852</td>
<td>366 (that the)</td>
<td>4274</td>
</tr>
</tbody>
</table>

While the use of ‘that’ is mostly in the form of a reporting function, with approximately 90% of hits fulfilling this role, there are nevertheless instances in the remaining 10% where it collocates with noun forms to act as a focussing device or indeed uses the construction to report the author’s view or that of others. The two bundles, shown in Table 6.8 below, belong to this core group of 26 expressions and represent between 43% and 50% of total hits in each period.
Table 6.8 Frequencies for two most common ‘that’ bundles in each period

<table>
<thead>
<tr>
<th></th>
<th>Period 1</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Hits</td>
<td>Authors</td>
<td>Hits</td>
<td>Authors</td>
<td>Hits</td>
</tr>
<tr>
<td></td>
<td>(total =</td>
<td>(total =</td>
<td>(total =</td>
<td>(total =</td>
<td>(total =</td>
</tr>
<tr>
<td>The + fact</td>
<td>47</td>
<td>12/14</td>
<td>62</td>
<td>14/15</td>
<td>71</td>
</tr>
<tr>
<td>+ that</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Noun phrase +</td>
<td>68</td>
<td>12/14</td>
<td>65</td>
<td>14/15</td>
<td>60</td>
</tr>
<tr>
<td>be + that</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

With 'that the' as the keyword in Period 3, we have just 23 hits for 'the fact that the'. However, the 3-word bundle 'the fact that' has in Period 3 more hits than in the previous two periods. Therefore, I decided to base my analysis in that period on this more open form of the expression. One possible explanation for the low frequency of ‘the fact that the’ is that it happens to be a minor constituent of the base keyword structure ‘that the’. Similarly for ‘noun phrase + be + that’, just 13 hits come under the 'that the' category in Period 3 but there are 60 under 'that'. Again, given the high number in relation to Periods 1 and 2, I chose this latter form as my basis.

6.2.2.1 ‘The + fact + that’

The bundle ‘the + fact + that’ acts primarily as a focussing device, though with a resultative clause similar to Hyland’s text oriented resultative signals (2008: 14). Sample concordance lines are shown in Figure 6.13.
Figure 6.13 Sample uses for ‘the fact that’

In agreement with Biber et al. (1999: 676), the corpus shows that it most commonly occurs in the sentence-medial positon (the resultative clause is in square brackets):

\[
\text{The infinite factors that need to be taken into account along with the fact that there is no right or wrong answer [makes the decision making process extremely difficult.]}\quad \text{(Period 1)}
\]

With about 15% of the hits in subject position:

\[
\text{The fact that Ireland has opted out of the Reception Conditions Directive...} \quad \text{(Period 2)}
\]

If the complement does not provide new information then space is frequently created for an evaluation or an elaboration of the ‘bundle + post-modifier’ theme thereafter:

\[
\text{The fact that Ireland has opted out of the Reception Conditions Directive ... is a denial of the human rights which the Directive seeks to protect.} \quad \text{(Period 2)}
\]

Alternatively, the evaluation or elaboration can precede the bundle:

\[
\text{Again we look at the Wayne O’Donoughue case and the four year sentence, for manslaughter, that caused considerable anger and recrimination particularly in}\quad \text{in}
\]
view of the fact that the offender had hidden the body while pretending to search for it.  

(Period 2)

6.2.2.2 ‘Noun phrase + be + that’

Table 6.9 below shows the breakdown of how students use this bundle.

Table 6.9 Functions and frequencies for ‘noun phrase + be + that’

<table>
<thead>
<tr>
<th></th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Averral - author</td>
<td>25</td>
<td>17</td>
<td>20</td>
<td>34</td>
</tr>
<tr>
<td>- external</td>
<td>22</td>
<td>13</td>
<td>15</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>47</td>
<td>30</td>
<td>35</td>
<td>46</td>
</tr>
<tr>
<td>Focus/elaboration</td>
<td>21</td>
<td>45</td>
<td>25</td>
<td>76</td>
</tr>
<tr>
<td>Total</td>
<td>68</td>
<td>75</td>
<td>60</td>
<td>122</td>
</tr>
</tbody>
</table>

The averrals indicate a reporting function which is likely to include an evaluative stance. Those that appeared to be more neutral were categorised as a focusing/elaboration device. Figure 6.14 illustrates its use in this capacity.

Figure 6.14 Sample uses for ‘noun phrase + be + that’

N Concordance
1  any funds.9 The disadvantages of this are that the bank must rely on the fund
2  of the real wrong of rape”11. The wrong is that a person has potentially been
3  are decidedly rehabilitative. The ethos is that attendees are not there to be
4  member state. 18 The effect of this is that a WTO ruling against a major
5  10(4) of the Trade Marks Act 1996, is that evidence of confusion with another
6  in any court action. A major concern is that witnesses and indeed victims will
7  and won his case. The point of course is that intimidation does occur and the
8  in this respect but the important point is that the victim has no statutory right to
9  the “result of this approach by the ECJ is that when Member States conclude
10  lecture on the material for this course, is that they are largely voluntary and
11  rationale behind the new penal system was that a proportionate punishment
12  was to be funded. The result was that most mentally ill patients (97%)
13  settled status there”.48 His belief was that family members should be
14  abroad. Life was good but the downside was that everything would have to be
15  for the future. Bentham’s philosophy was that offenders calculated the risk of
The students use this bundle to focus on a nominalised abstract form, a shell noun (Schmid 2000), and then the post-modifier will provide the elaboration move or as Schmid described, “the stretches of discourse which express the shell contents” (2000: 80):

Another charge levelled at Operation Turquoise is that in the context of a “humanitarian” mission it was poorly equipped to perform its task.

(Period 3)

However, while the example above is an attribution to a footnoted external source, many of these shell nouns enable the student to establish his or her own evaluative stance which is articulated in the elaboration:

...the sad conclusion is that we live in a blemished world that imposes horrendous conditions on some of our young people.

(Period 3)

Or the students use the nouns as a focusing device:

The recurring theme throughout the Rules is that any intervention in the child’s life must have the intention of protecting his/her well-being, rights and development.

(Period 1)

6.2.2.3 Summary comments
The two constructions above (‘noun phrase + be + that’ and ‘the + fact + that’) would appear to serve the role of getting the reader to focus on a particular piece of information so that the writer can elaborate around it in some way. Schmid’s shell noun concept (see Section 6.1.5) fits both constructions well though in addition to textual organisation it is evident from the examples above that the bundles play an important role in enabling the author to introduce an evaluative stance to the discourse.

6.2.3 Analysis of ‘law’
Table 6.10 shows the total number of hits for ‘law’ for each period. However, 1377 of these hits belong to footnoted legal citations, course titles etc. Table 6.11 on the other hand lists the main compound forms of law which are to be found in text form in the corpus. While
the data analysis till now has evidenced the dominance of post-modifiers or complements, the node ‘law’ does not follow this trend and instead shows a clear preference for pre-modifiers. The compound forms below with a pre-modifier conform to Bauer’s (1983: 30) endocentric category of compound nouns in that the compound serves as a hyponym for the grammatical head (e.g. international law is a type of law). Similarly, the meaning relation established by the pre-modified sequence would appear to fit Biber et al.’s (1999: 590) logical relation of ‘content’ (i.e. N₂ deals with N₁ → Community law → law about the European Community) though some of the compound noun forms which have several definitions and identities, such as common law, do not sit easily with this categorisation²⁰. Nevertheless, these nominalised forms have, to use Guillén Galve’s term, "fossilized" as “writers use them simply because those realizations have become the conventional way of presenting certain information” (1998: 375). Tables 6.10 and 6.11 show the period frequencies for law and the main compound forms.

### Table 6.10 Frequencies for ‘law’ in all periods

<table>
<thead>
<tr>
<th></th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law</td>
<td>748</td>
<td>966</td>
<td>562</td>
<td>1106</td>
</tr>
</tbody>
</table>

### Table 6.11 Frequencies for main compound forms of ‘law’

<table>
<thead>
<tr>
<th>Main compound forms</th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law reform</td>
<td>29</td>
<td>16</td>
<td>4</td>
<td>29</td>
<td>78</td>
</tr>
<tr>
<td>Criminal law</td>
<td>29</td>
<td>107</td>
<td>20</td>
<td>16</td>
<td>172</td>
</tr>
<tr>
<td>Common law</td>
<td>36</td>
<td>53</td>
<td>41</td>
<td>29</td>
<td>159</td>
</tr>
<tr>
<td>International law</td>
<td>6</td>
<td>4</td>
<td>18</td>
<td>1</td>
<td>29</td>
</tr>
<tr>
<td>Irish law</td>
<td>9</td>
<td>6</td>
<td>3</td>
<td>34</td>
<td>52</td>
</tr>
<tr>
<td>Domestic law</td>
<td>10</td>
<td>6</td>
<td>3</td>
<td>20</td>
<td>39</td>
</tr>
</tbody>
</table>

²⁰ For the three distinct senses of the term ‘common law’ see MacIntyre (2005:5)
<table>
<thead>
<tr>
<th>Main compound forms</th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competition law</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>66</td>
<td>66</td>
</tr>
<tr>
<td>Community law</td>
<td>19</td>
<td>48</td>
<td>9</td>
<td>13</td>
<td>89</td>
</tr>
<tr>
<td>EC law</td>
<td>11</td>
<td>8</td>
<td>-</td>
<td>4</td>
<td>23</td>
</tr>
<tr>
<td>Case law</td>
<td>22</td>
<td>17</td>
<td>13</td>
<td>39</td>
<td>91</td>
</tr>
<tr>
<td>Environmental law</td>
<td>7</td>
<td>4</td>
<td>6</td>
<td>-</td>
<td>17</td>
</tr>
<tr>
<td>Public law</td>
<td>2</td>
<td>19</td>
<td>4</td>
<td>-</td>
<td>25</td>
</tr>
<tr>
<td>Civil law</td>
<td>5</td>
<td>25</td>
<td>5</td>
<td>1</td>
<td>35</td>
</tr>
<tr>
<td>Mental health law</td>
<td>-</td>
<td>19</td>
<td>3</td>
<td>-</td>
<td>22</td>
</tr>
<tr>
<td>Private law</td>
<td>-</td>
<td>6</td>
<td>7</td>
<td>-</td>
<td>13</td>
</tr>
<tr>
<td>Roman law</td>
<td>-</td>
<td>-</td>
<td>11</td>
<td>-</td>
<td>11</td>
</tr>
<tr>
<td>Noun + of + law</td>
<td>35</td>
<td>21</td>
<td>58</td>
<td>58</td>
<td>172</td>
</tr>
<tr>
<td>The law</td>
<td>93</td>
<td>88</td>
<td>60</td>
<td>124</td>
<td>365</td>
</tr>
</tbody>
</table>

It is worth noting that the pre-modifier examples above tend to reflect a subject mix in the relevant sub-corpus period and hence their uneven distribution. Of the 18 expressions listed in Table 6.11, just five constitute almost 50% of all text hits and it is these that will be the focus of further analysis. A period breakdown of these is shown in Table 6.12 and concordance lines can be seen in Figure 6.15.

**Table 6.12 Frequencies and authors’ use of main ‘law’ phrases**

<table>
<thead>
<tr>
<th>Phrase</th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
<th>% of text hits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common law/Case law</td>
<td>58</td>
<td>11/14</td>
<td>70</td>
<td>10/15</td>
<td>68</td>
</tr>
<tr>
<td>Phrase</td>
<td>Period 1</td>
<td></td>
<td>Period 2</td>
<td></td>
<td>Period 3</td>
</tr>
<tr>
<td>-------------</td>
<td>----------</td>
<td>---</td>
<td>----------</td>
<td>---</td>
<td>----------</td>
</tr>
<tr>
<td>Noun + of + law</td>
<td>35</td>
<td>10/14</td>
<td>21</td>
<td>11/15</td>
<td>58</td>
</tr>
<tr>
<td>The law</td>
<td>93</td>
<td>12/14</td>
<td>88</td>
<td>12/15</td>
<td>60</td>
</tr>
<tr>
<td>Criminal law</td>
<td>29</td>
<td>9/14</td>
<td>107</td>
<td>8/15</td>
<td>20</td>
</tr>
<tr>
<td>Total %</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Figure 6.15 Sample uses of ‘law’ phrases**

N Concordance

1. it has not been referred to in recent case law ... and may now, at least in so
2. for guidance due to the dearth of Irish case law on the sale of goods. It was
3. The government did not refer to any case law prior to the date of questioning
4. need of the Irish courts to look to the case law of England and Wales for
5. although Ireland differs from many other common law jurisdictions by
6. legal rights. The one exception to the common law prohibition on detention for
7. interviews “is routine in most first world common law countries.”128 Hardiman J
8. it clear why the examples of other common law jurisdictions such as the
9. the definition of merchantable quality at common law, accompanied by
10. of checking the tax and insurance. The Criminal Law Act 1997 permits a Garda
11. this section is restricted by s.18 of the Criminal Law (Jurisdiction) Act 1976 (No.
12. thread” that runs throughout the web of criminal law.3 The burden of proof rests
13. right to life by putting in place effective criminal-law provisions to deter the
14. to Garland’s issue of the politicisation of law and order and the emergence of a
15. Court because it involved a point of law of exceptional importance. The
16. concern for consistency and the rule of law than the more policy driven
17. 53 Supra n.15 As in any other area of law, legislation concerning advertising
18. maximum viability. 221 It is evident that the law is unclear in this area and needs
19. of decisions to bring about changes in the law has ultimately led to confusion.
20. these concessions it remains clear that the law after Gencor was very favourable
21. sole manner of addressing issues with the law. They have turned their hand to
22. and lawyers alike cannot decipher what the law says and as a consequence
23. in the dominance based ECMR. The law only prohibited mergers which
24. legislation rather than a distortion of the law through jurisprudence. The
6.2.3.1 Common law/Case law

The more generic ‘common-’ and ‘case law’ forms permeate throughout the general corpus and indeed their combined presence consistently places them in second or third most frequent form in each of the four periods. ‘Common law’ is used in the sense of marking its identity as a legal system separate from the European continental civil law tradition and in an average of two-thirds of the cases it itself is used as a pre-modifier:

*The common law practitioner adapts the law to the circumstances of his or her client*  

‘Case law’ on the other hand is never used as a pre-modifier and its function is to refer to the law that is made by the courts:

*It will be submitted that trying to marry legislation for this technological era with this case law is unsuitable as it has left gaps in the law which...*  

6.2.3.2 Noun + of + law

Standing apart from the fixed expressions which dominate the list in Table 6.11, a considerable degree of variability occurs further to the left of the node ‘law’ through the use of ‘noun + of + law’ phrases. This form, occurring 172 times, represents almost 10% of the total number of text hits for the node ‘law’ in the corpus and with the exception of Period 2, is among the top three most frequently used forms of ‘law’. The relations expressed here are largely ‘defining’ (Biber *et al.* 1999: 303) in that the writers use the headword to refer to a particular aspect or feature of law:

*...the minimum degree of legal protection to which citizens were entitled under the rule of law in a democratic society was lacking.*  

This use may reflect the task rubric, which frequently gets students to assess the state of the current law in a particular area.\(^{21}\)

---

\(^{21}\) The following is a sample of essay questions and theses:

- Write on an area of comparative public law
- Critically Assess the role of the Mental Health Tribunals under the Mental Health Act 2001
- With reference to their form, functions, status and powers, critically discuss the extent to which Europol and Eurojust constitute an embryonic European police and prosecution service. Discuss.
- Discuss the impact of community law on double taxation agreement.
6.2.3.3 The law

However, the most common occurrence, with over 18% of all text hits for the node, is the students’ reference to ‘the law’. Students normally talk about the law in terms of what needs to be done with it, to describe its current state or with a post-modifier to indicate what field of law in particular. All of these place ‘the law’ in a passive role and account for about 80% of occurrences. Again, the explanation for this preference could lie with the task rubric:

\[
\text{This power allows the Commission to reform the law and adapt it to changing circumstance.} \quad \text{\footnotesize (Period 4)}
\]

The other 20% is where the students make ‘the law’ the active agent in terms of what it says, allows, provides for etc.:

\[
\text{A competent witness is a person whom the law allows a party to ask, but not compel, to give evidence.} \quad \text{\footnotesize (Period 1)}
\]

6.2.3.4 Criminal law

This construction seems to function similarly to 'the law' in that it is regarded as an entity and is most often the object of scrutiny, analysis or actions:

\[
\text{The deterrent function of criminal law would imply that prompt and appropriate punishment prevents future offences.} \quad \text{\footnotesize (Period 3)}
\]

6.2.3.5 Summary comments

With the exception of ‘criminal law’, whose presence here is due to an unexplained surge of hits in Period 2, the most common uses of the node ‘law’ are linked to structures that have a very broad scope of application. ‘The law’ and ‘noun + of + law’ will draw their meaning from the context in which they are set and additionally for the latter, the type of headword preceding the post-modifier ‘of law’. ‘Common law’ and ‘case law’ deal with issues of marking identity (common law) and practices within the legal community (the

\[\]
necessity to refer to case law) which obviously permeate throughout the sub-disciplines.
That the law is mostly subject to comment, analysis, further defining and description rather
than being a dynamic agent of action is perhaps a reflection of the expectation of master
level students not only to say what the law does, but more importantly to offer a critical
assessment of it.

6.2.4 Analysis of ‘on’
‘On’ appears as a top five keyword item in three of the four periods. Table 6.13 shows the
frequencies for each of those periods.

Table 6.13 Period frequencies for ‘on’ as a keyword

<table>
<thead>
<tr>
<th></th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>On</td>
<td>943</td>
<td>880</td>
<td>2000</td>
<td></td>
</tr>
</tbody>
</table>

Again the number of hits listed in Table 6.13 includes non-text items such as formulaic
citations in bibliographies and footnotes. These account for about 60% of the total sub-
corpus. There is an additional factor which is that ‘on’ collocates with many verbs and
nouns and for much of this sub-corpus it was not possible to identify a clear pattern of
language or functional patterns. Nevertheless, some trends did emerge and these were
mostly noun forms that combined with ‘on’ to refer to particular legal-related documents or
formal bodies. These occurrences accounted for about 13.5% of the total sub-corpus. Table
6.14 below shows the number of text hits in each period which conformed to this pattern
while Figure 6.16 illustrates some concordance lines.

Table 6.14 Relevant frequencies for ‘on’ as a node in nominal constructions

<table>
<thead>
<tr>
<th></th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>On</td>
<td>48</td>
<td>33</td>
<td>103</td>
<td></td>
</tr>
</tbody>
</table>
Intertextual or exophoric references dominate, which is quite similar to the document references that used the node ‘of’. What these two forms also have in common is that the expressions referred to are frozen and it appears that the need to refer to formal titles is a protocol that students are required to follow:

Thus, the final version of Article 9 (i.e., Article 52 EPC) was codified upon the signing of the Convention on the Grant of European Patents (EPC) on October 5, 1973 and became effective in signatory member states in 1977. (Period 4)

Many of the suggestions and recommendations of Report of the Joint Committee on Child Protection (November 2006) are still relevant. (Period 2)

The variety of forms which students use to refer to non-academic sources also implies the applied nature of the study of law at this level. This confirms that articulating the law as it is applied and reported on by the state-vested powers is certainly a defining feature LLM writing.
6.3 Discussion

The widespread use of nominalisation and nominal forms in the form of abstract nouns and the prevailing use of lexical bundles with post-modifier noun phrases or complements is in keeping with Biber et al.’s (1999: 323, 301) observations about the nature of academic prose. While the analysis above was done along the lines of the rhetorical functions of the nominal forms clustering around the high frequency keyword nodes, it is now possible to quantify the occurrences of these functions in Table 6.15 and Chart 6.2 below.

Table 6.15 Total frequencies for main rhetorical functions

<table>
<thead>
<tr>
<th>Rhetorical reference clusters</th>
<th>Corpus total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The law at a more abstract level</td>
<td>1918</td>
</tr>
<tr>
<td>2. Instruments of law</td>
<td>1488</td>
</tr>
<tr>
<td>3. Textual references</td>
<td>1089</td>
</tr>
<tr>
<td>4. Stance</td>
<td>297</td>
</tr>
</tbody>
</table>

23 The occurrences for here are drawn from the ‘legal frameworks’, the ‘philosophical underpinnings’ and ‘identification of stakeholders’ categories related to the node ‘of’, ‘common law’, ‘criminal law’, ‘the law’ and ‘noun + of + law’.
24 The instruments of law refer to the sub-categories listed in Table 6.3 for the node ‘of’ along with ‘on’ and ‘case law’.
25 The textual references refer to those connected to ‘of’ (Table 6.4) and ‘the fact that’ and ‘noun phrase + be + that’ when used as a neutral anaphoric device.
26 Stance refers to ‘the lack of’ when used in its critical sense and ‘noun phrase + to be + that’ when employed as an evaluative tool.
The chart and table above illustrate the clearly dominant role that legal content plays, even among the high frequency keywords. It is perhaps not surprising that legal content comes out on top with text organisation and stance playing a secondary role as the focus here is on nominal forms, which lend themselves to the naming of abstract concepts, actors, instruments of law and indeed the law itself with its derivate forms.

There are echoes here of Love’s (1993: 210) findings about geology texts where there was “a gradual shift from superordinate, unspecific lexis referring to the process to more specific, concrete lexis”. While a genre-type move analysis has not been conducted in this research, it is nevertheless noteworthy that the two categories of more general and specific references to the law are the primary attributes of the noun forms. The significance of Points 1 and 2 in Table 6.15 is also in keeping with the findings of Coulson (2009: 177), whose research on published legal articles revealed that the vast majority of the sentence subjects referred to the sources of law and legal theories. The authors of Coulson’s corpus
of articles came from both professional and academic backgrounds which would indicate a
costom approach to what may be the key factor here, task rubric. Coulson’s articles dealt
with an emerging legal problem in the field of arbitration and therefore the analysis
required input from the macro level. Similarly, the great majority of essay and thesis topics
dealt with in the EALP corpus are in relation to policy issues or the current state of the law,
which also require a macro perspective. The regular occurrence of fixed forms in the Point
2 (instruments of law) of Table 6.15 raises an interesting issue in that these expressions do
not come from the field of academia but from the world of professional (applied) law.
While other disciplines may invent their own taxonomies and tools to explain phenomena
particular to their field of study, it appears that what clusters around the semi-technical
language of masters-level academic common law relies significantly on entities outside the
academic expert community. However, this intertextual behaviour is not confined to master
level student writing, as Bhatia noted:

...academic communication generally depends on two of the most conventionally standardised
disciplinary genres (legislation and judgements) to construct legal knowledge, and this centrality is
also signalled in the intertextual and interdiscursive patterning that these mutually dependent generic
constructs display in all forms of legal discourse.

(Bhatia 2002: 31)

Rhetorical functions concerning the law at a more abstract level and the instruments of law
cater for the content aspect of legal writing with students often obliged to use fixed
expressions in post-modifying positions and in the case of the node ‘of law’, also in terms
of the headwords. However, Point 3 (textual references) leaves a far wider choice in how
post-modification will be executed or indeed what shell or anaphor nouns can be used in
the bundles themselves. There appears to be two overarching functions operating with these
bundles:

a) ‘Elaboration’ enables the student to add details in the form of further information or
evaluation to the theme identified in the ‘bundle + post-modifier’ phrase:
One of the most alarming aspects of the CSRT procedure was the response of the Department of Defence when a Tribunal found a detainee to be not/no-longer an enemy combatant...

b) ‘Focusing’:

The fact that UNAMIR, with its barely 500 men, poorly armed and equipped, protected at one time nearly twice that number is testament to the fact that the French could and did save lives when it suited their interests.

However, even here the object of focus is subsequently elaborated or evaluated.

Students appear to be primarily using this type of semi-technical language as a platform to develop topics further.

Point 4, indicating stance with ‘the lack of” being used to communicate a mostly negative connotation, has a minor role from the point of view of an analysis of nominal forms. However, this rhetorical function receives considerably more attention in the chapter to follow.

6.4 Conclusion

The word clusters and functions found to operate around the high frequency semi-technical keywords in this corpus underline the significant role that nominalisation and noun phrases play in the construction of the student texts. At a basic level there are three pillars of operation: (1) the incorporation of the outside world in terms of various legal entities, (2) the maintenance of cohesion and development of the text and (3) the stance projected by the author of the proposition. These three can be respectively aligned to Halliday’s (2004: 29) ideational, textual and interpersonal meta-functions. What the analysis in this chapter has added is that it is possible to see the weighting given to each of these rhetorical functions. The ideational aspect is a very strong feature of the use of nominal forms, which is hardly surprising given the lexical focus they carry. However, the corpus analysis enables the identification of what type of ideational forms are the norm for semi-technical language use, namely stating what the law says about an issue, being able to identify the abstract concepts upon which laws are based and finally referring to the law in more aggregate
terms, perhaps as a pronoun for a previous more detailed description or as a general reference point in the discourse. Similarly for textual functions, the corpus analysis enabled the identification of which means of expression are the preferred tools of the student writers. It was also at this point that it was possible to see how students developed their analyses, through focus and elaboration, which was often accompanied by evaluation.

To sum up, the analysis has answered two key questions when mapping the linguistic landscape of master level academic legal writing: what are nominal forms used for and how are they used? The insights they provide to the epistemological make-up of the discipline at this level is another piece in the jigsaw. The next chapter will continue in this analysis. So far, there has been a strong influence from the sources of law, both through the use of binomial forms and now here, nominal forms. Both chapters have been able to shed light the degree of autonomy a student has when making propositions, and indeed it is the explicit manifestation of the process of averral and attribution which is the subject of the next chapter.
Chapter 7: The Use of ‘That’

This chapter will review the possible uses for ‘that’ and then concentrate on its clausal function, which was the most prevalent use in the corpus. This use sets it apart from the previous two chapters where the focus was at a phrasal level and hence this use adds another dimension to the rhetorical features of semi-technical language. The clausal function in particular raises issues of citation and averral and hence writer stance in the text. Several factors can influence stance, from how the citation or averral is constructed to the type of reporting verbs used to the tense preferences. Following a review of the literature on the fields of citation and evaluation, the chapter will analyse the use of ‘that’ in the legal academic corpus from the point of view of the type of attributed sources being reported by the student writers and how the students represent themselves in the texts. The unfolding analysis should help build a picture of who the key players are in legal academic discourse and how they are reported. In addition, it should become apparent how students tend to represent their own views in the texts and to what degree legal academic writing conforms to practices uncovered in other disciplines.

7.1 Literature Review

The following categories, as developed by Sinclair (1990), formed over 80% of the uses of ‘that’ in the corpus and will form the basis of the literature review:

a) As a report (or ‘that’) clause. This category is quite extensive and includes the following:

- lexical verbs that refer to what has been said (i.e. argue that, confirm that, ruled that)
- lexical verbs that refer to thoughts (i.e. believe that, fear that, feel that)
- lexical verbs the refer to learning and perceiving (i.e. discover that, observe that, infer that)
- lexical verbs which relate to actions and checking or proving facts (i.e. arrange that, ensure that, indicate that, demonstrate that)
• lexical verbs that show that something is the case or has happened (i.e. it happened that, it emerged that, it transpired that)
• reporting nouns stressing what people say or think (i.e. conclusion that, statement that, feeling that) or, as complements of the copular verb ‘be’ (i.e. the assertion/belief/explanation/answer is that). All these have related verb forms.
• nouns that refer in some way to facts or beliefs but do not have a related verb form (i.e. evidence that, fact that, view that, point that).
• adjectives indicating knowledge (i.e. aware that, convinced that)
• adjectives indicating feelings (i.e. happy that, worried that)
• adjectives commenting on a fact (i.e. apparent that, clear that, likely that, important that)

b) ‘That’ as a subject clause (i.e. ‘The fact that … means …’ or ‘He fired the then Chief Financial Officer. That this was a disasterous is now indisputable’)

c) ‘In that’ as a subordinate clause of reason (i.e. ‘Despite similar sales volumes, the later models were not perceived to be as successful in that they no longer attracted celebrity endorsements; something which characterised the marketing campaign for the original product’)

Given that Biber et al. (1999: 660) saw the function of ‘that’ clauses as to “report the speech, thoughts, attitudes, or emotions of humans”, with the subject of the main clause frequently referring to the source of the utterance or view, it raises the issue of voices in the text. Fløttum et al. (2006b: 205) referred to the “polyphonic drama” that takes place in a research article, where authors not only interact with readers through a variety of roles, but may assign different roles to other researchers too. This in turn is derived from Bathkin’s (1981) theory of dialogic heteroglossia, which is that all texts are produced not as isolated closed systems, but in relation to other texts. Fairclough (1992: 104) illustrated this interdependence through his concept of manifest intertextuality, which involves overt traces of previous texts through the form of citations or paraphrasing the work of others. However, as Hyland (2009b: 26) pointed out, it is not simply a case of reproduction of previous texts,
but the author must decide on the degree of alignment that he or she wishes to adopt toward these texts. Each author is using the voices of others to ultimately clarify his or her interpretation or claim (Coulthard 1994, Woodward-Kron 2002), and it is the interaction between these external and personal forces which links the phenomena of citation and evaluation. Therefore, it is these two aspects of writing that will be explored below.

7.1.1 Citation

7.1.1.1 Attribution and the function of citation

In order to understand the function of citation it is first necessary to clarify two fundamental dynamics that occur in academic writing: averral and attribution. These phenomena, highlighted by Sinclair (1986, 1988), deal with whether the proposition in a statement is that of the writer (averral) or derived from another author or source (attribution)\(^\text{27}\). Coulthard (1994: 6) stressed the importance of making clear at all times who is responsible for a proposition, though as will be seen in Sections 7.1.2.2 and 7.2.2 below, explicit responsibility is not always provided by the writer and Sinclair (1986) himself also highlighted the fuzzy boundaries between averral and attribution. Regarding attribution, there should be “a manifest intertextual marker to acknowledge the presence of an antecedent authorial voice” (Groom 2000: 15) so that responsibility is transferred to the propositional source. As has been noted in the introduction to Section 7.1, reporting clauses represent the overwhelming use of ‘that’ in the legal academic writing corpus and as Table 7.4 in Section 7.2 below will show, the majority of these clauses are used to express manifest intertextuality.

That citation is an integrated part of academic writing is well documented in the literature. Johns (1997: 62) highlighted as one of the pillars of academic prose the nature of intertextuality and the exploitation of other texts without resorting to plagiarism. Hyland (2006: 25) stressed citation’s role of acknowledging previous research and thus enabling the writer to position him- or herself within the discourse community. Thus, it would appear that citation is the means by which writers are able to situate their research in a

\(^{27}\) In this study ‘writer’ will always refer to the producer of the text under study (the Master students in the context of the legal academic corpus). ‘Author’ will refer to the source of a proposition that doesn’t belong to the ‘writer’.
larger academic context (Hyland 2000: 20) and by being able to meaningfully engage with the “conversation of the discipline” (Charles 2006: 311) they gain credibility in the field. Teubert (2005: 197) provided further details on the motivation to use citations, two particularly significant ones being to seek out agreement with peers (or, as the case may be, disagreement) and to include in one’s text a citation from an important source. This latter point is a recurring feature in the legal academic corpus, though the dominant source is from legal practice rather than academia. However, the linguistic means by which such citations should be carried out also requires careful attention by the writer. The issue of acceptance in the field requires that specialised vocabularies and argument forms be used; sensitivity has to be shown in order to show respect to the views and reputations of others (Hyland 2000: 13).

7.1.1.2 Disciplinary differences
While the broad functions of citation have been highlighted above along with the accompanying linguistic sensitivities to maintain community relations, it does not mean that all disciplines approach citation in the same way. Hyland (2000) and Becher and Trowler (2001) drew a line of distinction between hard- and soft-knowledge disciplines. Around the former cluster natural science disciplines where knowledge is developed in a linear fashion, in that one person’s work is built on an established body of research. The soft-knowledge disciplines on the other hand are those of the humanities and social sciences. Here, research areas are not as tightly bound and therefore open to multiple lines of interpretation. The consequence of this for citation is that writers first have to elaborate their definition of a research area in light of multiple strands of research that have taken place. In effect, citation helps the reader perceive the world which is about to be analysed. Hyland’s (2000) research on citation practices across eight disciplines supported the hard/soft-knowledge divide. The soft-knowledge disciplines of philosophy, sociology, marketing and applied linguistics accounted for two-thirds of all citations in the study corpus, double the amount used for the hard-knowledge disciplines of physics, mechanical engineering, electronic engineering and biology. Furthermore, Holmes and Nesi’s (2009) study of history and physics academic papers noted that citations for history were far more likely to include explicit agents in the subject position, something which did not happen in physics where models, theories and systems dominated the subject position thus giving a
more factual emphasis to previous research. A similar finding was made by Thompson, P. (2005a) for hard and soft discipline academic papers. However, research has also shown that differences can exist between individual disciplines regardless of soft- or hard-knowledge categories. Ädel and Garretson’s (2006) analysis of nine disciplines from the Michigan Corpus Upper-level Student Papers revealed a rather uneven distribution and idiosyncratic use of reporting verbs across hard- and soft-knowledge disciplines. Even within a single discipline the rhetorical purpose of an article can influence the choice of reporting verbs as Hunston (2005) revealed in her review of research and conflict articles in applied linguistics. Fortunately, Mazzi’s (2007) review of a single genre (court judgements) within the discipline of law, but sourced from different jurisdictions, showed that the three courts in question shared a significant number of report verbs and shared a preference to use them in the active rather than passive form. In his study, some of the verbs collocated more readily with certain agents involved in the courtroom discourse, a phenomenon which is also observed in the analysis in Section 7.2 below.

7.1.1.3 Classifications of citation

Earlier work on citation classifications included that of Moravesik and Murugesan (1975) whose categories included whether a citation referred to a theory or concept (conceptual) or a technique or method (operational); or whether the writer agreed with the cited source (confirmatory) or the cited material position was disputed (negational).

Swales returned to the issue, though this time from a syntactical rather than rhetorical perspective, and developed a model where he distinguished between integral and non-integral citations (1990: 148). Integral citations have the reported source as an active member of the sentence:

Justice Scalia stated that legal rules could go against autonomy to protect life...

(Period 1)

While a non-integral citation will place the reported source in parenthesis or provide access through a footnote reference. The latter of these two is illustrated here:
Swales interpreted the integral form as giving greater emphasis to the reported author and the non-integral form as focusing more on the reported message. This basic division of citation form has since been elaborated on by researchers, as Table 7.1 will show:

**Table 7.1 Categories of citation by different researchers**

<table>
<thead>
<tr>
<th>Researcher and category</th>
<th>Example/Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fløttum et al.</strong> (2006a):</td>
<td>Little Lake is polluted (Clark 1999)</td>
</tr>
<tr>
<td>Partly integral reference</td>
<td>Clark (1999) has observed that Little Lake is polluted</td>
</tr>
<tr>
<td>Semi-integral reference</td>
<td>Clark (1999) claims: “Little Lake is polluted”</td>
</tr>
<tr>
<td>Fully integral reference</td>
<td>All footnoted citations</td>
</tr>
<tr>
<td>Non-integral</td>
<td></td>
</tr>
<tr>
<td><strong>Thompson</strong> (2001):</td>
<td>Agents control a lexical verb</td>
</tr>
<tr>
<td>Agentive integral citation</td>
<td>Agents do not control a lexical verb (<em>Fuller (1997) is the best example of this approach</em>)</td>
</tr>
<tr>
<td>Naming integral citation</td>
<td>a) An attribution of an idea or information</td>
</tr>
<tr>
<td></td>
<td>b) The inclusion in parenthesis of the agent after opening a sentence with a dummy ‘it’.</td>
</tr>
<tr>
<td></td>
<td>c) To indicate the origin of a concept, technique etc.</td>
</tr>
<tr>
<td></td>
<td>d) To refer the reader to a source for further details in an issue.</td>
</tr>
<tr>
<td></td>
<td>e) To provide explicit examples to a sentence opening with ‘many studies ...’</td>
</tr>
</tbody>
</table>
Shaw’s features will be explored in further detail in the data analysis of Section 7.2.

Groom (2000: 22), in determining propositional responsibility, noted how non-integral citations were primarily the responsibility of the writer rather than author, integral citations on the other hand could range from a case of shared responsibility between the writer and author to all responsibility being delegated to the cited author, as two of Groom’s examples illustrate:

As Brie (1999) points out, the moon may be made of cheese (the writer elicits the support of the author for an argument)

Brie (1999) argues that the moon may be made of cheese (all responsibility for the proposition is delegated to the reported author)

This last research opens the door to another aspect of attribution which is that of the rhetorical effect of the citation structure used. While this will be dealt with in more detail in the following section on evaluation, it is worth noting here the role that tense can play in intended meaning. Swales and Feak (2004: 254) noted three main tense forms used in citations, the simple past, present perfect and simple present. While stressing that this is just a general trend they found that the use of the simple past tense referred to single studies and what previous researchers did, the present perfect was to refer to an area of enquiry and also what researchers did, while the present referred to the current state of knowledge. This pattern of use certainly is analogous to court decisions and legislation citations which, for reasons discussed in Section 7.2.1.1, use the simple past and simple present respectively.
The authors also maintained that the adoption of the present tense by writers meant that the cited proposition was close to the writer in some way, possibly in terms of similarity to the writer’s own opinion or research or, as stated above, close to the current state of knowledge. This could be related to McCarthy and Carter’s (1994: 100) “historical present” in which students use the present tense to report on research carried out in the past that is relevant to their assignment. Regarding tenses other then the simple present, Shaw’s analysis (1992: 317) showed that the active voice in the past tense was relied upon to provide more detail while the non-integral perfect aspect sentences in the passive form were used to initiate new sub-topics. Finally, Okamura’s (2005) review of the use of ‘we’ (and hence averral) statements revealed the influence of an article’s section on tense use with British science papers preferring certain structures for given sections (i.e. past tense in the results section and present perfect in the introduction). Therefore, sentence structure and tense-aspect have been shown to play a significant role in influencing how a citation could be understood by a reader. Both these features have an important bearing on the corpus analysis in Section 7.2, though there still remains another crucial element of a citation: the choice of reporting verb to link a source with its proposition.

7.1.1.4 The role of reporting verbs

Halliday (2004: 232) drew the distinction between reporting through a parataxis structure, which focuses on the wording of an utterance (direct quote), and hypotaxis, where the focus is to represent the sense of what was said (indirect speech). Halliday considered the former to be a verbal process and the latter to be a mental process, though he also extended the mental process to reporting thoughts. The mental process, being removed from the precise wording of the utterance, also allows the writer to use semantically complex verbs which would not be used for direct speech (e.g. ‘insinuate’, ‘imply’ and ‘claim’). All of these point to a more active role by the writer when reporting, at least in terms of making interpretations. Further categorisations were done by Thompson and Ye (1991: 369), whose model features are applied in the analysis of attribution in Section 7.2. They developed three categories of reporting lexical verbs which were controlled by a citation and were what they considered to be author acts. The first was research verbs which reported on experiments, findings, observations and included verbs such as calculate, find, measure and obtain; this is quite similar to Sinclair’s (1990) action verb and also learning and perceiving
verb categories as outlined at the start of Section 7.1. The second category was *textual verbs* (later, Thompson (2001) referred to these as *discourse verbs*) which described processes where verbal expression was involved and members of this group typically included *suggest, report* and *argue*, Sinclair also had a similar category. Finally there were *mental verbs* such as *believe, think* and *consider* linked to Sinclair’s learning and perceiving category as well as the verbs to report thoughts category. While Thompson and Ye accepted that these categories were not watertight, the categorisation has nevertheless been applied to other studies. In applying these categories, Hyland (2000) noted that the soft-knowledge disciplines displayed a preference for textual activity verbs while the hard-knowledge disciplines favoured the research activity category. Hyland also built on the categories by combining them with Leech’s (1983) *factive, non-factive* and *counter-factive* reporting verbs in order to clarify the evaluative stance adopted by the writer. While *factive* indicates writer acceptance of the proposition (i.e. ‘the author established that ...’), it is the more ambiguous signal indicated by the *non-factive* evaluation which opens up the possibility for a more nuanced approach to be taken by the writer. Hyland proposed four non-factive stances: author positive (*argue*), author neutral (*comment*), author tentative (*believe*) and author critical (*criticise*). Again, Hyland’s research showed that writers from soft-knowledge disciplines were more likely to avail of these evaluative verbs when reporting authors. Their presence is also to be noted in the corpus analysis in Section 7.2 below.

Thomas and Hawes (1994) adapted Thompson and Ye’s categories to medical research articles and hence provided a framework against which comparisons on discipline epistemology could be made; real world (research) verbs and discourse (textual) verbs accounted for approximately 50% and 40% respectively of all corpus citations, with a very minor role for their cognition (mental) verbs. Charles’ (2006) survey of materials science and politics theses did show some grounds of commonality between the representatives of hard- and soft-knowledge disciplines. Again, inspired by Thompson and Ye’s categories she found that argue (discourse) verbs in the present tense with integral citations of human subjects was the most common pattern between the two sub-corpora. Also in line with both Hyland and Thomas and Hawes findings above, she noted that find/show (research) verbs were a defining feature of citations in the materials science corpus.
The research above brings another dimension to how a citation can be interpreted by the reader and it is now quite clear that referring to an external source is not just a simple naming activity to avoid the accusation of plagiarism. What has been dealt with so far is the attribution aspect as this is the feature that dominates ‘that’ clauses in the student legal academic corpus. Writer stance, when engaging in author attribution, has been touched upon but now requires further elaboration, both for how the writer engages with external sources and how he or she makes averrals in the text.

7.1.2 Evaluation

7.1.2.1 The function of evaluation in academic writing

Mushin (2001) reflected the unavoidable nature of evaluation when commenting that people do not just “neutrally and mechanically describe states and affairs in the world” (p.3). However, while present in a text, Hunston (2000: 177) points out that it is often implicit, relies for its effect on intertextuality and is often multilayered. Biber (2006a) also noted the multiple means by which evaluation could be expressed; grammatical devices, value-laden word choice or, particularly in the case of speaking, paralinguistic devices, could all enable evaluation in a text and consequently was also of the view that it was an area that could not be represented by a closed set of words. Given the complexity involved it is hardly surprising that evaluation has been researched from many viewpoints. For example, Giannoni (2010) focussed on the role of adjectives, adverbs, nouns and verbs, self-mentions were analysed by Fløttum et al. (2006a), Hyland and Tse (2005) investigated the evaluative ‘that’ clause (a complement ‘that’ clause to project a viewpoint), Hyland (2001) covered hedges and boosters and Groom (2005) surveyed how the dummy ‘it’ construction contributes to stance. For the student legal academic corpus the focus will be on how evaluation is communicated through the use of the reporting ‘that’ clauses; however, in light of the areas researched above, there is a need to recognise that not all evaluative acts are likely to be expressed through this structure.

Thompson and Hunston (2000: 6) identified three functions that evaluation is used to perform:
a) To express the speaker’s or writer’s opinion and in doing so reflect individual and discourse community values.

b) To construct and maintain relations with the reader/listener.

c) To organise the discourse.

Regarding point a), Giannoni (2010: 58) was of the view that expressing writer opinion is the most prominent evaluative act to be found in research articles and more often than not, it is used to align the writer with community values rather than to diverge from them. Another term for ‘writer opinion’ is that of ‘stance’ and this was the term Biber et al. (1999: 972) used when determining the broad range of personal meanings that can be communicated. As already explained in Section 6.1.5 they had two broad categories of stance markers: epistemic stance and attitudinal stance, with the former dealing with issues such as how certain, precise, limited or up-to-date the information may be and the latter being used to report personal attitudes or feelings about the information being reported. Čmejrková and Daneš (1997) defined epistemic modality as the “modality of assertion” (p.48) in that it regulated the writer’s degree of conviction and certainty about the validity of his or her statements and Vold (2006) considered it to be linguistic expressions that qualified the truth value of propositional content. To achieve this end can be a delicate process as writers must know how and when to give greater commitment to a proposition and at other times hold back from the developing argument. Hyland (2006: 29) referred to writer-oriented features (e.g. boosters, hedges, self mentions, attitude markers) and their use should fulfil Groom’s view (2000: 19) that the writer should be the dominant voice if an argumentative text is to be successful. The issue of voice in the text was also tackled by Helms-Park and Stapleton (2003) through the use of the voice intensity rating scale and in contrast to Groom’s view, their research found no correlation between the quality of a text and the degree of individualized voice as measured by the scale (which included self-mentions, hedging and boosting devices, counts of how often the main argument was rearticulated and finally the engagement with counter-arguments). In spite of the inconclusiveness of what has been outlined above, as one of the main keyword expressions in the student legal academic corpus, it cannot be denied that the evaluative ‘that’ does appear to have a significant role in the study corpus in terms of (mostly impersonal in style)
writer averrals and attributions. These two features will now be reviewed from the point of view of their evaluative role in a text.

### 7.1.2.2 Evaluation and attribution

Tadros’ (1985) paper argued that once an attribution had been made then it required a justification for its presence, which implied an evaluation. If the evaluation did not directly accompany the attribution, then the evaluation could be reasonably expected to follow later in the text. As already noted in Section 7.1.1.4, this evaluation can take place through the application of factive, non-factive and counter-factive stances and a general trend differentiating hard- and soft-knowledge disciplines is that the former are more likely to adopt a factive stance by the writer, thus confirming the validity of previous experiments or measurements, while the latter’s more qualitative arguments means the writer is more likely to report the author’s view on a proposition on a cline of true to tentative to false (Hyland 2000: 39). A clear example of this is Woodward-Kron’s (2009) analysis of undergraduate student writing in education and their ability to use mental and verbal process verbs to report external propositions. While the issue of the role of reporting verbs has already been discussed it is also important to note other means by which the writer can take a position on the reported proposition. In the context of newspaper journalism, Caldas-Coulthard (1992: 76) commented that the use of direct speech was to reinforce the primary discourse of the writer. Groom (2000: 20) highlighted the use of non-integral citation to support a writer’s developing proposition. Returning briefly to the use of factive, non-factive and counter-factive verbs, Fløttum et al. (2006a: 234) also dealt with the issue of degree of writer responsibility when making attributions. For them, there was a clear non-responsibility, or distance, between the writer and quoted author for non-factive reporting verbs, but in the case of factive verbs this position was weakened as it is more obvious that the writer is adopting the reported proposition. Hunston (2010: 38) also saw a dominant position being taken by the writer when he or she interprets the reported proposition. However, the status of proposition responsibility is not just dependent on reporting verbs, Hunston (2010: 28) also listed adverbs, adverbials, modal auxiliaries and evidentials (i.e. ‘according to’, but she also includes devices such as implied consensus ‘by all accounts’) as alternative devices.
The separation of averral and attribution may be deemed an artificial one in light of Sinclair’s (1986) assessment that all attributions were fundamentally embedded in averred ones and the issue of fuzzy boundaries of responsibility for a proposition was also discussed by Ivanic and Camps (2001). Nevertheless, while endorsing this view, Hunston (2000: 176) went on to develop a map of statement sources, ranging from attributions where responsibility was either delegated or reclaimed, to a range of devices to cover the ‘self’ as statement source (averral). This latter list illustrates an impressive range of devices that a writer can avail of to control a text, from intratextual referencing to appeals to consensus being just two means by which the writer’s voice is articulated. However, these two means also imply the appropriate choice of agent in subject position to mask self-mentions - appeals to consensus should be underwritten by an awareness of who the disciplinary experts are. This knowledge deficiency was particularly apparent in Tang’s (2009) study of undergraduate essays where one student’s continued choice of non-expert sources positioned her as “dialoguing with the wrong discourse community” (p.180).

It would appear that the overlap between attribution and evaluation involves varying degrees of writer intervention and this can be articulated by a variety of devices. The rhetorical effects of the preferred structures within a discipline are best left to empirical analyses, though in terms of the structure of reporting lexical or auxiliary verbs with the ‘that’ clause, a point of departure for attributions may be to look at the following features:

a) Is it an integral or non-integral citation?
b) How is the proposition structured (direct quote v paraphrase)?
c) What is the identity of the agent in subject position (inanimate v human v indefinite entities)?
d) What type of reporting verb is used (research v discourse/textual v mental verbs and the degree of writer alignment they enable)?
e) What tense is used for the reporting verb?
f) What is the rhetorical function of the act of attribution (supporting a proposition v building a framework v alternative view)?
7.1.2.3 Evaluation and averral

As already noted in the preceding section, it has been argued that averral is always present when an evaluation is being made. However, while Section 7.1.2.2 discussed the control the text writer can have when making attributions, this section will look at how the writer can present his or her own propositions.

The first issue to deal with is to discuss what forms of identity a writer can use. The most obvious one is to use the first person pronoun, though with regard to the student legal academic corpus this represents a very infrequent occurrence (see Tables 7.2, 7.3 and 7.4 in Section 7.2). Looking beyond the discipline of legal academic writing, one possible explanation for this may be in Sanderson’s (2008: 105) review of style guides which underline the view that it is expected that the opinions expressed in the text are those of the text writer and hence the use of explicit personal references is superfluous. However, if we accept Groom’s (2000) view that the writer’s voice should be the dominant one in a text, then we need to see, in addition to the evaluation strategies that can be applied to attributions, what means are available to the writers to express this voice.

Perez-Llantada (2009: 194) identified three main constructions by which the writers are able to bring their own propositions to a text, ‘I’ subject patterns, ‘we’ subject patterns and agentless contructions. The distance between the writer and the proposition is at a minimum with the ‘I’ pattern and greatest when agentless patterns are used. The last category includes the use of the passive form, inanimate subjects and anticipatory ‘it’ constructions, the effect of which is to give the impression of objectivity, impersonality and detachment. Biber (2006a) made a broader generalisation in that he proposed that in most cases, if there is no explicit attribution, then it can be assumed that the view expressed is that of the writer. Similarly, in relation to Perez-Llantada’s inanimate objects, Fløttum et al. (2006a: 130) were of the view that the personification of inanimate nouns enabled the writer to adopt a weaker presence in the text and that such a feature was typical of scientific language. Therefore, the use of agentless constructions points to what Geertz (1988: 9) described as “author-evacuated texts”, which Johns (1997) considered to represent one of the core practices or values of academic writing.
The dummy ‘it’ construction has attracted quite an amount of interest from researchers. It was the frequency of the ‘it + be + adj + that’ pattern in the BAWE that prompted Thompson (2009) to investigate its use in engineering and history undergraduate assignments (similarly, the pattern appears in the academic legal corpus, for example through the phrase ‘it is clear that’). For Hunston and Sinclair (2000: 84), the pattern ‘‘it’ + link verb + adjective group + clause’ was typically used to evaluate. This was so because the adjective determined how the clause details were to be evaluated. Hewings and Hewings (2002: 369) looked at rhetorical and non-rhetorical motivations for its use. While non-rhetorical reasons included points such as the enabling of new information to be end-loaded in the sentence, thus conforming to the theme-rheme pattern, Hewings and Hewings found the rhetorical motivations to be more pressing. A review of previous research left them with three main reasons: first, it allowed the writer to accept, reject or remain neutral about the proposition expressed; second, the use of ‘it’ with adjective complementation (‘it is important …’) enabled the writer to dictate how the ‘that’, ‘to’ or ‘wh-’ clause was to be interpreted by the reader and finally, it served to depersonalise opinions. Hewings and Hewings went on to propose four main categories of uses for ‘it’ clauses, the first three being of particular relevance for averrals:

a) Hedges (dealing with deduction and predictive use: ‘it could be argued’, ‘it would appear’, ‘it is likely’…)

b) Attitude markers (to highlight something or mark an evaluation: ‘it is noteworthy’, ‘it is surprising’…)

c) Emphatics (to emphasise that something is true or strongly draw the reader’s attention to a particular point or what is possible/necessary: ‘it follows’, ‘it is important to stress’, ‘it is clear’…)

d) Attribution (specific and general attribution: ‘it has been proposed (+ reference)’, ‘it is often claimed’…) (p. 372)

Additional research was carried out by Hyland (2009b), who saw the role for comment adjuncts (‘it is therefore quite likely that …’) as to persuade the reader. Another perspective was offered by Groom (2005), who found that ‘it + verb-link + adj + that’ enabled a writer
to comment on the adequacy, desirability, difficulty, expectation, importance or validity of a proposition.

Finally, to return to Perez-Llanta’s inanimate objects as a part of the agentless category as a means of disguising the writer’s voice, Hunston (2000) provided quite a detailed analysis of what she termed sourced and non-sourced averral. The notion of a source in an averral may sound misleading given that an attribution is precisely about citing the source of a proposition. However, if one considers that attribution deals with reporting on what someone said or thought, a sourced averral should be seen as one step removed from this position, in that the writer interprets a piece of writing, and a non-sourced averral can relate to experiential fact or assessment of a situation:

Attribution: ‘X states that climate change is here to stay’

Sourced-averral: ‘The summit’s closing statement proves to many that climate change is here to stay’

Non-sourced averral: ‘There is little evidence to suggest that climate change is not here to stay’

Hunston (2000: 192)

Given that Hunston (2000: 192) admits that “there can be indeterminancy between sourced and non-sourced averral”, its combined category nevertheless fills an important gap which is not addressed by her hidden averral (reference to a source which is effectively the writer’s view somewhere else in the text, or the writer’s opinion is disguised as an explicit public view: ‘many say that...’) and emphasised averral (explicit self-reference). Hyland and Tse (2005) narrowed their focus to an area which is compatible to the data analysis in Section 7.2 below: the use of the evaluative ‘that’. In particular, in relation to one of their categories, evaluative source, they did not distinguish between attribution and averral as Hunston had done, instead they had three sub-categories:

a) Human (the writer or another source)
b) An abstract entity or inanimate source (‘the findings show that...’)

233
c) A concealed source (‘it’ or, unlike a specified abstract or inanimate source, a more general source – ‘the general perception has been that...’)

(Hyland and Tse 2005: 130)

Finally, the analysis by Thompson (1996) of voice in language reports shows again the recurrent and overlapping themes that influence stance. His four basic criteria were:

a) Who or what is presented as the source of language being reported.
b) How the message is packaged, for example whether it is a direct quote or a mere summary.
c) How the writer signals the reported message, whether a clear reporting signal is used, the degree of dominance between the source and message and the degree the message and reporting signal may be fused.
d) The writer’s attitude to the message.

In these four categories we touch on previously discussed themes such as attribution and averral (a), integral and non-integral citations (b), writer responsibility and evaluative stance (c) and (d). This in particular indicates a certain level of convergence about what the driving forces behind the phenomena of attribution and averral are. What features dominate in the student legal academic corpus will now be investigated.

7.2 Data Analysis

‘That’ or ‘that the’ is present as a keyword item in each period as Table 7.2 shows:

<table>
<thead>
<tr>
<th>Period 1</th>
<th>Freq.</th>
<th>Authors</th>
<th>Period 2</th>
<th>Freq.</th>
<th>Authors</th>
<th>Period 3</th>
<th>Freq.</th>
<th>Authors</th>
<th>Period 4</th>
<th>Freq.</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>OF</td>
<td>5524</td>
<td>14</td>
<td>OF</td>
<td>5749</td>
<td>15</td>
<td>ON</td>
<td>880</td>
<td>14</td>
<td>OF</td>
<td>12457</td>
<td>14</td>
</tr>
<tr>
<td>THAT</td>
<td>1729</td>
<td>14</td>
<td>IN</td>
<td>3298</td>
<td>15</td>
<td>OR</td>
<td>573</td>
<td>14</td>
<td>THAT</td>
<td>4274</td>
<td>14</td>
</tr>
<tr>
<td>ON</td>
<td>943</td>
<td>14</td>
<td>THAT</td>
<td>1852</td>
<td>15</td>
<td>LAW</td>
<td>562</td>
<td>14</td>
<td>ON</td>
<td>2000</td>
<td>14</td>
</tr>
<tr>
<td>LAW</td>
<td>748</td>
<td>14</td>
<td>LAW</td>
<td>956</td>
<td>15</td>
<td>THAT THE</td>
<td></td>
<td></td>
<td>OR</td>
<td>1852</td>
<td>14</td>
</tr>
<tr>
<td>AT</td>
<td>697</td>
<td>14</td>
<td>OR</td>
<td>756</td>
<td>15</td>
<td>MAY</td>
<td>309</td>
<td>14</td>
<td>NOT</td>
<td>1801</td>
<td>14</td>
</tr>
</tbody>
</table>
A complete count of all occurrences in Period 1 showed that almost 90% of all instances fell under Sinclair’s (1990) categories c), d) and e) as listed in Section 7.1 (reporting verbs, nouns for beliefs and facts, adjectives for comment etc). Counting the occurrences which were ordered from position L1 in alphabetical order (in order to avoid author bias), a sample was taken from the other periods, which concurred with the evidence from Period 1 that categories c), d) and e) were the dominant forms used by students (79% for Period 2, 82% for Period 3 and 81% for Period 4)\(^{28}\).

Given the primacy of the roles of reporting, stance and elaboration of facts, which are implied with the uses listed in Sinclair’s categories c), d) and e) it was then decided to assess the sources from which this type of language emanated. The following three sources were identified by adapting the taxonomy of Sinclair (1988):

i) Instances where the student writer mentions him- or herself (writer direct averral):

- *The author believes that this method is the most favourable.* (Period 1)

ii) Instances where the student writer makes the proposition but does not direct identify him- or herself (writer indirect averral)

- *It should be noted that there are six registration systems in Ireland,* ...(Period 2)

iii) Instances where the statement comes from another source, either directly or indirectly (attribution)

- *Kelman goes on to say that the principles we impose on the criminal law are ...* (direct - Period 2)
- *... it has been suggested that the criminal justice system be developed so that it is ...* (indirect – Period 3)

A prevalent feature of the category of indirect attributions is that, while the statement has no source in the immediate co-text, there is frequently annotation for a footnoted reference,

---

\(^{28}\) For Period 2, every 10th item was sampled from hits 1000 to 1850. For Period 3, despite the narrower form ‘that the’ being key, it was felt that a sample of the base ‘that’ node was necessary to see if a fundamental shift had occurred, but this was not the case. Every 10th item was sampled from hits 500 to 1500. Finally, the first 1000 hits were sampled for Period 4, again each 10th item.
as Swales (1990) had noted about non-integral citations. The division between the three sources for each period is listed in Tables 7.3 below:

**Table 7.3 Avveral and attribution occurrences according to source with percentage share**

<table>
<thead>
<tr>
<th></th>
<th>Period 1 (that)</th>
<th>Period 2 (that)</th>
<th>Period 3 (that the)</th>
<th>Period 4 (that)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Writer direct averral</td>
<td>25 (3.5%)</td>
<td>12 (1.5%)</td>
<td>1 (0.5%)</td>
<td>10 (0.5%)</td>
</tr>
<tr>
<td>Writer indirect averral</td>
<td>163 (22%)</td>
<td>329 (42%)</td>
<td>66 (44%)</td>
<td>588 (28.5%)</td>
</tr>
<tr>
<td>Attribution</td>
<td>546 (74.5%)</td>
<td>439 (56.5%)</td>
<td>83 (83%)</td>
<td>1452 (71%)</td>
</tr>
</tbody>
</table>

Periods 1 to 3 show an increase in the writers’ presence in the texts with a clear preference for indirect averrals. This could be due to the fact that confidence increases as the course progresses and students feel more at ease with the essay format, which is the predominant genre in these periods. With the requirement of writing in a new genre (the thesis) in Period 4, we see that the percentage share returns to the approximate levels of Period 1, which again may reflect a degree of caution on behalf of the students and thus they cede to external authorities. However, if we draw the line of distinction between the essay genre, which dominates Periods 1 to 3, and the thesis genre, which is the only type of text produced in Period 4, then the differences narrow as Table 7.4 illustrates.

**Table 7.4 Percentage distributions of averral and attribution based on genre**

<table>
<thead>
<tr>
<th></th>
<th>Writer direct averral</th>
<th>Writer indirect averral</th>
<th>Total averral</th>
<th>Attribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Essay</td>
<td>2.5%</td>
<td>33.5%</td>
<td>36%</td>
<td>64%</td>
</tr>
<tr>
<td>Thesis</td>
<td>0.5%</td>
<td>28.5%</td>
<td>29%</td>
<td>71%</td>
</tr>
</tbody>
</table>
Combining writer direct and indirect averrals, we see that the essay genre has a total of 36% while the thesis genre has 29% which translates into a roughly 3-4% variation around the one-third mark thus indicating an overall stability in the distribution between writer averrals and attributions. Given the marginal role played by writer direct averrals it was decided to concentrate on writer indirect averrals and attributions, which together account for over 95% of the uses of ‘that’ when reporting or relating to facts and beliefs.

Table 7.5 below contains the words that occurred most frequently in L1 position before ‘that’ in each period (and before ‘that the’ in Period 3). These tokens represent 42.5%, 42%, 44% and 48% of all ‘that’ occurrences for Periods 1 to 4 respectively. The slight anomaly of ‘that’ not being key in Period 3 does not mean that there has been a dramatic fall-off in the use of ‘that’. Period 3 has 1539 occurrences for ‘that’, which while substantial, is nevertheless inferior to Period 1’s 1729 and Period 2’s 1852; so even in absolute terms the shortfall put its eventual statistical-value score below the threshold point for marking it as a Keyword in WordSmith. Period 3’s key term ‘that the’ maintains the pattern of usage as identified in the other periods, notwithstanding its considerably smaller total number of occurrences (366). The most common terms preceding ‘that’ are list in Table 7.5.

Table 7.5 Most common terms preceding ‘that’.

<table>
<thead>
<tr>
<th>Periods</th>
<th>Writer indirect averral</th>
<th>Attribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>State</td>
<td>2</td>
<td>68</td>
</tr>
<tr>
<td>Is</td>
<td>36</td>
<td>74</td>
</tr>
<tr>
<td>Note</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>Fact</td>
<td>38</td>
<td>45</td>
</tr>
<tr>
<td>Held</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Argue</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

237
<table>
<thead>
<tr>
<th></th>
<th>Writer indirect</th>
<th>Heat</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>Total</th>
<th>Attribution</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>Total</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Periods:</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>Total</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mean</td>
<td>16</td>
<td>29</td>
<td>9</td>
<td>76</td>
<td>130</td>
<td>13</td>
<td>23</td>
<td>36</td>
<td>166</td>
<td>13</td>
<td>23</td>
<td>36</td>
<td>166</td>
<td></td>
</tr>
<tr>
<td>Suggest</td>
<td>10</td>
<td>15</td>
<td>1</td>
<td>27</td>
<td>53</td>
<td>20</td>
<td>24</td>
<td>4</td>
<td>85</td>
<td>37</td>
<td>24</td>
<td>4</td>
<td>85</td>
<td></td>
</tr>
<tr>
<td>Say</td>
<td>5</td>
<td>9</td>
<td>5</td>
<td>20</td>
<td>39</td>
<td>36</td>
<td>16</td>
<td>3</td>
<td>97</td>
<td>42</td>
<td>16</td>
<td>3</td>
<td>97</td>
<td></td>
</tr>
<tr>
<td>Ensure</td>
<td>16</td>
<td>26</td>
<td>1</td>
<td>43</td>
<td>25</td>
<td>26</td>
<td>9</td>
<td>60</td>
<td>103</td>
<td>25</td>
<td>26</td>
<td>9</td>
<td>60</td>
<td></td>
</tr>
<tr>
<td>Conclude</td>
<td>2</td>
<td>9</td>
<td>11</td>
<td>17</td>
<td>19</td>
<td>45</td>
<td>91</td>
<td>102</td>
<td>102</td>
<td>17</td>
<td>19</td>
<td>45</td>
<td>91</td>
<td></td>
</tr>
<tr>
<td>Believe</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>24</td>
<td>29</td>
<td>44</td>
<td>97</td>
<td>101</td>
<td>101</td>
<td>24</td>
<td>29</td>
<td>44</td>
<td>97</td>
<td></td>
</tr>
<tr>
<td>Found</td>
<td>1</td>
<td>1</td>
<td>15</td>
<td>22</td>
<td>5</td>
<td>51</td>
<td>93</td>
<td>94</td>
<td>94</td>
<td>15</td>
<td>22</td>
<td>5</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Submit</td>
<td>18</td>
<td>13</td>
<td>7</td>
<td>42</td>
<td>80</td>
<td>5</td>
<td>3</td>
<td>13</td>
<td>93</td>
<td>5</td>
<td>3</td>
<td>13</td>
<td>93</td>
<td></td>
</tr>
<tr>
<td>Provide</td>
<td></td>
<td>29</td>
<td>5</td>
<td>52</td>
<td>86</td>
<td>5</td>
<td>3</td>
<td>13</td>
<td>93</td>
<td>5</td>
<td>3</td>
<td>13</td>
<td>93</td>
<td></td>
</tr>
<tr>
<td>Require</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>10</td>
<td>44</td>
<td>7</td>
<td>19</td>
<td>27</td>
<td>71</td>
<td>7</td>
<td>19</td>
<td>27</td>
<td>71</td>
<td></td>
</tr>
<tr>
<td>Clear</td>
<td>12</td>
<td>4</td>
<td>28</td>
<td>44</td>
<td>7</td>
<td>1</td>
<td>19</td>
<td>27</td>
<td>71</td>
<td>7</td>
<td>19</td>
<td>27</td>
<td>71</td>
<td></td>
</tr>
<tr>
<td>Show</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>14</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>72</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>72</td>
<td></td>
</tr>
<tr>
<td>In</td>
<td></td>
<td>9</td>
<td>21</td>
<td>1</td>
<td>33</td>
<td>64</td>
<td></td>
<td>64</td>
<td>64</td>
<td>9</td>
<td>21</td>
<td>1</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td>Recognise</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>11</td>
<td>10</td>
<td>8</td>
<td>28</td>
<td>46</td>
<td>57</td>
<td>10</td>
<td>8</td>
<td>28</td>
<td>46</td>
<td></td>
</tr>
<tr>
<td>Appear</td>
<td>7</td>
<td>12</td>
<td>6</td>
<td>26</td>
<td>51</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>52</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>52</td>
<td></td>
</tr>
<tr>
<td>Claim</td>
<td>1</td>
<td></td>
<td>11</td>
<td>12</td>
<td>5</td>
<td>22</td>
<td>50</td>
<td>51</td>
<td>50</td>
<td>11</td>
<td>12</td>
<td>5</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>Satisfy</td>
<td></td>
<td>12</td>
<td>36</td>
<td>48</td>
<td></td>
<td>48</td>
<td></td>
<td>48</td>
<td>48</td>
<td>12</td>
<td>36</td>
<td>48</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>Recommend</td>
<td>2</td>
<td>2</td>
<td>13</td>
<td>30</td>
<td>43</td>
<td>45</td>
<td></td>
<td>45</td>
<td>45</td>
<td>2</td>
<td>2</td>
<td>13</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Was</td>
<td></td>
<td>6</td>
<td>6</td>
<td>12</td>
<td>25</td>
<td>37</td>
<td>43</td>
<td></td>
<td>43</td>
<td>6</td>
<td>6</td>
<td>12</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Feel</td>
<td>1</td>
<td></td>
<td>9</td>
<td>13</td>
<td>20</td>
<td>42</td>
<td>43</td>
<td></td>
<td>43</td>
<td>9</td>
<td>13</td>
<td>20</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Indicate</td>
<td>13</td>
<td>10</td>
<td>23</td>
<td></td>
<td>19</td>
<td>19</td>
<td>42</td>
<td></td>
<td>42</td>
<td>13</td>
<td>10</td>
<td>23</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Be</td>
<td>9</td>
<td>13</td>
<td>4</td>
<td>15</td>
<td>41</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>42</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>Rule</td>
<td>5</td>
<td></td>
<td>5</td>
<td>9</td>
<td>7</td>
<td>19</td>
<td>35</td>
<td>40</td>
<td>40</td>
<td>5</td>
<td>9</td>
<td>7</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>Assume</td>
<td>2</td>
<td>9</td>
<td>11</td>
<td>13</td>
<td>14</td>
<td>27</td>
<td>38</td>
<td></td>
<td>38</td>
<td>9</td>
<td>11</td>
<td>13</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>View</td>
<td>2</td>
<td>5</td>
<td>7</td>
<td>10</td>
<td>18</td>
<td>28</td>
<td>35</td>
<td></td>
<td>35</td>
<td>5</td>
<td>7</td>
<td>10</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Contend</td>
<td>13</td>
<td>13</td>
<td></td>
<td>19</td>
<td>19</td>
<td>32</td>
<td></td>
<td>32</td>
<td>19</td>
<td>19</td>
<td>32</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

238
As has already been noted in Tables 7.3 and 7.4, the dominant use is that of attribution and in terms of Thompson and Ye’s (1991) categories as discussed in Section 7.1.1.4, textual and mental processes dominate. However, as the chart above shows, there are cases where there is a clear preference by the writers to use particular forms when expressing an attribution, such as the textual verb ‘state’, and other forms when the writer wishes to make a personal stance and hence uses epistemic process verb ‘appear’ or the epistemic adjective ‘clear’ or the verbal process (textual) verb ‘submit’. The data analysis will now investigate the characteristics of the terms that students opt for when attributing to others or when taking a personal stance. However, there is also a third category where the prevailing use is for attribution but there is nevertheless a significant use of the term for writer averral (see ‘suggest’ or ‘note’). This will be the third category of use to be analysed in order to
determine how characteristics of these hybrid terms differ according to whether there is an averral or an attribution.

### 7.2.1 Attribution

The following section will focus on the terms listed in Table 7.6 below. The selection criterion to determine whether a term was predominately used for attribution was that over 75% of its total occurrences had to be in that category.

Table 7.6 Terms predominately used as attributions

<table>
<thead>
<tr>
<th>Periods:</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>Total</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State</strong>&lt;sup&gt;29&lt;/sup&gt;</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td></td>
<td>68</td>
<td>51</td>
<td>11</td>
<td>167</td>
<td></td>
<td>297</td>
</tr>
<tr>
<td><strong>Held</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>44</td>
<td>36</td>
<td>15</td>
<td>121</td>
<td></td>
<td>216</td>
</tr>
<tr>
<td><strong>Believe</strong></td>
<td>1</td>
<td>3</td>
<td>4</td>
<td></td>
<td>24</td>
<td>29</td>
<td>44</td>
<td>97</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Found</strong></td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td>15</td>
<td>22</td>
<td>5</td>
<td>51</td>
<td></td>
<td>93</td>
</tr>
<tr>
<td><strong>Conclude</strong></td>
<td>2</td>
<td>9</td>
<td>11</td>
<td></td>
<td>17</td>
<td>19</td>
<td>45</td>
<td>91</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Provide</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>29</td>
<td>5</td>
<td>52</td>
<td>86</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Require</strong></td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>10</td>
<td>17</td>
<td>9</td>
<td>44</td>
<td>70</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Claim</strong></td>
<td>1</td>
<td></td>
<td>1</td>
<td></td>
<td>11</td>
<td>12</td>
<td>5</td>
<td>22</td>
<td></td>
<td>50</td>
</tr>
<tr>
<td><strong>Satisfy</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>12</td>
<td>36</td>
<td>48</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Recommend</strong></td>
<td>2</td>
<td>2</td>
<td></td>
<td></td>
<td>13</td>
<td>30</td>
<td>43</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Feel</strong></td>
<td>1</td>
<td></td>
<td>1</td>
<td></td>
<td>9</td>
<td>13</td>
<td>20</td>
<td>42</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Was</strong></td>
<td></td>
<td>6</td>
<td>6</td>
<td>12</td>
<td>25</td>
<td>37</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Rule</strong></td>
<td>5</td>
<td></td>
<td>5</td>
<td>9</td>
<td>19</td>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>View</strong></td>
<td>2</td>
<td>5</td>
<td>7</td>
<td>10</td>
<td>18</td>
<td>28</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Comment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>21</td>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

29 The words listed are the most common recorded though in some but not all cases inflected forms are also included in the count.
<table>
<thead>
<tr>
<th>Periods:</th>
<th>Writer indirect averral</th>
<th>Attribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Opinion</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Aware</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Decide</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Establish</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Observe</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prove</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Idea</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Find</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emphasise</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Ground</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Notion</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Reveal</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Confirm</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Condition</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Explain</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>Propose</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

The division between verbs and nouns is roughly 75:25. For the verbs, verbal processes dominate the high frequency items through ‘state’, ‘conclude’, ‘found’, ‘held’, ‘claim’ and ‘recommend’. The nouns also show a preference for reporting verbal rather than mental or epistemic processes as in this corpus ‘rule’, ‘idea’, ‘condition’ and ‘notion’ generally report on propositions that have already been articulated.

**7.2.1.1 Sources of the law in subject position**

A common theme running through the attributions is for students to rely heavily on the traditional sources of Common Law authority. These are legislative acts, treaties, constitutions and court decisions.
7.2.1.2 Court decisions

Given the defining role that judicial precedent plays in the constantly evolving state of common law and the fact that case law forms the bulk of laws in Common Law jurisdictions (MacIntyre 2005: 2), it is hardly surprising that appeal court decisions feature as the main source around which the various forms of the that-clause cluster. Total court related references account for approximately 40% (605) of the attributions derived from Table 7.6, with 22 word types being used. However, if we take just the word types that had ten tokens or more, then we are left with 10 and these represent 85% (513) of total court references. Table 7.7 provides a breakdown of how these 10 terms constitute this 85% share.

Table 7.7 Top terms used for court references

<table>
<thead>
<tr>
<th>Term</th>
<th>Number of tokens</th>
<th>% portion of top 10 tokens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Held</td>
<td>183</td>
<td>35.5%</td>
</tr>
<tr>
<td>Stated</td>
<td>91</td>
<td>18%</td>
</tr>
<tr>
<td>Found/find</td>
<td>77</td>
<td>15%</td>
</tr>
<tr>
<td>Satisfied</td>
<td>51</td>
<td>10%</td>
</tr>
<tr>
<td>Conclude</td>
<td>30</td>
<td>6%</td>
</tr>
<tr>
<td>Ruled</td>
<td>27</td>
<td>5.5%</td>
</tr>
<tr>
<td>Prove</td>
<td>16</td>
<td>3%</td>
</tr>
<tr>
<td>Was</td>
<td>14</td>
<td>2.5%</td>
</tr>
<tr>
<td>Established</td>
<td>13</td>
<td>2.5%</td>
</tr>
<tr>
<td>Require</td>
<td>11</td>
<td>2%</td>
</tr>
<tr>
<td>Total</td>
<td><strong>513</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

As the first six items account for close to 90% of all top ten occurrences, the remaining analysis in this section will focus on these. Sample concordance lines for court references are shown in Figure 7.1.
Figure 7.1 Sample concordance lines for court references

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>its consequences for him.78 The Court <strong>concluded</strong> that the domestic law at the</td>
</tr>
<tr>
<td>2</td>
<td>of residence. The European court <strong>concluded</strong> that there was nothing to</td>
</tr>
<tr>
<td>3</td>
<td>on another family member. He therefore <strong>concluded</strong> that the rule excluding the</td>
</tr>
<tr>
<td>4</td>
<td>of the merits of the claim that it can be <strong>concluded</strong> that it is in the public interest</td>
</tr>
<tr>
<td>5</td>
<td>Simon Brown LJ had no hesitation in <strong>finding</strong> that the public interest test had</td>
</tr>
<tr>
<td>6</td>
<td>sale by description, the Court of Appeal <strong>found</strong> that the sale was not by</td>
</tr>
<tr>
<td>7</td>
<td>, the European Court of Human Rights <strong>found</strong> that the blanket and</td>
</tr>
<tr>
<td>8</td>
<td>itself is open to scrutiny.70 The Court <strong>found</strong> that this law was deficient in that</td>
</tr>
<tr>
<td>9</td>
<td>vehicle and especially the Plaintiff.” He <strong>found</strong> that there was a breach of s.13(2).</td>
</tr>
<tr>
<td>10</td>
<td>in Lambert v France228 where it was <strong>held</strong> that Article 8 can be pleaded by</td>
</tr>
<tr>
<td>11</td>
<td>Directive was discussed.89 The ECJ <strong>held</strong> that the reduction or modification of</td>
</tr>
<tr>
<td>12</td>
<td>of Lords in that case, Lord Hoffman <strong>held</strong> that it was not a conceptual</td>
</tr>
<tr>
<td>13</td>
<td>NHS Trust v. S37. Lord Judge <strong>held</strong> that “[w]here the patient has given</td>
</tr>
<tr>
<td>14</td>
<td>Marine128 where the Court of Appeal <strong>held</strong> that driving the car without incident</td>
</tr>
<tr>
<td>15</td>
<td>tapping before the High Court, but it <strong>held</strong> that the tapping did not violate any</td>
</tr>
<tr>
<td>16</td>
<td>facilities. However, the Supreme Court <strong>held</strong> that it is not open to the detainee</td>
</tr>
<tr>
<td>17</td>
<td>metres with another inmate. The Court <strong>ruled</strong> that this constituted overcrowding</td>
</tr>
<tr>
<td>18</td>
<td>Cement I17 in which the Appellate Body <strong>ruled</strong> that DSU rules and procedures are</td>
</tr>
<tr>
<td>19</td>
<td>8(2).41 However, the Court was not <strong>satisfied</strong> that the applicant had proved</td>
</tr>
<tr>
<td>20</td>
<td>to protect the family”.41 Walsh J was <strong>satisfied</strong> that in the circumstances of</td>
</tr>
<tr>
<td>21</td>
<td>50 Bean J, granting a PCO was <strong>satisfied</strong> that without one, the applicant</td>
</tr>
<tr>
<td>22</td>
<td>Limited? where Mr. Justice O’Neill <strong>stated</strong> that “the word ‘director’ in</td>
</tr>
<tr>
<td>23</td>
<td>.7 Mr. Justice Egan, dissenting in SC, <strong>stated</strong> that such an approach would</td>
</tr>
<tr>
<td>24</td>
<td>Corporation42, where Lord Greene M.R. <strong>stated</strong> that “if a decision on a</td>
</tr>
<tr>
<td>25</td>
<td>and Ors v Germany166 the ECtHR <strong>stated</strong> that it considers that in the field</td>
</tr>
</tbody>
</table>

These six terms perform specific rhetorical functions, the most common one being the reporting of court final decisions, followed by the reporting of court deliberations and finally, within the scope of deliberations, the focus on criteria which the courts consider necessary to assess before proceeding towards the development of a final decision.

**Reporting final decisions – ‘Held that’**

‘Held’ is the dominant term used in conjunction with court references. Its rhetorical function is to report on the final decision of the court regarding the legal issue it was required to address:
This was conceived in Adams v. Lindsell and was fully formulated in Henthorn v. Fraser where it was held that the contract is formulated once the letter of acceptance is posted. (Period 3)

Hyland (2000) classified the reporting verb ‘hold’ as non-factive positive, though given the legally binding nature of the reported decision and hence the student’s powerlessness in assigning a value of undermine its finality, it could also be seen as a factive verb. This type of reporting is done using the simple past form. It is mostly used in the active form with 79% of occurrences and the remainder being in the passive form. While the construction of the passive form is almost always ‘it + was + held + that’ with the unnamed agent being the residing court, there are two main subject preferences when using the active form. One is to mention the court where the decision was made:

Ultimately, the Constitutional Court held that ... (Period 4)

The other is to add the name of the court judge or judges who wrote the majority (or even dissenting) decision:

In the House of Lords in that case, Lord Hoffman held that ... (Period 2)

One explanation for this could be Williams’ (2002: 110) explanation of the need to cite the court where a decision was made as this will then enable the law student to locate the case in the hierarchy of authorities. The additional significance of the judge is that, despite the ideal of objectivity in applying the law, there is nevertheless a significant role to be played by the judge and with it comes an ideological view that may influence decisions. Some judges have attained quite an amount of prestige in their careers due to landmark decisions that have had a major impact on society30. Following the reasoning of judges also allows the legal scholar to perceive ideological patterns in the ratio decidendi.

Reporting final decisions – ‘Found/find that’

‘Found/find’ carry out a similar rhetorical function to ‘held’ with the focus being on the court’s conclusions about a case:

30 See the case of Donoghue v Stevenson [1932] AC 562 where Lord Aitken’s ‘neighbour principle’ led to an increased duty of care by manufacturers towards consumers and hence opened a new era of consumer rights.
The court found that the tube feeding constituted medical treatment and had no curative effect thus it was invasive and a breach of bodily integrity.  

(Period 1)

‘Found + that’ accounts for almost 80% of occurrences and the active form of ‘found’ dominates with this structure being chosen 85% of the time. The practice of naming the court and/or the judge also continues. Where ‘found/find’ differs with ‘held’ is that it is not as restricted in terms of collocation. There are also instances where it is used to report the findings of regulatory bodies and commissioned papers as Section 7.2.1.3 will illustrate below.

**Reporting final decisions – ‘Concluded that’**

‘Concluded that’ follows the pattern already set by ‘held that’ in that the simple past form is used to report the court decision rather than intermediate deliberations. Just the active form is used and the subject is shared by a clearly identified court or name of a judge:

In *Hamdan v. Rumsfeld* the Supreme Court concluded that the restriction did not apply to cases already pending before the courts when the Detainee Treatment Act was passed.  

(Period 3)

**Reporting final decisions – ‘Ruled that’**

‘Ruled that’ occurrences deal mostly with reporting court decisions in cases and constitute about 60% of all occurrences of the sub-corpus dedicated to the root form ‘rule’ and its derivatives:

Egan J therefore ruled that the statement was inadmissible and directed the jury to acquit the defendant.  

(Period 4)

The active form dominates and again it is always clear which court is making the decision: in 80% of the cases the court is identified, with the remainder actually naming the judge. Further uses of ‘rule’ as a nominal form have been discussed in Chapter 6.2.1.1.

**Court deliberations – ‘Stated that’**

When ‘stated’ is used for attributions, 37% of the 297 instances are in relation to court decisions. However, the rhetorical function of ‘stated’ (the form which constitutes 80% of
the court specific occurrences, the remaining 20% being dominated by ‘stating’) would appear to bring to light the deliberations of the court when arriving at a final decision as the following example illustrates:

*The ECJ stated that an IPR (in this case a trademark) does not per se fall within the scope of Article 81 unless... If this exercise occurs ... it must be ascertained in each case whether it gives rise to situations prohibited by Article [81]. The ECJ held that: ...* (Period 4)

The function that ‘stated’ enables is not to be underestimated. From a Common Law point of view, the inductive approach taken by the courts to the issues raised by a particular case is important to help scholars and practitioners understand the criteria by which a decision is made. The rule is devised as reasoning proceeds, which is in contrast to civil law systems which take a deductive approach to cases based on legal principles already set out in legal codes. In common with ‘held that’, over 95% of the occurrences are again in the simple past and subject position of the active form, which accounts for all instances bar one, is occupied by either the court or judge:

*The Court stated that in order for a refusal to licence to be abusive it needed to satisfy three cumulative requirements: ...* (Period 4)

*Mr Justice Scalia stated that legal rules could go against autonomy to protect life because of the state’s interest in protecting life.* (Period 1)

**Issues of procedure and verifications of facts and circumstances – ‘Satisfied that’**

‘Satisfied that’ sheds light on other aspects of court deliberations, those of procedure:

*Walsh J was satisfied that in the circumstances of the case, the admission of Mrs T as a witness for the prosecution did not infringe the constitutional guarantee to protect the family under Article 41.* (Period 1)

And the verification of facts and circumstances:
Although the European Court was satisfied that the applicant's position could be contrasted with classic detention ... (Period 4)

... a court may refuse the application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence. (Period 2)

As the three examples show above, both court and judge can occupy the subject position though in contrast to, say, the ‘stated’ construction, where there was almost a 50% split between occurrences of the name of the court and judge, here the judge’s name occurs only 10% of the time. It is also worth noting that the references including a court in subject position remain at the generic idea of ‘court’ rather than specifying which court in particular. A likely explanation for both these phenomena is that the simple past, which has played a key role in reporting court deliberations and conclusions, is present in just 30% of the cases. This means the construction is not being used in a historical reporting role. Indeed, the 70% of occurrences that use ‘is/be satisfied’ are either preceded by a modal form:

*The evidence must be given on oath or affirmation ... or the court must be satisfied that when the statement was made, the witness understood the requirement to tell the truth.* (Period 1)

Or, in a context of conditionality:

*... hearsay evidence may become admissible, where the court hearing the application is satisfied that there are sufficient grounds for not requiring that witness to give viva voce evidence.* (Period 4)

Both of these uses point to hypothetical scenarios and hence the impossibility of knowing which court the appeal is going to be heard in, or indeed which judges will be hearing the submissions. Therefore, not only does ‘satisfied that’ fulfil the typical reporting role but is also gives expression to the assessment of criteria which the courts consider necessary in order to maintain the sanctity of due process, or identify grounds from which decisions can then proceed.
7.2.1.3 Court decisions – Summary comments

The corpus reveals that students write mostly about the courts’ final decisions and in the process name the court or the judge who makes the relevant ruling and in the process display a preference for integral citations. The reporting of judgements is done using the simple past and the range of vocabulary to report on the rulings is relatively limited with just four lemmas dominating. The preference for the simple past is certainly in line with Shaw’s (1992: 317) view about the active voice and simple past being relied on to provide more detail. The type of verbs used, held, found, concluded and ruled, cannot really be aligned with Thompson and Ye’s (1991) research verbs (hold was listed in their category) as no research experiments or surveys have been done. Instead, because of the declarative nature of the decision, in that judgements are read out in a court of law, one can argue that these verbs have a greater affinity with textual/discourse verbs. Students also pay attention to the aspects of court deliberations and the criteria applied by the courts in relation to due process and the assessment of case facts. These features are not as frequently mentioned in the texts, perhaps because they are not legally binding as an end decision is. Both of these features are dealt with historically as again the simple past dominates when reporting on cases, though issues of due process and assessment of case facts can also operate in a more hypothetical sphere. In such circumstances students are writing about what would need to be in place for a court to proceed in a certain direction with a case and accordingly adopt structures of conditionality of modal forms of obligation. Altogether, the three strands of reporting on rulings, deliberations and criteria setting provide an insight as to the type of legal analysis which is expected of students.

7.2.1.4 Legislative acts, constitutions and treaties

References to legislative acts etc. rely principally on the use of three terms and their derivative forms: state, provide and require. Examples of their use are shown in Figure 7.2.
While ‘state’ has a wider range of collocation possibilities with a little under 20% of its occurrences with formal law making documents, close to 90% of the instances of ‘provide’ are preceded by details of acts, directives or codes. ‘Require’ and its derivatives are somewhat between the other two with a little over 50% of occurrences having collocations similar to those of ‘provide’. These three terms operating under the function of documents of law account for 12% of the attributions listed in Table 7.6. The character of the subject is in many cases quite detailed with precise references to document sections:

*Section 9(2) of the Juries Act, 1976 states that* ... (Period 1)

*Article 9(2)(a) of the 2003 Regulations requires that* ... (Period 4)

Another feature that all three terms share is that when they are used to report the contents of a treaty, constitution or piece of legislation, the tense is almost always present and most often present simple:

*Sections 7(11) and (12) provide that not later than 7 days after*... (Period 4)
Blackstone (1832), in reference to the function of law, defined it as “a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong” (p.44). In light of such a viewpoint, it would appear quite logical that the three terms perform similar rhetorical functions, primarily outlining what the parties referred to by the law in question are entitled, prohibited or obliged to do. As Diani (2001) remarks, “in legislative discourse, the condition of authority is crucial” (p.188). As a result, it is not surprising that deontic modal forms are frequently found in the ‘that’ clause:

Sections 28, 29 and 30 all state that no adverse inferences can be drawn unless ... (Period 4)

Article 40 2006/48/EC provides that the prudential supervision of a credit institution shall be... (Period 3)

7.2.1.5 Legislative acts, constitutions and treaties – Summary comments

Playing a relatively minor role, when compared to court decisions, legislative acts etc. share a feature with the preceding category in that the very specific details in the subject position again underline the importance of precise references to the sources of law. The nature of the source means that this time, all integral citations (and indeed they are all integral) have Hyland and Tse’s (2005) “inanimate source” (p.130) as subject agent. What is also of interest is the perception created by the use of the present tense when compared to the past tense used to report on court decisions. While the latter seems to be focusing on the event where the court decision was made, the legislative documents are communicated as current states of being and the (past) action of enacting the law is not reflected in the language of the students. It should also be noted that the precedent set by the court decisions reported may have since been refined by later cases, while reporting what a piece of legislation requires is to outline the most up-to-date state of the law. This latter point concurs with Swales and Feak’s (2004: 254) observation that a general trend in the use of the present tense across disciplines is to reflect the current state of knowledge, though here we are talking about the current state of the law.
7.2.1.6 Reference to non-academic and non-law making bodies

Non-academic or non-law making bodies, for the purpose of this study, are those sources to which the student writers refer that belong neither to the field of academia nor the law-making bodies discussed above. They can be grouped into three broad categories:

*Quasi-judicial entities (106 occurrences)* - This first category incorporates all bodies that perform a regulatory or executive function and therefore have varying degrees of authority, though their scope for law making, in the parliamentary or judicial precedent sense, is non-existent. Nevertheless, it could be said that they play a quasi-judicial role given that they do have the mandate to issue guidelines (such as the Medical Council), issue licences (such as the Patent’s Board) and enforce regulations (such as the European Commission). It accounts for 30% of all occurrences in this category.

*Protagonists in court and police-related activities (75 occurrences)* – This second category could be considered to represent those who are in some way related to court or police-related activities but unlike the judges, do not have a law making role. This could be the police officers themselves, crime victims, litigants, lawyers etc. It accounts for 21% of all occurrences in this category.

*Other (172)* - This includes references to society in general (“the public/the middle classes”), abstract concepts such as theories, models and doctrines, or shell nouns, whose description follows in the ‘that’ clause. It accounts for 49% of all occurrences in this category.

Counting the occurrences from the list in Table 7.6 which corresponded to non-academic and non-law making bodies, a total number of 353 were recorded (24% of all attribution occurrences). These are listed in Table 7.8.
Table 7.8 Main terms used with references to non-academic or non-law making entities

<table>
<thead>
<tr>
<th>Lemma</th>
<th>Number of tokens</th>
<th>% portion of occurrences</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>71</td>
<td>20%</td>
</tr>
<tr>
<td>Believe</td>
<td>57</td>
<td>16%</td>
</tr>
<tr>
<td>Feel</td>
<td>40</td>
<td>11.5%</td>
</tr>
<tr>
<td>Require</td>
<td>40</td>
<td>11.5%</td>
</tr>
<tr>
<td>Claim</td>
<td>36</td>
<td>10%</td>
</tr>
<tr>
<td>Found</td>
<td>27</td>
<td>7.5%</td>
</tr>
<tr>
<td>Was</td>
<td>22</td>
<td>6%</td>
</tr>
<tr>
<td>Idea</td>
<td>17</td>
<td>5%</td>
</tr>
<tr>
<td>Conclude</td>
<td>15</td>
<td>4%</td>
</tr>
<tr>
<td>Ground</td>
<td>12</td>
<td>3%</td>
</tr>
<tr>
<td>Recommend</td>
<td>10</td>
<td>3%</td>
</tr>
<tr>
<td>Report</td>
<td>9</td>
<td>2.5%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>353</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Unlike the occurrences recorded for court decisions and law documents, the spread among terms is far more even here. However, there is also a far wider dispersion of sources being quoted and a wider range of report-type verbs being used. Mental verbs are more visible here with just ‘believe’ and ‘feel’ accounting for almost one quarter of all occurrences for the category and verbal process maintain a strong presence through ‘state’, ‘found’ ‘recommend’ and the more epistemic ‘claim’. The rhetorical roles are described below.

*Other*

Sample concordance lines of the main verbs belonging to the ‘other’ category are as follows in Figure 7.3.
Figure 7.3 Sample concordance lines for the category ‘other’

This is consistent with the growing belief that bilateral treaties “no longer

demands of public protection. The belief that too few serious offenders are

attempts to challenge the popular belief that objective legal conclusions

support from the general public. “72% believe that mentally ill offenders should

also to explain why it is preferable to believe that a female criminal has

for innovation. In the past it was believed that there was an inherent

reactions by individuals who feel that their neighbour has wronged

, it is not surprising that law students feel that their ideas are “devalued” or

. A similar number (69%) of insurers feel that Solvency II is just another

. While this is difficult for clients who feel that they have been wronged or

any relevant documentation, if s/he feels that an RMIF member has not

to vent and to tell Wilma why he feels that the way she is conducting her

the consultation and the Green Paper it felt that the “potential drawbacks to

legal framework. In particular, the idea that Europol could enjoy

and anomie. Behaviouralism is the idea that what you see on television will

occur. By having in the backdrop, the idea that if mediation fails, one can

more questionable. It adds to the idea that politicians are only concerned

in the UK it was found that 56% reported that they felt ‘unsafe’, ‘nearly a

had tea there. Members of his family reported that whilst there he laughed,

Tribunals, The Irish Medical Times reported that the Chief Executive Officer

not. The Irish Times on 31 March 2008 reported that research carried out by Dr.

guilty or not. But that is a very clinical statement that belies the complexities

(S?C?P) paradigm. This theory states that the structure of the market

.28 The principle of dual criminality states that extradition is allowed only

Blair has stated, “[W]hat galvanized me was that it was a declaration of war by

to the king directly. The logic for this was that if the king was wronged it was

decisions where the underlying principle was that the subject matter is not

want the operation and medical opinion was that she was alert at this time and

.63 The claimant’s skeleton argument was that, as a matter of law, mitigation

It is difficult to identify a clear trend in this category. As reported in the literature review,
numerous issues of stance appear to be at play here. Line 30 illustrates Thompson’s (1996: 517) message summary and hence the writer takes more control over the statement by reformulating the author’s proposition. Furthermore, ‘was that’ differs from the other concordances in that the reporting element shifts to the preceding noun or noun clause. Line
18 has the potential to be classified as Hunston’s (2000: 191) sourced averral, as the writer gives an interpretation of an ‘idea’ and overall the occupiers of the subject position are frequently inanimate objects or group entities which have to effect of making the proposition sound more general in scope. Syntactically, we can see that the ‘that’ clause does indeed facilitate the explanation of the shell nouns used by the student authors:

\[
\text{All the public want is to feel safer and the mere perception or belief that this is happening is sufficient.} \quad \text{(Period 1)}
\]

The main terms that facilitate this approach are ‘idea that’, ‘state that’ and ‘was that’. As the sample concordance lines for these lemmas show above, nominal forms have a significant role to play in student legal academic writing and indeed the issue has already been addressed in more detail in Chapter 6.

When shell nouns in the form of concepts or views of the public are not being described, then the other main use seems to be that of using verb forms to report what others think or have said:

\[
\text{After the trial the travelling community claimed that if Mr. Nally had been a traveller and if Mr. Ward had been a member of the settled community, a different verdict may have been returned.} \quad \text{(Period 2)}
\]

\[
\text{96\% of those who prior to taking the course had had some interest in public interest practice reported that their experience in clinic had reinforced that intention.} \quad \text{(Period 2)}
\]

While the topic always remains focussed on legal issues, a review of who occupies the subject position can at times reflect the influence of the material under discussion. For example, the verb ‘feel’ features quite prominently in this category with 29 occurrences. However, many occurrences come from a thesis on mediation in a divorce settlement scenario. Perhaps reflecting the desire to take a less adversarial approach under the delicate circumstances many of the opposing parties claims are not prefaced with ‘claim’ but instead the less face threatening verb of ‘feel’ is preferred:
...it will give Hank an opportunity to vent and to tell Wilma why he feels that the way she is conducting her relationship with Lance is inappropriate. (Period 4)

Where topic influence is less strong, verbs such as report include newspapers, websites or survey respondents in the subject position while believe is prefaced by the more generic ‘supporters’, ‘the public’, ‘those who’ or ‘a person’ and require, with echoes of Hunston’s sourced averrals (Section 7.1.2.3), attracts concepts such as ‘fair procedures’, ‘the interests of justice’ or ‘the public interest’. However, none of these forms are sufficiently large enough to establish a clear trend within the category. Perhaps just one common thread can be identified which is the type of reporting verbs used. The lexical reporting verbs belong to Thompson and Ye’s (1991) textual and mental verbs categories, while the auxiliary verb ‘be’ is collocated to mental processes in lines 27 to 30 with nominals such as underlying principle/logic/opinion.

Quasi-judicial entities
In contrast to the ‘Other’ category, quasi-judicial entities, while smaller in terms of occurrences, do appear to form a clear group of entities that perform a particular function within the field of law, mostly in the form of regulation enforcement or granting of permits of one form or another. Figure 7.4 shows a sample of concordance lines relating to this category.
As can be seen from the concordance lines above, the entities occupying the subject position tend to be governmental (e.g. line 5 for the Environmental Protection Agency), transnational (e.g. the European Commission in lines 4, 12 and 18), regulatory (e.g. the Patents Board and its constituent elements in lines 11, 14 and 16) or profession based (e.g. lines 1 and 2). The most common verbs in this category, with 92 occurrences, are state, recommend, require, found and conclude, which, with the exception of recommend, have already been found in reports on court decisions and legislative contents and have a strong textual process verb focus. Require, found and conclude indicate a clear decision-making and regulatory capacity while state and recommend indicate a degree of influence and certainty of stance. In contrast, verbs indicating subjective views such as feel, believe or claim have a very low presence here (just 10 occurrences).

256
As already noted in Section 7.2.1.2, when referring to documents there is the tendency with state, the word form with the highest number of occurrences at 42, to report document contents in the present tense along with a modal verb of obligation or expectation:

... *the Pension Board Guidance Note, which states that the employer must* “ensure” that members and beneficiaries are receiving annual accounts, annual reports, ...

(Period 2)

... *the claimant sought to rely on the Commission’s Methodological Guidance where it states that the screening state should be carried out in the absence of mitigation measures.*

(Period 4)

The modal forms again reflect the position of authority that these bodies have been invested with. Another general feature is that the past tense is preferred for the reporting verb when a specific document is not being referred to but the entity that produced the document is, a phenomenon already observed for legislative documents and courts. Compare:

*The Communication also concludes that there is currently no case for changing the current minimum guarantee level.*

(Period 1)


*The Commission concluded that: "Tetra abused its dominant position by the acquisition of [the] exclusive licence ...*

(Period 4)

As the examples above illustrate, the role of the quasi-judicial entities is similar to that of the courts in that they specify obligations and in some cases even issue rulings. However, when compared to the courts of appeal and documents of law, these entities should be considered to be at a lower tier of legal significance, both because of the lower rate of occurrences in the corpus and from a purely legal point of view, their more restricted role in the formation of new laws.

A final point worth noting is that in the sample corpus lines of Figure 7.4, nine are reported with direct quotation marks. As noted in Section 7.1.2.2 Caldas-Coulthard (1992: 72) highlighted the reinforcing effect of including direct quotations to a writer’s thesis.
Thompson (1996) also pointed out that the primary function in academic writing for direct quotation was to “indicate a higher degree of faithfulness” (p.512). It would appear that the use of direct quotes here is to cede authority to the institution that made the statement, thus aligning the writer with the proposition.

**Protagonists in court and police-related activities**

Given that criminal law constitutes almost 30% of the total corpus, it is hardly surprising that a category that contains reference to police activities has arisen. The category extends to the field of prison detention but is not just focussed on criminal activities, the court protagonists can belong to civil cases, it is sufficient that they do not belong to the judiciary who have already been dealt with under Section 7.2.1.1. The main verbs used under this category are ‘believe’, ‘claim’, ‘state’, and the noun form ‘ground’. Once again, the preference is for textual and mental process verbs. A sample of concordance lines for each of these is is shown in Figure 7.5.

**Figure 7.5 Sample concordance lines for the category ‘Protagonists in court and police-related activities’**

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>effected which will allow practitioners to believe that full testing of the evidence</td>
</tr>
<tr>
<td>2</td>
<td>cites the case of a schoolteacher who believed that he had done nothing wrong</td>
</tr>
<tr>
<td>3</td>
<td>the rank of Chief Superintendent if he believes that it is necessary for the</td>
</tr>
<tr>
<td>4</td>
<td>must have reasonable grounds for believing that the surveillance</td>
</tr>
<tr>
<td>5</td>
<td>were ignored.26 Detainees also claimed that the hearing was a</td>
</tr>
<tr>
<td>6</td>
<td>signed the contract and subsequently claimed that she had not read the small</td>
</tr>
<tr>
<td>7</td>
<td>inferences even though the applicants claimed that they were only acting on</td>
</tr>
<tr>
<td>8</td>
<td>the individual then sought judicial review claiming that the procedure for</td>
</tr>
<tr>
<td>9</td>
<td>the plaintiff purchased the vehicle. He claims that if he had known of the</td>
</tr>
<tr>
<td>10</td>
<td>the plaintiff's primary school on the grounds that it was dangerous to their</td>
</tr>
<tr>
<td>11</td>
<td>to justify a raised threshold on the grounds that the existing law has</td>
</tr>
<tr>
<td>12</td>
<td>may bring a challenge on the grounds that the Member State is in circumstances.) “Barristers sometimes state that, in the Irish jurisdiction, every</td>
</tr>
<tr>
<td>13</td>
<td>the other side may call a witness to state that in his or her opinion the other</td>
</tr>
<tr>
<td>14</td>
<td>in charge of the Ballistics Dept. stated that he was instructed to provide</td>
</tr>
<tr>
<td>15</td>
<td>. The Garda Inspectorate has stated that the gardai, “Have made</td>
</tr>
<tr>
<td>16</td>
<td>case to be taken by three Irish women stating that their rights have been</td>
</tr>
<tr>
<td>17</td>
<td></td>
</tr>
</tbody>
</table>
The protagonists are varied, a schoolteacher as defendant (line 2), police employees (line 3 and 15), court applicants (line 7 and 17), legal profession practitioners (lines 1 and 13) and witnesses (line 14). The formulaic expression ‘on the grounds that’ is used in the corpus to explain the reasons for an opinion or action in court:

...which was opposed by the Gardai on the grounds that the accused would not turn up for trial ...

(Period 2)

When compared to the quasi-judicial category we can see that there is more space given to the subjective views of parties, either before a court or in making a decision based on a balance of probabilities:

He claims that if he had known of the damage he would have paid £1,000 less.

(Period 4)

They must both be of the belief that the surveillance is proportionate to its objectives.

(Period 4)

If we combine the three main word forms occurring with these rhetorical roles (‘claim’, ‘believe’ and ‘state’) we account for 52 out of the total of 75 occurrences. The first two confirm the prevalence of opinion-based views governing the actions of the said protagonists and is also in keeping with the increasing distance from the core law making functions of the courts, legal documents and even quasi-judicial bodies where the language used with ‘that’ clauses tends to be far more definitive in nature. Indeed Mazzi’s (2007: 201) analysis of court judgements also noted certain verbs clustering around the litigants in a case, while not the same (they were ‘submit’, ‘argue’, ‘contend’ and ‘add’), the tentative nature of how their propositions are reported also reflects the adoption of the non-factive stance. In contrast, the use of ‘state’ continues to be factive in nature, even in this context, as the sample lines illustrate a view by the attributed source which the writer seems less disposed to challenge.
7.2.1.7 Reference to non-academic and non-law making bodies - Summary comments

The concordance lines for the three categories above have revealed another layer of protagonists who have a role to play in legal analysis. We have now moved from the inner circle of judges and legal documents to the world of court players, police-related actors and even more generic groups or ideas in society. The roles given to these categories vary as the reporting language the student writers use can accentuate the sources’ subjectivity or in other cases authority over matters. Perhaps, as the net widens, it is not surprising that it becomes more difficult to identify core group features, something which might be possible with a larger corpus. Nevertheless, there does appear to be a certain ranking of certainty which is dictated by the nature of the agent in subject position. Those belonging to institutions such as the various commissions, boards or even abstract theories or principles are reported factively, while more disparate groups and individuals tend to be dealt with in a non-factive way by the writer:

7.2.1.8 Reference to academics and quasi-academic bodies

Belonging to the ‘reference to academics and quasi-academic bodies’ category are student references to the views of legal scholars and bodies which have carried out research into a legal issue through the means of committees, review groups etc. A cursory review of concordance lines indicated that the contributions from this category could be broken down into three parts: explicit references to scholars, footnoted references to scholars and quasi-academic references. There are 373 occurrences that fall under these categories which represent approximately 24% of all attributions. The division between the three categories is outlined in Table 7.9 below.
Table 7.9 Division of occurrences for academic and quasi-academic references

<table>
<thead>
<tr>
<th>Source</th>
<th>Hits</th>
<th>% share</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Academic – explicit</td>
<td>218</td>
<td>58%</td>
</tr>
<tr>
<td>2. Academic – footnoted</td>
<td>60</td>
<td>16%</td>
</tr>
<tr>
<td>Total academic references</td>
<td>278</td>
<td>74%</td>
</tr>
<tr>
<td>3. Quasi academic</td>
<td>95</td>
<td>26%</td>
</tr>
<tr>
<td>Total academic and quasi-academic references</td>
<td>373</td>
<td>100%</td>
</tr>
</tbody>
</table>

Three-quarters of all references pertain to those of academic scholars in the field with explicit academic references dominating. The difference between explicit and footnoted academic references is that the former actually names the source in the text, via integral citation in the Fløttum et al. (2006a) sense as explained in Section 7.1.1.3, while the latter refers the reader to the source through a footnote (Fløttum et al.’s non-integral citation). The remaining quarter is comprised of references to quasi-academic entities. The term ‘quasi-academic’ is used as the body’s output most likely comes from a source other than a university, nevertheless the input of expertise does give it research validity. This is a far more disparate group though the identity almost all its members share is that of actually being a group rather than one or two individuals, which is frequently the case for the academic categories. Examples of quasi-academic bodies are the Law Reform Commission, the Irish Human Rights Commission and the Committee on Child Protection. A sample of concordance lines to illustrate the categories is displayed in Figures 7.6, 7.7 and 7.8.
criticised by McGee. McGee does believe that there is such a distinction
corruption and even terrorism. Aden believes that the negative connotations
, at 152 41 Ibid, at 152-153 42 Jackson believes that Walsh J, without ever
experience in their fields. Carey also believes that their exclusion is, “Bad for
available to them is a must. Carey believes that, “The jury system is not
were obtained. Bronitt and McSherry claim that, “The main purpose of
is nothing short of cynical when he claims that the French troops’ point of
in both the UK and the US. 16 Garland claims that this emerging culture of
only “as far as practicable.” 91 She claims that Article 38.1 would offer
from each of its citizens. Elias claims that this process originated in
. This leads Faull and Nikpay to comment that “with oligopoly anything
and economic growth.” 2 Dryzek has commented that just because it is
of when the interest is created. LoPucki comments that the although the
is suggested by Posner. He comments that oligopolistic
imprisonment rates. Ridley et al conclude that, “This decrease in jail
Recording Angel. 96 However, Damaska concluded that European criminal
“negates basic freedoms”. Edwards concludes that the challenge posed by
on several occasions. 101 And Peers concludes that in light of the
man- made capital.’ Pearce and Barbier state that in their first Blueprint book22
by gynaecological surgery. 204 Mair has stated that it is ‘incongruous’ that the
be targeted by state militaries. Melzer states that “[n]either the Geneva
help but agree with Krämer when he states that “there is hardly one [opinion]
As regards judicial passivity Damaska states that it is recognised as an ideal
of any person are serious. Grassian states that, “The restriction[s] of
Althouse suggests similar findings. She states that a woman Rita Kempley a
Figure 7.7 Concordance lines for academic-footnoted references

<table>
<thead>
<tr>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>7</td>
</tr>
<tr>
<td>8</td>
</tr>
<tr>
<td>9</td>
</tr>
<tr>
<td>10</td>
</tr>
<tr>
<td>11</td>
</tr>
<tr>
<td>12</td>
</tr>
</tbody>
</table>

Figure 7.8 Concordance lines for quasi-academic references

<table>
<thead>
<tr>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>7</td>
</tr>
<tr>
<td>8</td>
</tr>
<tr>
<td>9</td>
</tr>
<tr>
<td>10</td>
</tr>
<tr>
<td>11</td>
</tr>
<tr>
<td>12</td>
</tr>
<tr>
<td>13</td>
</tr>
</tbody>
</table>

**Academic-explicit references**

Table 7.10 lists the terms that account for just over 72% of all academic-specific references.
Table 7.10 Main expressions used for academic-specific references

<table>
<thead>
<tr>
<th>Expression</th>
<th>Occurrences</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>45</td>
</tr>
<tr>
<td>Believe</td>
<td>27</td>
</tr>
<tr>
<td>Claim</td>
<td>20</td>
</tr>
<tr>
<td>Conclude</td>
<td>19</td>
</tr>
<tr>
<td>Comment</td>
<td>19</td>
</tr>
<tr>
<td>Feel/felt</td>
<td>14</td>
</tr>
<tr>
<td>Observe</td>
<td>14</td>
</tr>
</tbody>
</table>

The list of main expressions again points to the dominance of textual/discourse and mental process verbs. While ‘state’ is the most common form, it would be misleading to believe that all such sources are reported in such a definitive way. Indeed, if one takes the rest of the terms, whose combined occurrences more than double those of ‘state’, then it is clear that students prefer to emphasise the subjectivity aspect associated with the views of academics. In investigating why students opted for the lemma ‘state’, one possible explanation could be that in 32 of the 45 occurrences a direct quote was used. Therefore, the desire by the student writer may have been to emphasise that what followed was factual in that it was a faithful reporting of what was actually written (Thompson 1996: 512) as opposed to evaluating the content therein. In such circumstances ‘state’ would not appear to be inappropriate:

- Ryall states that this is ‘disquieting’ and notes that the... (Period 1)

- Mullally states that “[t]he nation is conceptualized as strictly bounded between insiders and outsiders” (Period 2)

However, as Figure 7.6 illustrates, an underlying trend unifying all the academic-explicit references is the preference for the use of a present tense. This is a significant contrast to reporting court judgements where the past form dominates but in line with the reporting of legislative documents etc. As with the legal documents, it would seem that the focus is on the statement rather than locating it in the event that produced it along with Swales and
Feak’s (2004: 254) view that such a structure indicates that the research is close in some way to that of the writer’s. The views of academics however do not have the weight of judicial precedent or the force of law that treaties or legislation have and therefore it is easier to accept, qualify or discard them. The present tense, combined with the use of non-factive verbs indicating a personal contention, have the effect of presenting the view as something that should be considered but not necessarily followed:

*Ryall comments that instead of taking this opportunity to discover this issue in more depth, the ECJ delivered a brief and disappointing judgement.*  
(Period 1)

*McNulty concurs with this and further claims that the French soldiers carried out joint patrols with the FAR.*  
(Period 3)

**Academic-footnoted references**

The citation of academic-footnoted references is clearly less common than the category above though nevertheless occurs 60 times in the sub-corpus. In common with the above, the preferred tense remains the present though given the role of the footnoted reference, the subject in this case is not named:

*... those who believe that mentally ill offenders should not have to seek access to mental health care via the criminal justice system. 50*  
(Period 2)

When pronoun forms or collective nouns are not used, then students avail of the impersonal subject ‘it’ with a passive construction:

*It has been stated that in our modern society, ‘Crime stopped being seen as a relatively rare event and instead came to be seen as a normal social fact...’*  
(Period 1)

Or, there is the choice of using a shell noun whose definition can come with a footnoted reference.

*...the idea that “death is preferable to life when life becomes devoid of quality”.*  
(Period 1)
Certainly the effect of the footnote approach is to give prominence to the statement rather than who made it. This structure could be seen as the writer delegating responsibility to the author (Hunston 2000: 191), particularly in the case of using direct quotes (Thompson 1996), or alternatively, as claimed by Groom (2000: 22), non-integral citations indicate writer responsibility. How can these two conflicting views be reconciled? Perhaps one function that both interpretations share is that of using the non-integral form to introduce a new argument to the discussion that the writer may have chosen to accept or challenge. Other explanations for the use of footnotes appear less tenuous. Some footnoted authors sometimes appear in the essay as an integral citation, therefore it is not possible to explain the phenomenon in terms of less prestigious names being footnoted. It is also something that happens randomly throughout texts so a convention of a genre section does not appear to govern its use.

Quasi-academic references

Table 7.11 lists the terms that account for approximately 70% of the 95 quasi-academic references:

Table 7.11 Main expressions used for quasi-academic references

<table>
<thead>
<tr>
<th>Expression</th>
<th>Occurrences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommend</td>
<td>38</td>
</tr>
<tr>
<td>Found</td>
<td>13</td>
</tr>
<tr>
<td>Report</td>
<td>9</td>
</tr>
<tr>
<td>Reveal</td>
<td>6</td>
</tr>
</tbody>
</table>

It is worth noting that the verbs chosen by students to communicate this type of source differ significantly from those used to cite academic references. As can be seen in Figure 7.8, the output of this source seems to be in the form of reports and surveys that were carried out by non-university entities. It would appear from the choice of lemmas that what is expected from these sources is not just views and comments but primarily, through the use of ‘recommend’, a clear vision as to how the issue being investigated should be dealt with in the future:
The Committee recommends that the US “should ensure, in accordance with Article 9(4) of the Covenant [ICCPR], that ... (Period 3)

In addition, the uses of ‘found’, ‘report’ and ‘reveal’ all indicate, as research process verbs, that the student writers view these sources as investigatory in the sense of uncovering new information as opposed to the implied analytical focus of existing facts from the academic references:

The Royal Commission study found that males make up 53 per cent of jurors but only 48 per cent of the general population. (Period 1)

In terms of syntax the preference is the active form though tense use is slightly more varied; both present are past forms are used.

7.2.1.9 Reference to academics and quasi-academic bodies – Summary comments

Perhaps the clearest division between citation of academic and quasi-academic sources is to be seen in the choice of lemmas used. The reporting of academic sources places a lot of emphasis on the fact that it is the cited source’s view while the verbs used in conjunction with quasi-academic entities result in a greater focus on the output of the research work. This might be explained by the different genres which both groups produce. The academic sources are more likely to be from articles and books with one or two authors (the maximum number in the sample concordance lines of 7.7 is two) while the quasi-academic sources frequently refer to reports (see lines 1, 7 and 13 of Figure 7.8) which tend to leave less space for personal opinions, especially if compiled by a committee or commission. Such publications are also directed towards another readership, not fellow academics but governmental bodies which may rely on the factual content to make better informed decisions.

To close, Chart 7.1 below shows the clear focus on legal bodies when students make attributions in the corpus. This is a somewhat surprising aspect of Master student writing in light of the fact that they are still very much in an academic context and underlines how critical it is for students to constantly state the law in their analyses. The section to follow will now see what role student averrals have in the same texts.
7.2.2 Writer Averral

This section deals with how the student writers represent their own views in their texts. In over 90% of the time this is done through an indirect averral; the student writer does not refer directly to him- or herself. Table 7.12 below shows the main lemmas employed by students for self-attributions. The criterion remains that if 75% or more of the occurrences belong to one category, in this instance the author attribution category, then it is considered to be predominately an author attribution term.
Table 7.12 Main words used for writer indirect averral

<table>
<thead>
<tr>
<th>Periods</th>
<th>Writer indirect averral</th>
<th>Attribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td><em>Is</em></td>
<td>36</td>
<td>74</td>
</tr>
<tr>
<td><em>Mean</em></td>
<td>16</td>
<td>29</td>
</tr>
<tr>
<td><em>Submit</em></td>
<td>18</td>
<td>13</td>
</tr>
<tr>
<td><em>In</em></td>
<td>9</td>
<td>21</td>
</tr>
<tr>
<td><em>Appear</em></td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td><em>Be</em></td>
<td>9</td>
<td>13</td>
</tr>
<tr>
<td><em>Likely</em></td>
<td></td>
<td>11</td>
</tr>
<tr>
<td><em>Seem</em></td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td><em>Possible</em></td>
<td>8</td>
<td>8</td>
</tr>
</tbody>
</table>

In order to understand the rhetorical roles that students adopt in their texts, the following analysis will look at the top six words (‘appear’, ‘be’, ‘in’, ‘is’, ‘mean’ and ‘submit’) which account for almost 90% of the indirect averrals.

**7.2.2.1 ‘Is’**

The main rhetorical function of ‘is’ appears to be to enable the student to focus on one particular detail and elaborate it in the following ‘that’ clause:

*A final point of interest regarding Commission v Austria is that the court asserted that, in its view...*  
(Period 4)

The adoption of shell-like nouns, or noun phrases, allows the writer to dictate how the information should be interpreted. The evaluative aspect of the shell noun is frequently neutral in character, as lines 2, 4, 9 and 15 from the concordances in Figure 7.9 below show. However, it also offers the opportunity to the writer to strike a more strident tone as lines 3, 16 and 19 illustrate. The division between these two approaches is not so clear cut and indeed it is probably better to view the ‘is that’ construction as a platform that allows the writer to attend to metadiscoursal factors by using varying degrees of evaluative language.
7.2.2.2 ‘Mean’

While Carter and McCarthy (2006: 107) described one of the main uses of ‘mean’ as that of talking about understanding language, a better understanding of an issue seems to be the objective here. The lemma ‘mean’ appears to work as a device that enables the student writers to elaborate a point already under discussion in the text by frequently emphasising its consequences:

Finally, the new framework will strengthen the role of the group supervisor who ... This will mean that the same economic risk-based approach will be applied to insurance groups. (Period 3)
As the sample concordance lines in Figure 7.10 below show, the lemma is not restricted in use in terms of tense but the sub-corpus does show a prevalence of the present tense with modal and past forms following. The active form is also preferred by the student writers.

**Figure 7.10 Concordance lines for ‘mean’**

N Concordance
1 and Sudan. However, this does not mean that the problem of detainees’ years after the initial complaint may mean that details of the original that this retrospective application will mean that “many closed and abandoned will be no easy feat but that does not mean that it can be ignored. The than ordinary legislation. This would mean that legislation could be struck Over 75% of these are passenger cars, meaning that there is almost one car for people to resort to litigation also means that the Government are giving wider than merchantable quality. It means that consumers are given greater entered a new phase of causality which means that we now began to treat the

the police with their inquiries." This means that the Gardai do not have to mentioned in Article 52(2) EPC. This means that, if a claim is directed to, or when, abortion is right or wrong, means that legal development in the institutionalised nature of these rights means that they can still offer protection stated that the very nature of privacy meant that once it was invaded it could

justice system at all, even if this meant that the perpetrator was not

‘Mean’ differs from ‘is’ in that the evaluative stance that ‘is’ affords is not present when ‘mean’ is used. The effect is to give the impression of objectivity, or one could argue that it simply reflects the fact that the writer feels more comfortable in making what are considered in the field to be non-controversial interpretations.

**7.2.2.3 ‘Submit’**

This is the lemma that students use to indicate that what they are about to say is their own opinion. The proposition or contention can include a criticism:

*It is submitted that these provisions are both punitive and reactionary.* (Period 2)

Or simply be the conclusion of an analysis:
... *it is therefore submitted* that the postal rule should apply in relation to email.

(Period 3)

A sample of concordance lines is shown in Figure 7.11.

**Figure 7.11 Concordance lines for ‘submit’**

<table>
<thead>
<tr>
<th>Concordance</th>
<th>1</th>
<th>as compensatory measures.47 It is <em>submitted that</em> the courts use of</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2</td>
<td>justice system of the South. It will be <em>submitted that</em> such extraordinary laws</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>motor vehicle advertising. It is <em>submitted that</em> the time has come for</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>resolved by the organisation itself. It is <em>submitted that</em> with the current downturn</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>made before 4:00 p.m. It is respectfully <em>submitted that</em> there are two problems</td>
</tr>
<tr>
<td></td>
<td>6</td>
<td>, their final decision. The author <em>submits that</em> no matter how strongly a</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>.27 To take up Easterbrook’s baton I <em>submit that</em> the separation of powers is</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>in the treatment of the patient. It is <em>submitted that</em> Irish courts should follow</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>with the legal rules.58 However, it is <em>submitted that</em> this prospect is not</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>of IHL (“irregular armed forces”). It is <em>submitted that</em> tactics such as these</td>
</tr>
</tbody>
</table>

As can be seen from the sample concordances, there is a strong tendency for students to use the passive form with the impersonal ‘it’. Carter and McCarthy (2006: 891) have pointed out that the effect of this is to place the focus on what is going to be said in the complement ‘that’ clause. It would also seem to match with what was noted in Section 7.1.2.3 about Hewings and Hewings’ (2002) view that ‘it’ structures serve to depersonalise the message communicated. The fact that the writer in most cases avoids direct self-mention through the use of the passive construction might also indicate an element of caution or respect towards the reader, which in this case will be a more senior and expert member of the discourse community.

**7.2.2.4 ‘In’**

‘In that’ is another device to enable elaboration:

*It is more limited than the SIMI in that the dispute must arise from a contract made in the previous 12 months.*

(Period 4)
The information in the ‘that’ clause may be footnoted to another source (as the example just given is) but nevertheless the evaluation is of the author’s making and this is clearly contained in the main clause as the concordance lines in Figure 7.12 below will show. As discussed in Section 7.1.2.2, there is frequently a dialogism between the attributed source and writer, which can create collaborations that combine reported facts with (writer) opinions. In such cases, in agreement with Hunston’s (2010) view of writer responsibility for the reported proposition, these hybrid statements normally have the writer’s stance in the main clause and the attributed supporting statement in the ‘that’ clause as the example above shows and in particular line 5 of Figure 7.12, which relies on a direct quotation as support.

Figure 7.12 Concordance lines for ‘in’

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>. Dynamic efficiency is interesting in that less competition does not</td>
</tr>
<tr>
<td>2</td>
<td>life”.30 This, however, is unfortunate in that the Court has acknowledged that</td>
</tr>
<tr>
<td>3</td>
<td>of this has been called into question in that surely the defendant has the</td>
</tr>
<tr>
<td>4</td>
<td>slight element of caveat emptor lingers in that buyers should take reasonable</td>
</tr>
<tr>
<td>5</td>
<td>.79 The result of this is paradoxical in that a “better payoff is left on the table</td>
</tr>
<tr>
<td>6</td>
<td>. (3) However they were forgiving in that after punishing a defection they</td>
</tr>
<tr>
<td>7</td>
<td>. The United Kingdom is also unique in that the legislature retains legislative</td>
</tr>
<tr>
<td>8</td>
<td>mistakes. Both arguments have merit in that the first scenario means that</td>
</tr>
<tr>
<td>9</td>
<td>is a significantly difficult one for courts in that it presents not one but two types</td>
</tr>
<tr>
<td>10</td>
<td>wishes. This can be seen as positive in that the competent decision-maker</td>
</tr>
</tbody>
</table>

Being a complement clause, ‘in that’ is not likely to start a sentence, which is a feature it shares with ‘is that’ and ‘means that’.
7.2.2.5 ‘Appear’

In contrast to the sentence position for ‘is’, ‘in’ and the lemma ‘mean’, the sample concordance lines for ‘appear’ clearly show a preference for a sentence initial position or just removed from it as the concordance lines in Figure 7.13 illustrate.

Figure 7.13 Concordance for ‘appear’

```
N  Concordance
1   children and their family".12 It would appear that this has materialised. The
2   law not being properly enforced. It would appear that, from a legal perspective at
3   each Member State. However it would appear that even with the reminders not
4   become a management issue. It would appear that after the tragic loss of three
5   in increased protection. It does not appear that there will be any change in
6   he provided the authority.98 However, it appears that where mistakes of a more
7   the total period of detention to 7 days. It appears that the reason for the judicial
8   of the problems of society. Therefore it appears that it is abandoning the grand
9   and transparency."[53] Ultimately, it appears that the most important factor
10   of trial by jury is not perfect but it appears that it remains a central part of
```

Another feature of collocation is that the impersonal ‘it’ is always used by the student writers even though, as with the lemma ‘submit’, the construction can permit the writer to make a personal evaluation. Biber et al. (1999: 983) referred to this structure as a comment clause:

\[ ... it appears that other measures in the area of criminal legislation are taking precedence and this has been evident with the acceleration of the passing into law of acts such as the Criminal Justice (Amendment) Act 2009 and the Criminal Surveillance Act 2009. \]

(Period 4)

The construction also has the effect of qualifying the writer’s commitment to the statement made, even if the statement is actually footnoted to another source:

\[ Crucially, it would appear that the scientific knowledge forming the basis for concern about a potential risk need not be the majority view on the subject.[50] \]

(Period 3)
While Hewings and Hewings (2005) took a negative view of the use of this structure since the effect is “to suggest indecision about the statement made” (p.375), perhaps another reason for its use is because a review of the co-text often reveals that the construction works in tandem with a wider range of analytical tools to develop a more comprehensive understanding of a topic. In this role it can serve as a summary analysis, particularly when it is found towards the end of a paragraph. It can also serve to launch a point of view that can be supported, questioned or qualified in later sentences. This dynamic can be observed in the following paragraph (capital letters in brackets are my comments):

*Crucially, it would appear that the scientific knowledge forming the basis for concern about a potential risk need not be the majority view on the subject. As noted in the Commission’s Communication, due account is to be taken of ... (SUPPORTING STATEMENT). On a similar note, the CFI has emphasised ... (ANOTHER SUPPORTING STATEMENT). However, the expert scientific evidence that is relied on instead must... (QUALIFICATION). Ultimately, it appears that the most important factor will be ... (SUMMARY VIEW)*

(Period 3)

7.2.2.6 Summary comments

Averrrals, while normally eschewing the direct self-mentions, nevertheless manage to establish a significant, if not always immediately obvious, presence in the texts. While the lemma ‘submit’ clearly indicates the author’s position on an issue, this is not the most common means of adopting a stance in the texts. Both ‘is that’ and ‘in that’ are often prefaced by subjective statements which mark the author’s point of view. The ‘that’ clauses in both instances then serve to articulate what the given point of view is, with the writer sometimes availing of a non-integral citation as support. The issue of articulation is also dealt with by the lemma ‘mean’ which, while less evaluative in style, nevertheless fulfils the academic requirement of students having to explain in detail the significance of particular aspects of law. Finally, the two main strands of student writer input in the form of academic analysis and stance are combined with the lemma ‘appear’. Taking, for example, ‘it appears that’; it allows the writer to subsequently draw on arguments that support or criticise the view expressed in the ‘that’ clause, or alternatively it can allow the student to cautiously and discreetly make a conclusion from the facts already presented.
7.2.3 Items Shared between Writer Indirect Averral and Attribution

The final list is items which occurred frequently in both third party and attribution categories. These items are presented in Table 7.13 below.

Table 7.13 List of items shared between author self-attributions and third party references

<table>
<thead>
<tr>
<th>Periods</th>
<th>Writer indirect averral</th>
<th>Attribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Note 31</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>Fact</td>
<td>38</td>
<td>45</td>
</tr>
<tr>
<td>Suggest</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Ensure</td>
<td>16</td>
<td>26</td>
</tr>
<tr>
<td>Clear</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>Indicate</td>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>Assume</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Contend</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>Accept</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Acknowledge</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Demonstrate</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Evidence</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Reason</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Aware</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Imply</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Sure</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>

The five lemmas in bold will be the focus of analysis as their combined occurrences account for just over 75% of all occurrences belonging to this hybrid category.

7.2.3.1 ‘Note’

31 The words listed are the most common recorded though in some but not all cases inflected forms are also included in the count
Figures 7.14 and 7.15 show sample concordance lines for attributions and writer indirect averrals.

**Figure 7.14 Attribution concordance lines for ‘note’**

<table>
<thead>
<tr>
<th></th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>change on the market. Jones and Sufrin <em>note that</em> there are a range of other</td>
</tr>
<tr>
<td>2</td>
<td>prevail against consensus.85 O’Donnell <em>noted that</em> the existence of a consensus</td>
</tr>
<tr>
<td>3</td>
<td>formed in good faith.” Jackson has <em>noted that</em> this is at odds with the</td>
</tr>
<tr>
<td>4</td>
<td>.143 On the other hand, it has been <em>noted that</em> it is rare that a doctor will</td>
</tr>
<tr>
<td>5</td>
<td>will receive treatment.45 Kennedy has <em>noted that</em> the mentally ill are in prison</td>
</tr>
<tr>
<td>6</td>
<td>to be made.&quot;135 The CFI further <em>noted that</em> “the members of an oligopoly</td>
</tr>
<tr>
<td>7</td>
<td>AC 31 In Rogers v Parish143, Mustill LJ <em>noted that</em> for a motor vehicle, purpose</td>
</tr>
<tr>
<td>8</td>
<td>circumstances.54 It has also been <em>noted that</em> treatment does not</td>
</tr>
<tr>
<td>9</td>
<td>who are more remote.’ Finally she <em>notes that</em> in the past public opinion and</td>
</tr>
<tr>
<td>10</td>
<td>responsibilities.16 O’Donnell <em>notes that</em> this criticism assumes that</td>
</tr>
<tr>
<td>11</td>
<td>the derogation.94 Moreover, Questiaux <em>notes that</em> only the ICCPR and the</td>
</tr>
<tr>
<td>12</td>
<td>and solidarity in this regard.68 Vaughan <em>notes that</em> one of the reasons why the</td>
</tr>
<tr>
<td>13</td>
<td>in a national security context.21 Foster <em>notes that</em> the decision in Klass</td>
</tr>
<tr>
<td>14</td>
<td>into the field of merger control. Lane <em>notes that</em> the initial caution as shown</td>
</tr>
<tr>
<td>15</td>
<td>depend on the particular judge. Norries <em>notes that</em> as “we come to ‘the moment</td>
</tr>
<tr>
<td>16</td>
<td>Member State’s authorities.53 Gunning <em>notes that</em> the added value of</td>
</tr>
<tr>
<td>17</td>
<td>of Community law. The ECJ began by <em>noting that</em> it was clear from Article 58</td>
</tr>
<tr>
<td>18</td>
<td>. AG Darmon in his opinion agreed, <em>noting that</em> parallel conduct can have an</td>
</tr>
</tbody>
</table>
The first main difference in the way ‘note’ is used in the two categories is that the subject in
the attributions is identified by a proper noun. Writer indirect averrals on the other hand, as
with ‘submit’ in Section 7.2.2.3 above, avail of the impersonal ‘it’ followed by an
evaluative adjective (e.g. lines 1, 3 and 4 of Figure 7.15) or modals to indicate importance
(lines 7 – 10 of Figure 7.15). When used in the averral context, its function appears to be
that of enabling the writer to comment on an aspect of a topic or, through the use of modals
indicating importance, to direct the reader’s attention to one particular feature (Hewings
and Hewings (2005) attitudinal use of ‘it’ as outlined in Section 7.1.2.3). The approach
taken for reporting attributions is far more factual; modality and the use of evaluative nouns
or adjectives are absent from the third-party references.

There are also distinct patterns of use within the attribution category. In keeping with what
was noted in the reporting of court decisions in Section 7.2.1.1, ‘note’ follows the
convention of using the past tense for court decisions. Also in keeping with the analysis of
reporting on the work of academics in Section 7.2.1.4), the present tense is the preferred
choice by student writers when ‘note’ is used to cite academic sources. Overall, for
attributions there is a tendency among the students to use it more for academic citations and
indeed this accounts for almost 80% of all occurrences in the category. The non-factive
nature of this textual verb is also in agreement with the type of verbs student writers chose (e.g. ‘believe’, ‘claim’, ‘comment’) when reporting on the work of academics.

7.2.3.2 ‘Fact’
The rhetorical function of ‘fact’ does not differ between the two categories in that it serves primarily as a focusing device. Figures 7.16 and 7.17 show sample concordance lines for attribution and averral uses.

**Figure 7.16 Attribution concordance lines for ‘fact’**

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
</table>
| 1 | J. also expressed irritation at the fact that, “... the Courts are being ask to right would have. Keane C.J. noted the fact that if the right to life of the unborn again O’Flaherty J commenting on the fact that a person refusing to take part Henchy Report) of 1978 described the fact that the courts could not order a . According to the Commission: “The fact that intellectual property laws grant to be reunited. Lambert highlights the fact that the court acknowledged that, conflict.” He argues though that “the fact that a conflict is not an internal one

**Figure 7.17 Writer indirect averral concordance lines for ‘fact’**

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>or project.”130This is often due to the fact that the status that was in place</td>
</tr>
<tr>
<td>2</td>
<td>, if it exists at all?149 Alarming, the fact that the captured communication is more of a concern in light of the fact that abortion pills can now be sold</td>
</tr>
<tr>
<td>3</td>
<td>, is insufficiently stringent.”30 The fact that the curfew was twelve hours in</td>
</tr>
<tr>
<td>4</td>
<td>of rules of evidence is a reflection of the fact that the duty to collect evidence based on a moral compulsion. The fact that A does not kill B may have</td>
</tr>
<tr>
<td>5</td>
<td>the entire business20. Considering the fact that you need to be financially and it is hoped this will continues. The fact that family reunification is not</td>
</tr>
<tr>
<td>6</td>
<td>like respect for marriage and the fact that this institution is enshrined in</td>
</tr>
<tr>
<td>7</td>
<td>. Garland’s theory also ignores the fact that judges act as a counter inherent mechanisms of control. The fact that society routinely accepts the</td>
</tr>
<tr>
<td>8</td>
<td>only add to the diversity of a jury. The fact that any person suffering from,</td>
</tr>
</tbody>
</table>

A stronger trend in the attribution sub-corpus lines is that of integral citations. Also the reporting verbs (as usual textual/discoursal or mental process) do not actually require the presence of ‘fact’ before ‘that’. There is a higher probability that an averral may start with ‘fact’ in subject position and there appears to be greater syntactical variety around its use
with the writer using, for example, adverbs to indicate attitudinal stance (lines 2, 3) or line 7 for metadiscoursal engagement markers (Hyland 2004a: 139). Another feature is that what collocates to the left of the node will determine whether a comment will be attached at the end of the ‘that’ clause or not. The expressions listed in Table 7.14 below tend not to have a comment at the end of the information provided in the ‘that’ clause.

Table 7.14 ‘Fact’ expressions without a comment at the end of the ‘that’ clause

<table>
<thead>
<tr>
<th>Expression</th>
<th>Occurrences</th>
</tr>
</thead>
<tbody>
<tr>
<td>to the fact that</td>
<td>29</td>
</tr>
<tr>
<td>on the fact that</td>
<td>15</td>
</tr>
<tr>
<td>of the fact that</td>
<td>25</td>
</tr>
<tr>
<td>is the fact that</td>
<td>9</td>
</tr>
<tr>
<td>in the fact that</td>
<td>7</td>
</tr>
<tr>
<td>by the fact that</td>
<td>15</td>
</tr>
</tbody>
</table>

In many instances in the sub-corpus the expression appears in the medial position of a sentence to link two clauses. This is consistent with Biber et al.’s finding for sentence position in academic prose in general (1999: 676). The two examples that follow illustrate this point as well as identifying further collocates that fit to the core structure.

‘To the fact that’ is prefaced in ten instances by ‘due’:

...it went on to find the invention lacked the required inventive step due to the fact that differences between the claims and the prior art related only to economic considerations. (Period 4)

Half of the ‘on the fact that’ expressions are prefaced by ‘base’ or its inflected forms. Other synonymous terms are also present such as ‘rely’ and ‘rest’:

The rationale for this rule is largely based on the fact that such out-of-court statements are made without the “twin safeguards of an oath and cross-examination”. (Period 1)
It is when ‘fact’ occupies the subject position at the start of a sentence that a comment by the author or cited source can follow in the complementary clause. Hunston (2010: 115) referred to this as the “orientation motif”, which could enable corroboration of another idea or its use shows that it can imply or mean something:

The fact that the debate over the use of torture in the interrogation of suspected terrorists is even taking place damages the principle that the prohibition on torture is absolute. 

(Period 3)

This sentence construction is less common, accounting for approximately 20% of all occurrences and could also be said to have strong stylistic overtones given that a simple ‘that’ could replace ‘the fact that’. Overall, ‘fact that’ appears to be a relatively non-controversial choice as its focussing function presents “the proposition in the ‘that ’ clause as factual or generally accepted information” (Biber et al. 1999: 676), an aspect it shares with the lemma ‘mean’. The role of ‘the fact that’ as a noun phrase has also been discussed in Chapter 6.2.2.1.

7.2.3.3 ‘Suggest’

The lemma ‘suggest’ when used in the attribution category, which is where most of the occurrences are, functions as a reporting verb and mostly with integral citations. This is illustrated in Figure 7.18.

Figure 7.18 Attribution concordance lines for ‘suggest’

<table>
<thead>
<tr>
<th>N</th>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>in the registration book. Atiyah et al suggest that the statement could have</td>
</tr>
<tr>
<td>2</td>
<td>14 Later on in Chapter 10 the authors suggest that the “best interest approach</td>
</tr>
<tr>
<td>3</td>
<td>the responsibility argument, Wolff has suggested that mental illness and</td>
</tr>
<tr>
<td>4</td>
<td>leave the area completely. It has been suggested that the courts are lenient in</td>
</tr>
<tr>
<td>5</td>
<td>of truth. Accordingly, the Court suggested that the reliability of any</td>
</tr>
<tr>
<td>6</td>
<td>Commission’s (1996) final report which suggested that previous criminal</td>
</tr>
<tr>
<td>7</td>
<td>loss of an asset. Mann builds on this suggesting that the loss of this asset</td>
</tr>
<tr>
<td>8</td>
<td>of power.&quot;20 The re-emergence of suggestions that torture could be an</td>
</tr>
<tr>
<td>9</td>
<td>by an all English jury.’3 She further suggests that Irish jurors may find it</td>
</tr>
<tr>
<td>10</td>
<td>test, will still rear their heads. Keeling94 suggests that the ECJ now uses a</td>
</tr>
<tr>
<td>11</td>
<td>from the model. Dr. Pasqual Pistone suggests that any model tax treaty</td>
</tr>
</tbody>
</table>
As the concordance sample shows, the present tense dominates with students continuing to adhere to the convention of using the past tense when reporting on court deliberations. The latter is in the minority though, with the lemma being used mostly to report on the views of academics and to a lesser extent bodies such as the European Commission or the content of reports. Over 90% of the occurrences use ‘suggest’ as a synonym for ‘propose’, the remainder use the lemma to draw conclusions from the facts presented:

Walsh notes that the size of that number would suggest that the powers are being used frequently in respect of relatively minor offences. (Period 3)

This latter functional role, which according to Vold (2006: 231) allows suggest to express epistemic modality, is far more prevalent in the writer averral category as the sample concordance lines in Figure 7.19 below show.

**Figure 7.19 Writer indirect averral concordance lines for ‘suggest’**

<table>
<thead>
<tr>
<th>Concordance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>7</td>
</tr>
</tbody>
</table>

Once again the student writer tends to avoid direct self-mentions, preferring to use, as with ‘submit’, the impersonal ‘it’ when making personal observations:

*It is suggested that this amnesia was due to intimidation and threats of retaliation.* (Period 2)

However, as already noted, the main use of ‘suggest’ in this category is to interpret details that have already been presented. These details will normally precede the ‘suggest’ node:
However, the rulings in Volvo, discussed above, and Magill, discussed below, suggest that this is not always the case. (Period 4)

The construction in this way allows the student to bring his or her opinion to bear on the issue under discussion, though hedging those views within the parameters set by the facts already mentioned. As Hyland (2000) noted, the net effect is the “the creation of a discourse where the research appears to speak for itself” (p.95) by giving agency to non-human entities.

7.2.3.4 ‘Ensure’

The lemma ‘ensure’ operates in a similar way for both categories in that it has a factual focus bringing to light features that are considered to be given and uncontroversial in the discourse community, thus making it similar to Biber et al.’s (1999) view on ‘fact that’ as discussed in Section 7.2.3.2 above. Sample concordance lines for attribution and averral are shown in Figures 7.20 and 7.21 respectively.

**Figure 7.20 Attribution concordance lines for ‘ensure’**

| Concordance | Oligopoly case-law. The Court ensured that the Commission must truly compensate measures necessary” to ensure that the overall coherence of and indeed the community. It will ensure that mentally ill offenders are led and developments in court procedure ensure that the moral choices of the the validity of the order O’Neill J ensured that the ‘best interests’ of the , for individual WTO member states, to ensure that agriculture, more than any existence, the Inter-American Court has ensured that the socially excluded, the a desire to see offenders rehabilitated to ensure that they could again become |
Figure 7.21 Writer indirect averral concordance lines for ‘ensure’

N Concordance
1 it is an important starting point for ensuring that the decision making
2 that they are being supervised. It also ensures that those that are most in
3 One way to prevent this happening is to ensure that no work begins until the
4 framework, then, it is crucial to ensure that privatisation produces the
5 noted that this potential sanction should ensure that Gardaí are careful about
6 to the electorate it may be difficult to ensure that they are held politically
7 their rulings are clear. It should also ensure that facts are clearly and
8 agreement it would be vital to ensure that the private operator is

One difference between the two categories is that the writer averral sub-corpus contains
more evaluative statements preceding the node (see lines 1, 4, 6 and 8 of Figure 7.21)
though the function of the node itself always remains that of guaranteeing an outcome that
is specified in the ‘that’ clause (in square brackets):

In 1987 the Law Reform Commission of Ireland considered the possibility of
ensuring that [there were equal numbers of men and women on each jury in
rape trials.] (Period 1)

...it is difficult to deny that some “adjectival discretion” is legitimate under the
Convention but care needs to be taken in order to ensure that [state parties are not
permitted too much latitude in deciding what is “reasonable.”] (Period 1)

The lack of explicit human agents is in line with Biber et al.’s (1999: 670) analysis for this
type of verb which frequently uses non-human subjects to report a stance that tends not to
be closely associated with feelings or thoughts.

7.2.3.5 ‘Clear’

Sample concordance lines for 'clear that' when used as an attribution and averral are shown
in Figures 7.22 and 7.23 respectively.
While both categories again share a common rhetorical function in that ‘clear that’ works cataphorically with the ‘that’ clause explaining where the clarity lays, there are distinct syntactical features to be noted depending on the source of the statement. As can be seen in Figure 7.22 the dominant structure for attributions is ‘make + it + clear + that’ and in over 90% of the occurrences in the sub-corpus the subject position was occupied by courts, judges, cases or semi-judicial entities such as the European Commission and the Patents Board. Accordingly, the past tense is prevalent though the present perfect form is a more common choice as lines 1, 6 and 7 in Figure 7.22 illustrate. One explanation for the frequent reference to judicial and semi-judicial bodies when using ‘clear’ could be the objective in law-making institutions to provide legal certainty (Guinchard 2008) to the jurisdiction’s citizens.

Writer averrals are structured differently, with the impersonal ‘it’ dominating as the student writers again avoid direct self-mentions. Just two occurrences in this category did not avail

Figure 7.22 Attribution sample concordance lines for ‘clear’

N Concordance
1 hearing.94 The court has also made it clear that children have the right to
2 discussed above, the Court made it clear that States enjoyed a wide margin
3 41. Furthermore, he made it quite clear that in the event of conflict
4 of the European judiciary which make it clear that the protection of public health
5 in 2003. The Courts had been very clear that the Convention provided
6 . Case law of the ECJ has made it clear that, although it is for the
7 of the ECJ has further made it clear that Articles 6(2) – (4) do not
8 .I.A. Agreement In Bayer63 it was made clear that for the Commission to find an

Figure 7.23 Writer indirect averral sample concordance lines for ‘clear’

N Concordance
1 criminals is being waged and whilst it is clear that this war is not being won, it is
2 Article 6(1) and 6(3)(d).68 However, it is clear that reliance on such out-of-court
3 for example, in my view it is plainly clear that the defendant went well
4 credit is badly needed25. However it is clear that the lax credit approach that
5 to the relief of many IPR owners. It was clear that Magill would not result in
6 allow for detention without charge, it is clear that such infringements on the
7 the Commission’s guidance. While it is clear that the Methodological Guidance
8 . Despite these concessions it remains clear that the law after Gencor was very
of the impersonal ‘it’ construction and the present tense also dominated bar two instances. This is an example of another construction which enables the student author to establish a personal stance in the text. The ‘that’ clause does not have any hedging however and would be categorised as a validity claim of obviousness under Groom’s (2005) categories, thus the students are forced to commit themselves completely to a proposition, which makes it one of the stronger expressions of personal stance in the corpus.

7.2.3.6 Concluding summary
Words that occur to a noteworthy degree in both categories nevertheless seem to follow the features already identified in the individual category analyses. For example, it is now clear that rather than engaging in direct self-mentions, students have a strong preference for the use of the impersonal ‘it’. While availing of the same lemmas, both categories apply them in different ways. The attribution category is far more likely to reduce the writer’s critical stance to a fairly neutral one with the possible exception of the reporting verbs accompanying ‘fact that’. Writer averrals on the other hand use the lemmas to focus on particular aspects of the analysis, to make propositions or interpretations, and all of which tend to include a clearly subjective element, particularly as the immediate co-text may include modal forms or value-laden expressions.

7.3 Discussion
At first glance, Groom’s (2000) view that writer stance should be predominant does not appear to be the case when using the evaluative ‘that’ clause given the greater number of occurrences in the attribution category. However, if we heed Sinclair’s view (1986) that all attributions, since provided by the writer, are really embedded in averrals, then we need to consider the various stances that writers took when reporting the propositions of others. There seems to be a certain hierarchy in terms of agents and the level of student writer acceptance of their propositions. When there is a factive stance, then we are dealing with the law as it is promulgated by the courts, legislation and similar instruments and epistemic modality has no real role to play here. The students’ evaluative stance becomes more apparent as we move away from the sources of law and spread out in five main directions, court protagonists, society in general and beliefs, academic studies of law, quasi-judicial bodies and professional bodies. However, even here, when there is formal authority or
executive power attached, the writers adopt a reporting approach similar to that of the
courts and law documents, as indeed they do for reports and views of professional bodies
that may have an influence on the political decision making process. However, the views of
academics are less likely to be viewed factively with the writer engaging in a neutral or
tentative approach to the propositions, the same for courtroom protagonists and general
agents who have been invested with no formal authority. The prevalence of integral
citations would nevertheless give a level of prominence to the reported source and may be
an indication of the students situating their writing within the discourse community by
displaying a knowledge of ‘who’s who’ in the world of law. The tense usage appears to be
in line with Swales and Feak (2004) view on the present tense for up-to-date knowledge or
research that is close to that of the student writer (for legal documents and academic
citations respectively). Also, given that experimentation is not a regular feature of law, the
soft-knowledge report verbs of textual/discourse and mental process dominate. However,
what the corpus analysis also uncovered was the relatively small range of report verbs that
collocate with certain agents. For example, the workings of a court seem to rely on a
specific range of verbs depending on what function of the court is being reported on.

As far as averrals are concerned, Perez-Llantada’s (2009) agentless constructions dominate
and hence the academic practice of Geertz (1988) ‘author evacuated’ texts remains in place.
One of the clear preferences is for the ‘it’ structure as one is to assume that students seek to
depersonalise their presence in getting the reader to focus on the proposition. However, the
‘it’ structure in not the only means by which students are able to establish a personal stance
in the text. Through the adoption of neutral verbs such as ‘is’, ‘mean’ and the prepositional
phrase ‘in that’, the students were able to elaborate on a topic with the option (and not the
obligation) of loading the propositions with epistemic or attitudinal modality. Perhaps it is
in the context of these structures that we can see evidence of Hunston’s (2000) sourced and
non-sourced averrals as students’ propositions are derived from the interpretation of both
documents and situations. The fact that all three constructions seem to serve the function of
enabling the student to provide further detail is an indication of its importance in post-
graduate level writing.
In contrasting the lemmas that have a high degree of use in both categories, it was interesting to note the behaviour of the writers when they attributed the proposition to a source and when they themselves were the source. The former was mostly in the form of a neutral or factive stance, little writer responsibility for integral citations, perhaps with the exception of fact that where the authors’ attitudinal stance was highlighted by the students. In contrast, when the students’ own propositions were to be communicated they used more attitudinal markers, epistemic markers and engagement functions to direct the reader or even adopted a different semantic use, as was the case with ‘suggest’ when the writers mostly used it to make an interpretation rather than proposal. This change of behaviour depending on whose proposition is being reported points to a level of awareness of the student’s own position of caution within the discourse community, and the infrequency of counter-factive verbs for attributions also indicates a level of deference to more senior members of the community.

Finally, to return to Sinclair’s (1990) categories established for ‘that’ in Section 7.1, it is now possible to assess to what degree each of these is present in the post-graduate student academic legal corpus:

- **Lexical verbs that refer to what has been said:**
  These have a very strong presence in the corpus, particularly when reporting the deliberations and findings of the courts and other legal entities through ‘held’, ‘ruled’, ‘stated’, ‘found’ and ‘concluded’. Recording what has been said is also present for the non-academic bodies through the use of (again) ‘state’, ‘claim’ and ‘report’ and the academic category uses verbs such as ‘note’, ‘suggest’, ‘comment’ and ‘claim’.

- **Lexical verbs that refer to thoughts:**
  ‘Believe’ and ‘feel’ were the two expressions that represented this category. They were mostly found among the non-academic and non-law making bodies under the ‘other’ and ‘court protagonists’ categories and it was also used by academics in the
academic category. This category however plays a more minor role when compared to reporting what has actually been said.

- **Lexical verbs the refer to learning and perceiving**
  Given that such verbs are close to *research process* verbs as described by Thompson and Ye (1991) in Section 7.1.1.4 and empirical research is not a feature of Master level student legal learning, one might well expect the presence of these verbs to be quite limited. Indeed, for attributions the only context in which they could be found was in reporting on the work of quasi-academic bodies in Section 7.2.1.4, whose mandate was frequently of an investigatory nature. However, for averrals there was more activity from this category. The way students use the word ‘suggest’ in Section 7.2.3.3 as a means of interpretation would align it to this category of use, as is their use of ‘appear’ (Section 7.2.2.5). ‘Submit’, while having an action focus in terms of its referential meaning, has also been shown in Section 7.2.2.3 to act as a preface for interpretations by students.

- **Lexical verbs which relate to actions and checking or proving facts**:  
The strongest presence for these verbs was in the legislative documents with ‘provide’ and ‘require’, and ‘ensure’ was used in the averral and attribution contrasts section (7.2.3.4). One could also argue that ‘mean’ belongs here as it frequently serves to show the consequences of a given state of being and hence emphasises an action which is or isn’t possible (see Section 7.2.2.2)

- **Lexical verbs that show that something is the case or has happened**:  
  This category was absent from the analysis.

- **Reporting nouns stressing what people say or think or, as complements of the copular verb ‘be’.** All these nouns have related verb forms:  
The corpus shows a clear preference for the use of the verb rather than the noun form so both these categories maintained a low profile. The ‘be + ‘that’
complement’ construction did not feature in any of the attribution sources, but students did avail of it to make their own averrals (see Section 7.2.2.1).

- Nouns that refer in some way to facts or beliefs but do not have a related verb form: ‘The fact that’ was used in medial position for both attributions and averrals and with a total number of occurrences of 409, it is the highest frequency noun form in the ‘that’ subcorpus. No other nouns from this category reached the required threshold for analysis.

- Adjectives indicating knowledge: As Table 7.5 clearly illustrates, adjectives do not very collocate very often with ‘that’. Under court decisions there is the use of ‘satisfied’ and this remains the only notable presence of this category.

- Adjectives indicating feelings: Having categorised ‘satisfied’ as pertaining to the establishment of facts or conditions, no adjectives belonging to this category qualified for analysis.

- Adjectives commenting on a fact: The adjective ‘clear’ is analysed for the contrast between averrals and attributions but beyond that there are no clear patterns of ‘adjective + that’ that merited further study. However, a derivation of the structure could involve the reason-type clause ‘in that’ as studied for student averrals in Section 7.2.2.4. This frequently follows an evaluative stance which is expressed through the adjective.

- ‘That’ as a subject clause (i.e. ‘The fact that … means …’): In addition to being used in the medial position, ‘the fact that’ is also to be found as a subject clause in about 20% of ‘fact that’ concordances and these are mostly used for student averrals. However, in light of the total number of concordances for ‘that’ under analysis in this chapter, this construction represents a minor feature of the uses of ‘that’.
7.4 Conclusion

It appears that Fløttum et al.’s (2006b) ‘polyphonic drama’ in research articles can also be extended to essays and theses. There is indeed much evidence to support Fairclough’s (1992) ‘manifest intertextuality’ with not only academics’ texts participating in the discourse but also court judgements, legislative documents and quasi-judicial bodies’ statements and decisions being present. While academic papers from other disciplines (as can be seen in this chapter), rely more heavily on the narrower academic discourse community as a source of reference, the world of academic law appears to have a much broader scope in terms of discourse participants. Also, in terms of number of occurrences alone, these non-academic participants are highly visible in the discourse, the number of citations perhaps being a recognition of one of Teubert’s (2005) justifications for citation, as the necessity to include important sources in one’s text. Nevertheless, on another level there is some degree of overlap with other disciplines, Thompson, P.’s (2005a: 41) list of the ten most common verbs in agentive citations for botany, agricultural economics and psychology contain five which are also to be found for attributions in law. When reporting the views of academics, there is also some analogy with Charles’ (2006) finding for materials science and politics that the most common structure was integral citations in the present tense with human subjects using argue (textual/discourse) verbs.

Perhaps it would be best to describe academic law as a hybrid between hard- and soft-knowledge disciplines. Hyland (2000) commented on the soft-knowledge disciplines’ preference for evaluative verbs from the non-factive category - true in law for reporting academic propositions, but not in the case of judgements which require the student to adopt a factive stance. In addition, while not conducting experiments, law nevertheless has similarities with Thompson, P.’s (2005) agricultural botany sub-corpus by foregrounding non-human agents, -courts and legal documents are cited as fixed parameters on the legal landscape. It would appear that successful engagement with the legal academic discourse requires that students acquire the ability to negotiate with both hard and soft features within the discipline.

Overall, the corpus shows a clear tendency for attributions to report on what was said through the use of lexical verbs. As language is the basis of how law is constructed and
applied, rather than being based on laboratory work or the reporting on phenomenon, this focus means that one is obliged defer to the statements, and not actions, of the sources of law, ancillary institutions and, to a lesser degree, academics. Averrals display the use of another type of lexical verb with ‘that’. Students, unsurprisingly, avail of learning and perception verbs as they bring their own interpretations to the texts and when such interpretations were deemed uncontroversial, then they invoked ‘mean’ to give a factual emphasis to their propositions. Nouns have a stronger presence in the averrals through collocating with ‘is that’. As already noted, the construction allows the students to attend to textual matters or to bring the aspect of evaluation to the propositions made in the ‘that’ clause. Also the use of ‘the fact that’ in the subject position enables students in particular to comment on propositions. What these patterns of use say about the role of ‘that’ for attribution and averral in student academic legal writing is that factive reporting of attribution has the effect of students remaining very faithful to a legal or quasi-legal source in its original form (no opportunity for shell nouns with a connotative slant) and what utterances it makes. A more detached approach is taken as one moves away from this inner core with reporting verbs becoming non-factive. Averrals avail of different reporting forms to communicate stance. Adjective and noun forms are more prevalent and in stark contrast to attribution, the clear identification of the source of the proposition has disappeared – effectively students remove themselves from the text when speaking.
Chapter 8: Discussion

This chapter will seek to determine how the research on post-graduate legal academic writing is positioned in relation to the general principles of academic writing outlined and Chapter 2 and the more specialised characteristics of legal English in Chapter 3. One would naturally expect the study corpus to adopt features of both the academic and specialised legal branches, though what this research should bring to light is how this alignment or disparity is expressed. The chapter will discuss this dual identity by first looking at the general features of academic writing, as the texts are located in an academic setting, to see which aspects can be discerned through the semi-technical language extracted from this study corpus. Then, where appropriate, relevant comparisons will be made with legal English in order to develop a more comprehensive picture of PGALW. To end the discussion, there will be additional comments made about the three empirical chapters and how the individual features can be interpreted from either an academic or legal English point of view.

8.1 Aspects of Academic and Legal English Writing Revealed by Semi-technical Language

8.1.1 Semi-technical language and mastering context-specific knowledge

It is possible to discern some features of Beaufort’s context-specific knowledge (as discussed in Section 2.1) through observing how semi-technical language is used. Features such as subject-matter knowledge and rhetorical knowledge are represented by all three areas of semi-technical language studied in this corpus. Nominal forms and report forms, with the strong showing of concepts, principles, legislation, judicial decisions and other instruments of law, all indicate a high level of awareness by the student writers of the foundations required for any legal analysis to be successful. In addition, the reliance on binomial and multinomial constructions, normally for the purposes of providing greater clarity and precision, are definitely in line with Common Law’s preoccupation for the closing of all loopholes in its rules.
Another significant point about the binomial construction is that in the case of pseudo hyponyms, the student is required to articulate the context in order to provide a clear picture of the often abstract notion:

...the victim should be kept informed of any change in circumstance of the offender, bail application, any release from prison, parole, escape or temporary release.

(Period 2)

In the example above it would not possible to articulate the rights of the victim without the required subject-matter knowledge. Regarding rhetorical knowledge, linguistic tools such as the use of shell nouns and in particular averral, enable students to focus on issues:

**Considering the fact that** you need to be financially strong in the first place to take security, it is easy to see the vicious circle that monitoring creates.  

(Period 2)

Elaborate on a proposition:

*This effectively means that all evidence yielded by the lawful surveillance of State agents, whether endorsed by a District Court judge or not is now admissible in court.*  

(Period 4)

And lastly, to evaluate a proposition:

*It might be suggested that such retention is justified on the presumption that the likelihood is that among these individuals there will be a significant proportion of recidivists.*  

(Period 3)

These type of analyses resemble the final stage of competence which Jacobson (2001: 3) considered necessary for student writers of legal academic texts (the application of information, detailing analyses and arriving at conclusions).

There is another feature revealed by the semi-technical analysis which shows a level of sensitivity towards how knowledge is managed within the discipline. Both Elbow (1991) and Biber and Gray (2010) referred to explicitness as a feature of academic writing, but at the same time Biber et al. (1999) also noted the phenomenon of generalisations in academic prose. Again, the analysis of the patterns around the semi-technical nodes, in this case ‘of’,
indicated a high degree of precision when it came to identifying in which courts a statement or decision came from, or the precise location of a statutory reference:

*Under s.12(1) of the 1977 Act...*

However, the semi-technical language also accommodated more general references, particularly with the ‘or’ construction when superordinate terms were used to complement the more explicit hyponym:

*... a case where injunctive or other relief is necessary...*

The issue of whether these are academic writing traits or legal English traits, is somewhat superfluous here. What it does reflect is a degree of competence by the student writers when dealing with content issues in their texts. They meet explicitness requirements through their ability to articulate the relevant points of law, and the generalisations, through for example the binomial construction, display a knowledge of the general context in which their writing is set. Perhaps this does not meet Biber et al.’s (1999) explanation of generalisation in academic writing as a means of extending the validity of the proposition, but it does indicate the students’ knowledge of the appropriate umbrella terms or terminology.

Furthermore, while it is not possible to make a comparison with the students’ writing while novices within the discipline, it is nevertheless noteworthy that semi-technical language includes features of general attributes of academic writing which were identified by researchers as signs of having achieved a good level of competence within the disciplinary community; Woodward-Kron (2008: 243) stressed the use of technical terms (facilitated by the ‘of’ node for instruments of law – Chapter 6) and Hyland for the ability to articulate a position (2009b: 130), which can be given expression through the averral examples above (Chapter 7.2.2).

**8.1.2 Semi-technical language as an aid to understanding the cultural undertones in English language academic writing**

Paltridge (2001: 63) cited citation practices, reader engagement and adopting a critical stance as representative of the underlying culture that informed academic writing in the
English language. Semi-technical language in this corpus has provided insights to some of these features. In Chapter 7.1.1 the fundamental nature of citation in academic writing was stressed by, among others, Tadros (1993), Johns (1997), Hyland (2006) and Fløttum et al. (2006a). This aspect of academic writing was also one of the main features of the semi-technical language analysis thanks to the ubiquity of ‘that’ as a report form. However, what the analysis of this corpus revealed was not only its importance for students, but also how reporting should be carried out within the discipline. Judicial, quasi-judicial and various commissions tend to be reported in a similar manner, legislation in another manner and academic sources were treated differently again. As Table 8.1 below shows, there are some common reporting verbs between the sources, but there is also a preference for certain verbs to collocate with a particular source:

Table 8.1 Main verbs used when reporting an external source

<table>
<thead>
<tr>
<th>Courts</th>
<th>Legislative acts, constitutions and treaties</th>
<th>Academic</th>
<th>Quasi-academic</th>
<th>Non-academic/non-law making bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td>held</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>state</td>
<td>state</td>
<td>state</td>
<td>state</td>
<td></td>
</tr>
<tr>
<td>find</td>
<td></td>
<td>find</td>
<td>find</td>
<td></td>
</tr>
<tr>
<td>satisfied</td>
<td></td>
<td>conclude</td>
<td></td>
<td>conclude</td>
</tr>
<tr>
<td>conclude</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ruled</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>prove</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>was</td>
<td></td>
<td></td>
<td>was</td>
<td></td>
</tr>
<tr>
<td>established</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>require</td>
<td>require</td>
<td></td>
<td>require</td>
<td></td>
</tr>
<tr>
<td>provide</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>believe</td>
<td></td>
<td></td>
<td>believe</td>
<td></td>
</tr>
<tr>
<td>feel/felt</td>
<td></td>
<td></td>
<td>feel</td>
<td></td>
</tr>
<tr>
<td>claim</td>
<td></td>
<td></td>
<td>claim</td>
<td></td>
</tr>
<tr>
<td>recommend</td>
<td></td>
<td></td>
<td>recommend</td>
<td></td>
</tr>
<tr>
<td>report</td>
<td></td>
<td></td>
<td>report</td>
<td></td>
</tr>
<tr>
<td>comment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>observe</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>reveal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The significance of this is that not only are the collocations worth noting if one wants to talk in an acceptable way with the gatekeepers to the disciplinary community, but it also serves to inform us as to how each source is interpreted in terms of the degree of alignment the student writer makes with the propositions (for example, academic and non-academic/non-law making bodies having a higher number of non-factive stance verbs). The semi-technical language analysis has uncovered a number of aspects to citation: firstly, it shows how frequent the practice is. Secondly, it shows what sources are required in law to perform an appropriate legal analysis and finally it is possible to see how each source is commonly reported as one can see through the range of terms most commonly used for judicial decisions and how they can be divided between reporting court decisions and reporting aspects of court deliberations. How the reporting is divided up between the sources will also indicate how the resources of analysis should be allocated. This division is illustrated in Table 8.2.

**Table 8.2 Division of citations among main attribution sources**

<table>
<thead>
<tr>
<th>Source</th>
<th>Frequency</th>
<th>% Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court references</td>
<td>605</td>
<td>40%</td>
</tr>
<tr>
<td>Legislation</td>
<td>165</td>
<td>11%</td>
</tr>
<tr>
<td>Non-academic/non-law-making entities</td>
<td>353</td>
<td>24%</td>
</tr>
<tr>
<td>Academic/quasi-academic bodies</td>
<td>373</td>
<td>25%</td>
</tr>
</tbody>
</table>

The above table confirms the primacy of referring to the primary sources of law and case law in particular, a source which would not be so prominent in other (non-English speaking) legal systems.

There is also the possibility to identify features of critical stance through semi-technical language. While students remain more deferent towards the sources of law (statutes and case law) and other official/quasi-judicial entities by adopting a factive stance, epistemic stance and evaluative tones become more pronounced for propositions from academics and the students themselves. Compare a judicial source:
However, in Hamdan, the Supreme Court ruled that the military commission system established by President Bush violated restrictions. (Period 3)

With an academic source:

Garland claims that this emerging culture of control is represented by the decline of the rehabilitative ideal. (Period 4)

Or a student averral:

Indeed, it is interesting to note that the European Court has opted for a broad interpretation of privacy under art.8,... (Period 4)

For the reporting verbs, the range of verbs which cover the majority of occurrences is often quite limited (just seven word types cover most of the reporting of academics’ propositions for example – Chapter 7.2.1.4.1) though for copula expressions such as ‘is that’, it is the semi-technical structure, rather than a fixed collocation, which enables the placement of a subjective view which is subsequently elaborated in the ‘that’ clause:

...the striking thing is that the right to privacy is no closer... (Period 4)

Again, as with attribution, the semi-technical language analysis method enables the highlighting of the phenomenon of stance, but is also capable of providing further details as to how one can actually articulate stance. This articulation of the cultural undertones should help those who are new to English language academia, legal academic education or both, by clearly illustrating what the writing practices are.

8.1.3 Semi-technical language and intertextuality

While genre move analysis did not form a part of this research project, it is nevertheless possible to see the effect of genres on the corpus. As with citation above, by noting the sources quoted one can also see what genres are the required reading for students of law. Effectively, the semi-technical language has enabled the identification of a ‘genre set’ (Swales 2004) whose members students must use if to produce an essay or thesis, and in this discipline it is largely law reports, legislation, commissioned reports, articles and books. The dominance of the first two sources is also confirmed by the literature at the more
applied legal English level. Feak et al. (2000) noted that the citations used in law review introductions were mostly to do with the primary sources of law and indeed both Williams’ (2002) and Brostoff and Sinsheimer’s (2003) recommendation to students of the necessity to become familiar with the authentic documents of the law appear to have been followed by the contributing members of this corpus. There is also agreement with the research of Deutch (2003), who noted that academic professors did not use professional legal documents such as wills and title deeds and this absence is also notable among the student citations. However, the input genres also leak into the students’ own texts. Binomial and multinomial expressions, already identified by Gustafsson (1984) as particularly prevalent in statutes, are also present in the students’ texts through the use of the node ‘or’. Students, by and large, do not apply the structure differently but mirror statutory language practices of providing explicit details for the purposes of clarity and precision, or availing of superordinate forms to give maximum coverage and hence close loopholes that could be exploited by a hostile interpreter. With regard to the reporting verbs observed by Mazzi (2007) in the decisions of supreme courts, these are also adopted to a limited degree by students (both Mazzi’s corpus and this study corpus show the high occurrence of ‘state’ and ‘conclude’). However, one striking difference is that the majority of verbs used in the judges’ discourse in Mazzi’s study remain non-factive and thus enable varying degrees of commitment by the judges to the propositions (e.g. observe, consider, say, believe, think) while the students, perhaps in deference to the higher authority of the courts, report much more with factive verbs (e.g. held, found, ruled). Therefore, it is important to note that this heteroglossia relationship between texts does not always mean a full transplant of content and the language to express it across different genres.

If one is to look at the defining lexical, syntactical and discourse features of legal English in general as listed in Chapter 3.3, then it becomes clear that not academic but other spheres of legal practice have a significant influence on the legal English linguistic profile. Of the fourteen lexical features, just two, binominal forms and nominalisation (Chapter 3.3.1.6 and 3.3.1.9), could be said to have been clearly adopted by the essay and thesis genres in this study. One could possibly argue that the extensive range of vocabulary feature is also observable via the semi-technical language constructions (Chapter 3.3.1.16), though the main collocates around the semi-technical nodes are not too numerous with, for example,
just 22 fixed collocates recorded for nominal forms (Chapter 6.2.1-3). Of course, if one is to look at the binomial forms (Chapter 5.2) then the constant is the structure while the constituent members change all the time in light of the multiple contexts being discussed. With regard to syntactic features it is not possible to comment on the embedded clauses as the analysis here took place at the phrasal level. Conditionals or any of their derivative forms (Chapter 3.3.2.3), do not, at first glance, appear in the corpus as semi-technical language. However, if one looks beyond the conventional syntactic cues, the binomial structure does seem to carry some of the conditional functions, particularly when referring to remit of a statutory provision or rule of some sort:

...lawyer must obtain the informed consent of client (current / former / or prospective) before accepting or continuing representation or pursuing a course of conduct.  

In this section “statement” includes any representation of fact, whether in words or otherwise.  

Also “close links” must be investigated because “close links” involve situations where two or more persons, natural or legal, are linked.  

All of the above could be reformulated into an ‘if….then…’ construction (i.e. for the second example: ‘if, in this section, a fact is represented by words or any other form, then it is considered a ‘statement’’).

The passive form was present (Chapter 3.3.2.2), particularly for student averrals where the dummy ‘it’ collocated with ‘submit’, ‘appear’, ‘note’ and ‘clear’. Legal English also lists the passive as one of its defining features though a different construction is highlighted. Maley (1994) saw it more in tandem with nominalised forms rather than ‘it’, particularly in procedural sections of legislative documents where the agent was superfluous to the passage. This difference in use again underlines the danger of applying general characteristics of a register to a particular genre or sub-group of a disciplinary community. One could also link the discourse feature of impersonal style to the effect of the use of the passive form. The impersonal style (Chapter 3.3.3.1) is also present due to the reliance on nominal forms with the emphasis on legal sources and principles. Even where human
agents could be mentioned, the corpus at times opted to borrow the practice found in contracts and legislation by using general terms to cover the roles played and hence making its applicability much wider:

...in addition to the interests of the individual parties...

...the rights of the accused are potentially the rights of everybody...

Again, this feature works for both academic and legal English settings. Biber et al. (1999) argued that these generalisations enabled a wider validity for claims in an academic setting and Williams (2005a) felt such a form brought impartiality and authoritativeness to legal documents.

Perhaps the discussion has now moved from intertextuality, in terms of citations, to absorb elements of interdiscursivity through student writing imitating professional legal forms such as binomial structures and adopting a more impersonal approach, both features being present in statutes and contracts. To conclude, it might be best to say that, while intertextuality is undoubtedly a cornerstone of academic writing, it is hard to ignore the influence of interdiscursive effects of other legal genres on student writing style.

8.1.4 Semi-technical language and student voice in the text

It is necessary to look at the role of semi-technical vocabulary in establishing the writer’s voice in the text in contrast to following the conventions of the discipline in terms of what information is deemed necessary and how it is displayed. Numerically, the nominal forms identified as semi-technical language which identify the key points of reference required for the legal analyses far outnumber the text development structures which would represent a student’s direct intervention in the text. Likewise, the averral and attribution structures in Chapter 7 show a 30/70 division respectively, and for the category of binomial forms (Chapter 5) we are approaching a 50/50 divide between externally imposed binomial forms and those independently generated by the students. Overall, this would point to semi-technical language primarily putting in place the informational prerequisites for analysis. However, as all the texts submitted to the corpus were successful in terms of the mark received, does this mean that the writer’s voice, if we assume that text development tools do indeed represent this aspect, is subordinated to the external requirements of the
discipline? Groom (2000) argued that the writer’s voice should be the dominant one in the
text; if so, how can this view hold in light of the findings here? An accommodation of the
reality of semi-technical language’s informational focus and Groom’s viewpoint of writer
subjective intervention in the text being the dominating element might still exist. If we
return to Hyland’s (2009b) view of students producing essays and theses with the
prerequisites of being able to handle the evidence appropriately in order to sustain a valid
argument, it might well be that semi-technical language firstly puts in place the building
blocks of the discipline upon which any analysis and conclusions must be based. Students
are required to display this knowledge of how the discipline perceives an issue to the
gatekeepers who decide whether they are sufficiently well versed in the principles of the
disciplinary community or not. Therefore, it would appear that semi-technical language
plays an important role in enabling the students to fulfil this requirement and without which,
any subsequent analysis would be without an acceptable intellectual base. However, that
does not mean that the writer’s voice does not dominate. The core information blocks are
necessary but not sufficient to produce a successful text. While numerically inferior, the
writer actions nevertheless represent a certain element of uniqueness in the text and render
it different to the texts dealing with the same topic submitted by other students. Therefore,
the counting of occurrences for writer acts and cases of disciplinary external requirements
is perhaps not the determining factor for writer voice in the text. I would argue that semi-
technical language in this corpus clearly represents the twin expectations identified by
Thompson, C. (2005) of students having to show a degree of personal creativity in their
legal analysis yet being bound to adhere to reporting on what the legal authorities had ruled
or thought about the topic. Semi-technical language covers primarily the tools of analysis
that students are required to display, and then the more common means of developing
arguments becomes apparent. It is this latter aspect that differentiates one text from another
and brings the student’s voice into sharp relief.

8.1.5 Some anomalies

While there are many features listed for legal English that are not present in the EALP
corpus, this study corpus does contain one feature which is not among those listed in
Chapter 3.3. The use of report structures for attribution and averral figured strongly in the
semi-technical language functions, but not the legal English literature review. This perhaps
represents more fully the academic character of the corpus and emphasises the observation role it takes with regard to the law, rather than producing texts that actually have a direct bearing on the law.

There is also some dissonance with regard to what semi-technical language is. As in Chapter 3.3.1.11, Alcaraz and Hughes’ (2002) description of legal English contained a reference to semi-technical language which was expressions that had a common meaning, but this meaning did not apply when used in the specialised legal context (for example, *consideration* is synonymous with ‘thoughtfulness’ in general English but in law means the transfer of money, a good or service in a formal contract). In contrast, due to the methodology applied to the study corpus, which dealt with issues of statistical keyness and distribution across subjects, authors, periods and genres, quite a different list of vocabulary was derived as the function words analysed in Chapters 5 to 7 illustrate. The issue would appear to be one of definition and whether one takes a semantic or quantitative approach to the semi-technical concept. They also have a different focus, the Alcaraz and Hughes definition is purely lexical, while the function words derived through the quantitative process cast more light on what the core rhetorical features are in a post-graduate EALP context and how they are constructed.

The final point in relation to academic language concerns Li and Schmitt’s (2009) and Durrant and Matthews-Aydinli’s (2011) advocacy of formulaic language which must fit with the discourse norms of the disciplinary community. The phrases that were constructed around the semi-technical language nodes showed, at times, repeated patterns of the same language (e.g. ‘his or her’, ‘whether or not’, ‘the interests of’, ‘the provisions of’) though in many instances the rhetorical effects that the structures allowed were more significant. Binomial forms were rarely repeated word for word, yet the perception of an issue that they enabled, be it for emphasis or use of antonyms to provide a wide scope, did continue to surface in the texts. This of course is also reflected in the fact that frozen lexical bundles, with the exception of ‘that the’ in Period 3, did not make it into the top items of the semi-technical language list (see Chapter 4.4.6, Table 4.11 and 4.12). Therefore, it was more important to be aware of the overall structure rather than requiring the same words to appear in the slots. The point is that semi-technical language does not appear as a self-
contained meaning unit and that it frequently requires other terms (often technical in nature) to allow it to achieve its full expression:

\[ \text{...the provisions of a double taxation agreement...} \]

This does not fit exactly with the advocacy of formulaic language but it does concur with the advocacy of formulaic presentation of propositions. Hence it says more about epistemology than frozen lexical forms in the discipline. This will be reviewed again in the conclusions of Chapter 9.

### 8.2 Binomia and Multinomia Expressions

The presence of binomial forms in PGALW is a clear demonstration of the transfer of practices in one field of law to another. Statutes are a particularly rich source of binomial structures (Gustafsson 1984) and as the results from the analysis of nominal forms and ‘that’ as a report clause have shown, there is a strong presence of statutory sources in the student texts. However, as noted in Chapter 5.2, the binomial sets in the student texts do not replicate themselves to the same degree as can happen in legislative texts, so have a higher changeover of constituents. Does this anomaly dilute the specialised discourse features and move the construction more into the domain of academic writing in general, or does it continue to maintain its affinity with the professional discourses from which it came?

The first sign that a yes or no answer is unlikely is the fact that yes, some binomial forms do repeat themselves, which would make it a significant phenomenon in light of Biber et al.’s (1999) recording of very low rates of occurrences in general English, but as shown in Chapter 5.2, not as often as in legislative documents. This lack of repetition then led to the analysis to determine its nature in terms of whether it was a tool used primarily by students or a part of a reported attribution, what rhetorical functions it enabled and the nature of its syntactical structure. In terms of syntactic structure binomial dominate, for longer lists the trinomial is the preferred length and the most common word form to be used is the noun. None of the above appears to be something that is particularly unique to the field of legal English and the only main difference at this point remains that of frequency. The study also
showed that the combined use of verbs and adjectives also represents a sizeable block (approximately 38% of occurrences), not far behind the share held by nouns (45%). This share of occurrences may not be unique to the field of law but it is certainly relevant, given the higher level of use of the structure in the discipline.

Turning to source, research to date has tended to focus on formal documents such as legislation (Gustafsson 1984) where attribution does not exist and Biber et al. (1999) did not report on this aspect in their research. The division in this study between student averrals and direct or indirect attributions is 52.5%/47.5%. As noted in Chapter 5.2.3.6, there is very little change in semantic behaviour when students use the structure independently and when it is part of an attribution. The long tradition of using binomial structures in common law as, first, Anglo-Saxon style poetic adornments (Chapter 3.2), to be followed by using the form to facilitate English and French descriptions of the same term (ibid), and then the requirement to anticipate attempts to interpret the text in a way that was not intended (ibid), to finally formulating texts in a way which limits the courts’ freedom of action as a creator of law (Bhatia 2010: 8), represents a very deeply rooted means of expression within the disciplinary discourse. The already existing intertextuality and the apparently strong deference towards the primary sources of law in student legal writing would lead to the uncontroversial conclusion that students have aligned their writing to the conventions of the discipline. This view is further strengthened for student averrals, where intertextuality is not present but interdiscursivity as the means of expression is, so the style if not the content of legislative documents is adopted by the student writers. Therefore, the binomial structure is a clear marker of legal English writing rather than students adopting a more general academic writing approach to their texts.

Finally, there is the issue of rhetorical function of the structure. The strongly non-experiential nature of use around binomial forms makes the structure ideal for setting out frameworks, criteria or conditions which are ultimately controlled by the writer (the legislation drafter or student writer). The heavy information load which the binomial structure is able to carry combined with this enabling of abstraction indicates a degree of intellectual activity which fits comfortably with both academic writing and legal writing ideals. While precision was seen as the main function of the binomial structure by Bhatia
(1993) and Bazlik (2007) for legal English, Biber et al. (1999) emphasised clarity on those occasions when it appeared in their academic register, though to this could be added their observations of other registers where it served to make a proposition applicable to all circumstances. The effects of all three, precision, clarity and applicability in all circumstances, were present in the study corpus. While the means by which such goals can be achieved are wide and varied (one just has to look at Gustafsson’s (1975) thirty-two categories), what the study showed was the rate of occurrences between the five main categories identified in the corpus. Biber et al.’s applicability to all circumstances could be related to the maximum scope category (Chapter 5.2.3.2), which accounted for just 10% of all cases in the sub-sample. Therefore, the non-academic registers, from which Biber et al. observed this behaviour, have a relatively minor influence on the use of binomials in a student legal academic context. The precision function could be satisfied by the study’s categories of reinforcement, temporal/staged relations and degree of intensity occurrences (Chapter 5.2.3.3, 5.2.3.1 and 5.2.3.4 respectively), which all together accounted for 35% of the sub-sample lines. However, this means that the last and largest of the study’s categories represents Biber et al.’s clarity function, a function they saw as being particularly relevant to academic prose. Bhatia and Bazlik both appear to be basing their observations on professional texts or the sources of law and hence their highlighting of the precision aspect of binomial use. This study, of course, is from the academic part of the discourse community and this could explain why the category ‘list of members of a semantic set’ is the dominant one with approximately 50% of all occurrences. However, because of the subjective nature of deriving such categories, one can argue that there is a degree of overlap. If one looks at the construction ‘or other’:

\[
\text{A barrister may excuse him or herself by pleading Rule 2.14 (lack of expertise in that area or conflict of interest or other special circumstances)}\ldots\quad\text{ (Period 2)}
\]

There are two functions at play here, one is to illustrate and hence clarify what ‘special circumstances’ is likely to mean, and the other is to widen the scope of the proposition from “lack of expertise” to any case that might allow the barrister to excuse him- or herself. Nevertheless, given the base premise that students of law are expected to display their knowledge of the content of the sources of law (Bhatia 1989), one means by which this
academic imperative can be achieved is by illustrating clearly to the reader what these frameworks, criteria or conditions are. Therefore, there is a strong academic writing undercurrent of knowledge display in the structure, even if this is disguised by legal English’s preference for the structure.

A final minor point worth noting is how the present-day use of the binomial form in student academic writing contrasts with its uses as highlighted in the legal English chapter. There was little evidence of poetic adornments or Anglo-French combinations, though, as has been discussed above, attention to detail in its various forms remains a recurring theme.

8.3 Reporting and Stance Features

The report function enabled by ‘that’ along with the evaluative opportunities it offers to the student writers would appear to make this aspect of semi-technical language a particularly general academic rather than specialised discipline one. Certainly citation is considered to be one of the cornerstones of academic writing (Johns 1997), though that is not to say that the professional legal genres eschew the process altogether. The hybrid genre of court judgements is particularly rich in citations (Bhatia 1993, Mazzi 2007) due to the need to refer to statutory and case law when developing a set of rules to decide the instant case. Indeed, it is probably the court judgement which is most similar to the thesis and essay genres in terms of citations for analyses of legal issues. However, as one moves beyond the setting of frameworks to describe the state of the law and more into the evaluative stage of expressing opinions, then a gap opens between the genres again. Both Bowles (1995) and Mazzi (2007) were able to display evidence of direct self-references by the judges when writing opinions, this feature was noticeably absent in the study corpus as students opted for other forms of indirect reference such as the use of the dummy ‘it’:

Frequently, the product obtained can provide compelling evidence of criminality and it is sensible that it should be possible to advance this as evidence before a court. (Period 4)

Or simply applying comment language without any subject reference:
Another progressive change is that, before 21 days elapses after a Detention Order has been granted, a Tribunal review must take place. (Period 2)

Divergences not only occur for how self-mentions are expressed, epistemic stance is also a feature shared between the student and judgement genres, though again they choose not to express it in the same way. As already noted in 7.3, the further the students move from the sources of law the more likely they are to adopt a non-factive stance towards the proposition. In the case of court judgements, Mazzi’s analysis showed that for direct self-reference the judges, unlike the students reporting on what the court said, were more likely to stress the epistemic element through the selection of more subjective verbs such as ‘consider’, ‘believe’ and ‘think’ with ‘I’. Such verbs were not availed of by students in the case of their own direct or indirect self-mentions, though it is debatable as to how epistemic judges’ utterances are, given the law-making powers invested in the appellate courts and hence the weight such words carry.

If one is to look at how students exhibit their degree of membership of the discourse community through the prism of attribution and averral practices, then it is possible to draw a picture of what they are expected to produce in essays and theses. The dominance of legal sources indicates the primary requirement of displaying knowledge of the law on the matter under discussion:

Consequently Recital 33 of Regulation 1/2003 provides that “… all decisions taken by the Commission under this Regulation are...” (Period 4)

However, the category of agents at times moves the discourse to beyond proclamations of the law to the solicitation of the views of the actual actors who have helped cause the event under analysis or have an interest in some way:

... the travelling community claimed that if Mr. Nally had been a traveller and if Mr. Ward had been a member of the settled community, a different verdict may have been returned. (Period 2)

The degree of membership is also illustrated by the acknowledgment of the views of academics in the field:
He believes that the planning process is integral to remediation of contaminated sites because...

And finally the students are expected to make known their own point of view, often in conjunction with indirect self-mentions, through the use of evaluative shell nouns:

Moreover, it is a valid point to note that the Commission is not an ecological or scientific body.

Or more commonly, adjectives:

It is important to note that not every situation involving law enforcement and mentally ill persons will escalate to the heights of Abbeylara.

Ironically, Orta’s (2010) list of who or what entities judges referred to is not all that different from what the students engage in here, though it is only a very small number of students who will actually end up as judges. However, as seen in the EOLP genres in Chapter 3.5.2, being able to describe the state of the law along with providing an informed evaluation is an analytical approach that can be applied, to varying degrees, to legal memoranda, trial briefs, appellate briefs and barrister opinions. What the corpus texts have in common with these EOLP texts is that all of them do not have a legal standing, but the main objective is to interpret the law. Therefore, while citation and stance are recognised features of academic writing, it would appear that there is a convergence of approach between the less frozen professional genres and PGALW.

Therefore, the point of the semi-technical term ‘that’ is that it appears to be able to satisfy both disciplinary specific and general academic requirements for good writing. In particular, its attribution role satisfies the necessity in law to name and explain the sources of law relevant to the issue identified in the task rubric. As an extension of that, and moving more into the field of general academic writing for soft disciplines, it not only refers to the primary sources of law but it also widens the field by referring to academic viewpoints. Then, when using ‘that’ for averrals we see evidence of students being able to focus on, explain and give their own assessments of the issues raised. As a result, the semi-technical
construction seems to be first required to address the core informational issues of the discipline before it can proceed to build its more academic side of setting the issues in a wider context and providing interpretations of these descriptions.

### 8.4 Nominal phrases

Also already noted in Section 6.1.8, Cortes (2004) found that the lexical bundles used by students did not correspond to those used in the expert papers, while Hyland (2008) found that very few bundles were common to the four disciplines analysed. Both these studies would point to the fact that each discipline has its own unique phraseological profile (Cheng 2007), even among the different levels of community membership. The phenomenon of nominal forms in the corpus is a clear response to the need in common law to rely on precedent and the statutes when analysing problems. Both these elements are to the fore in the analysis of Chapter 6. The constructions around ‘of’ not only tell us what other texts/institutions are of relevance to the analysis, but the noun phrases themselves are also adhering to law’s preference for precision:

*the court of criminal appeal...the case R v O’Connor...Article 6 of the European Convention on Human Rights...the principle of proportionality... Report of the Joint Committee on Child Protection...*

While legal method requires precision, many of the above examples also illustrate a feature of academic English which is that of complex noun phrases. Biber *et al.* (2011) showed how the use of these phrases can explain the compressed style in academic writing, particularly due to the high information load contained within the expressions. This high information load which the semi-technical node ‘of’ facilitates, in turn emphasises the communication of information focus of academic writing, rather than other aspects such as the building of relationships (Biber and Conrad 2009).

While not as prevalent as the discipline content focus, the second main feature of the chapter analysing nominal forms in the corpus concerns the constructions that enable the student to focus on and elaborate particular aspects of a proposition. This function has
perhaps a stronger academic identity about it rather than being discipline specific, as is the case for the nominal forms for the sources and institutions of law. To fully understand these textual terms, it is first necessary to look at the genres the students have produced, essays and theses. Hyland (2009b) noted that the essence of essay writing was the ability to marshal evidence, evaluate it and mount a sustained argument. The thesis genre continued in the same vein with students required to show intellectual autonomy, but at the same time show deference to the expert readers’ greater knowledge of the field. Therefore, in both cases there appears to be the expectation that the student will be able to offer a considerable depth of analysis. There are a number of indications as to how this is done through the use of semi-technical language constructions for nominal forms. The expressions ‘noun phrase + be + that’, ‘the fact that’, ‘case of’, ‘one of’ and ‘application of’ all represent writer actions in developing the text. As already noted in Chapter 6, these constructions enable various functions such as the critical assessment of a legal instrument:

While the application of competition law to such anti-competitive agreements is uncontroversial, difficulties arise when... (Period 4)

The qualification of propositions or the construction of frames within which further clarification is provided:

...common law or statutory rules limiting compellability of the spouse may, at least in some cases of suspected child abuse, be unconstitutional. (Period 2)

Or to focus on a particular aspect with the purpose of explaining the effect it has:

The fact that Ireland has opted out of the Reception Conditions Directive ... is a denial of the human rights which the Directive seeks to protect. (Period 2)

All of these would seem to concur, as was the case for averrals using ‘that’, with Jacobson’s (2001) most complex level of student academic legal writing, which is being able to apply information, detail an analysis and conclude. Given this correlation, the academic writing credentials of the use of the nominal form would appear to be consolidated. Furthermore, if one looks at the use of the term ‘the law’ in the corpus it touches on one of the core features of academic legal English. Williams (2002) noted that
ascertaining the state of the law was one of the core objectives for students of the discipline and indeed the rubric of the essays and theses would appear to confirm this point (see the footnote in Chapter 6.2.3.2). Therefore, that ‘the law’ and its various derivatives are commented upon by students is in line with the expectations of the academic community and the legal academic identity of the genres is reinforced.

8.5 Conclusion

To conclude, what the discussion in this chapter has revealed is that the corpus is unsurprisingly a product of academic writing and legal English conventions. Of the three main areas investigated in the study, not one could be said to be totally independent of either of these pillars of influence and instead, for different aspects, we see varying degrees of academic writing or legal English footprints on the texts. The two core functions of semi-technical language would appear to be description and analysis. The nominal forms and report structures sometimes work in tandem with each other, and in both cases the primary emphasis is on identifying the core elements necessary to carry out a legal analysis. Once that premise has been fulfilled, then we see evidence of greater student input in the texts through the tools of evaluation and stance.

While the semi-technical language features based around ‘that’ and nominal forms seem to follow a similar pattern of behaviour, the ‘or’ node has a slightly different identity. The influence from the field of professional legal practice is much stronger here, especially since research of academic prose does not accord a significant presence to this structure. Certainly, academic prerequisites such as clarity can be fulfilled through the use of binomials, though research has not shown it to be a structure that is relied upon in other academic registers. Nevertheless, if one is to look at the sum of the parts, then the overall identity of the semi-technical language of the corpus is more academic than legal. Each analysis of the individual features satisfied in some way the requirements of academic writing, however, if one is to make a comparison with the linguistic features of legal English, a lot more is missing than is present in the corpus. Perhaps this can be explained by the fact that quite an amount of research on written legal English has, quite naturally,
focussed on professional legal documents or the primary sources of law. The legal English review chapter represented an overview of the whole discipline and this fact demonstrates that legal English is much more than just what is produced at the academic level – indeed it is very unlikely that any sub-field of law is going to incorporate all the features described in that chapter. Therefore, the description of the genres as student EALP texts seems to be eminently appropriate. As regards the fact that citation was not considered a defining feature of legal English, this was perhaps an oversight. It also belongs to other academic disciplines but the reliance on such a feature in student and hybrid legal texts means it has a right to be considered an integral part of legal discourse.

To close, for those who must become familiar with the discipline, the labelling of features as legal or academic English is unlikely to be so relevant. The main advantage which this approach to semi-technical language holds is that it describes what happens rhetorically, how often it happens and in order to ‘talk the talk’ of the discourse community, what one needs to write to make it happen.
Chapter 9: Conclusion

9.1 Semi-technical Language: What it achieves in post-graduate academic legal writing

It is now possible to return to the research questions in Chapter 1 about the nature of semi-technical vocabulary:

Research Question 1. What semi-technical vocabulary can be identified and how can this be categorised according to shared features in the EALP study corpus?

Research Question 2. What rhetorical functions does this semi-technical vocabulary fulfill?

Research Question 3. Do these rhetorical functions display a convergence of use which allows them to be identified as core epistemological features of the sub-community’s writing practices?

The methodology chapter dealt with the Research Question 1. Thanks to the quantitative approach enabled by the use of the WordSmith software, it was possible to pare down the corpus so that firstly, items occurring at a higher rate than in the general academic written reference corpus could be identified, and then, that these items met various distribution criteria across subject, author, genre and periods. This approach revealed two main streams of semi-technical vocabulary. One, with its high keyness values, did indeed contain items which could be clearly identifiable as legal in nature (e.g. court, justice, act), though the real frequency of such items was not particularly high. The second stream was the inverse, the items, while identified as key by WordSmith, had low keyness values but on the other hand had a relatively high frequency of occurrence. Unlike the first stream, these expressions were largely dominated by function words (e.g. of, that, on) and the legal connotation that they might have was not immediately apparent. The remainder of this chapter will now discuss the significance of the terms taken from the high frequency, low keyness value list as their opacity and sheer numbers only served to increase their
attractiveness from a research point of view. With regard to Research Questions 2 and 3, it can be argued that the rhetorical features identified are indeed at the core of the discipline due the invariability of their recurrence throughout the texts. The main functions identified were as follows:

- Student legal academic writing contains a focus on clarity, precision, and where this fails to cover all eventualities for the application of the law, then ironically, generalisations, through the use of binomial and multinomial structures based on the node ‘or’. This structure also fulfils the knowledge display notion, which the gatekeepers in academia need to see if student texts are to be successful. The construction appears to have been adopted from legislative texts as it is frequently used to describe the law from those sources, though the style remains when the students explain the criteria, frameworks or conditions for their own propositions. The construction could be seen as related to the conditional form as the members of the multi- or binomial structure could, in certain contexts, act as a trigger in some way for a legal event to be confirmed.

- Semi-technical language also enables one to cite external sources in an appropriate manner and mark one’s own voice in the text. This role was realised by the ‘that’ node. The analysis provided a list of what were the main sources to be cited and for law this was heavily dominated by the primary sources of law along with quasi-judicial and state appointed bodies. Insights were also provided as to how the sources were to be cited in terms of, for example, tense use, a preference for the active form for attributions and what verbs or constructions were likely to cluster around a particular source. For the numerically inferior self-mentions, the analysis showed how direct self-mentions were largely avoided in favour of more indirect forms. It was also possible to gain an understanding of the function these indirect self-mentions had, dealing mostly with aspects of the development of an argument through focusing, elaborating and commenting on propositions or an aspect of a proposition.

- Finally, the strong presence of nominal forms typical to the PGALW corpus indicates that students must be able to identify what a particular law says or which abstract notions of law can govern a choice. Alternatively, there is the use of the more generic term ‘law’ with its various collocates as a means of providing further elaboration and comment, most likely in
response to the task rubric. While the nominal forms can work in tandem with the reporting ‘that’ structure, a more common function is that it helps identify what needs to be highlighted by students in their analyses, which cases or statutes should be brought to bear on the issues – the elaboration of the legal framework appears critical in this context. There are elements of text development, metadiscourse features which allow one to focus on a particular issue in order to elaborate further or provide comment, though the analysis showed these instances to be less frequent.

Overall, what the semi-technical language analysis has revealed is that there is a strong tendency for students, regardless of the sub-discipline, to articulate what the law says about a particular issue - primary sources of law hold sway over academic comment. If number of occurrences in the data is to be an indicator, then this is the primary function of student EALP writing. The second function is then the focusing on aspects of the law, with their elaboration and interpretation by the students themselves. Also attention to detail, through various constructions, permeates the texts. Finally, the semi-technical language illustrates how stance can be expressed. This final feature is perhaps common to many student academic genres and contrasts to the primary function noted above, which relies heavily on a world beyond the university campus.

9.2 Was the Thesis Successful in its Aims?

The aim at the outset of this thesis was to shed light on how students write in a PGALW context. Given the multiple sub-disciplines involved, a comprehensive description of all contexts was not possible, but the identification of a core behaviour did seem attainable. The reliance on corpus linguistics methods allowed the data to ‘speak for itself’ in a sense. The analysis was designed to delay researcher interference. Despite this, at a more macro level, the parameters for filtering the data had to be decided on, though this was largely selection criteria for the WordSmith statistically derived keyword expressions. Indeed, when the final analysis concentrated on high frequency keyword items rather than keywords with the high keyness values, it was also in some way consistent with this idea of selecting language that represented the majority of members. It was really at this point that the interpretation of the language got underway and a more subjective aspect of the analysis
took over. Delaying researcher intervention in the data any further was not possible, nor desirable; hence the balance between quantitative and qualitative approaches had reached a stage where the handover seemed natural and necessary, if further information was to be extracted from the data.

As regards the core behaviour or epistemology of the discipline, what can be said is yes, there do appear to be features that have to be present if a post-graduate student essay or thesis is to be considered successful within the legal academic discourse community. The analysis not only identified these building blocks, but was also able to quantify them and show how they should look. Of course the picture could be more comprehensive, more could have been taken from the list of most frequent keywords, or the highest keyness keywords could have been added to the analysis, but resources did not permit this in this study. Nevertheless, coming to the study from the position of teaching English to Civil Law students who are looking to improve their legal English abilities, it does provide insights to how Common Law approaches issues. Students from other legal systems must be aware of the rhetorical structure of academic legal discourse in Common Law if they are to interact more productively with this discourse community. Therefore, semi-technical language as derived in this study is more than just a list of words, it is a linguistic analysis of the core functions of PGALW.

The core functions which the data analysis chapters uncovered relate to two broad areas. The first, through primarily the use of ‘that’, demonstrates the need for students to report the positions of others, with the parallel need to reveal their own stance on these positions, as well as using the node to develop their own interpretations. This rhetorical organisation is consistent with the expectation that academic writing will first situate itself within the established discourse of the community (Hyland 2006: 25) and then set an orientation (through the writer’s evaluation, empirical research or interpretation) which makes each individual text unique. The second core function is discernible from the binomial structure; this entails a level of detail which enables increased scope or clarity of a proposition, which in turn emphasises the high information content aspect of academic writing. This is hardly unconventional for writing, Halliday (1985: 330) considered lexical complexity as typical of written language. However, the binomial form in particular seems to be a feature of
academic legal writing which has not been recorded as prevalent in non-legal disciplines. Finally, Halliday’s (1985: 330) grammatical metaphor as a key element of academic writing is seen through the high frequency of nominal forms, often with the compression of processes into noun phrases (one just has to try to describe the term ‘Common Law’ to understand grammatical metaphor’s efficiency). This also confirms Biber et al.’s (2011: 30) assertion that the ability to use complex noun phrases is the last stage of development for an academic writer. The undoubtedly important position of nominalisation in academic writing is reflected in the attention it has recently attracted from Baratta (2010b), Lu (2011) and Gao (2012). This study has confirmed such interest and added to that body of knowledge by describing what type of nominalisations are commonly used in an English for specific purposes register.

9.3 Shortcomings in the Analysis

One clear shortcoming from the analysis is the absence of any indication as to whether there is a pattern of use of these particular functions in the texts. Do students first explain what all the laws are and then provide their own analysis, or do they state one law, analyse and comment, and then move on to the next law? A complementary piece of research would be to do a genre analysis of the texts and once the texts could be broken down into sections and moves therein, each one could be subject to a corpus linguistics based analysis to see if the patterns identified contain standardised forms of expression.

Another point worth addressing is how universal the claims can be. Returning to the view of Swales and Bhatia (1983) that law did not travel well, this was partially tempered by the fact that Common Law, at least, did share a common language. The data collected comes from just one jurisdiction, even if the texts contain references to the law and its workings in other countries. Student texts from universities in other countries would need to be analysed to see if the same functions repeated themselves. At the moment, there can only be a tentative claim that this common law approach to writing essays is a standard practice across jurisdictions.

A further limiting factor is that not all Masters in Law courses follow the organisation witnessed here. At the early stages of the research, when searching for suitable sites to
collect texts, some universities were unable to participate because they only had end of semester exams with no marked essays during the year. Again, one could speculate that the tools of analysis used in the corpus are unlikely to be radically different to how students might approach a similar task in a timed exam-setting, though at the moment there is no empirical basis to back the claim.

From a pedagogical point of view, the texts analysed represent, for many who contributed to the corpus, the pinnacle of their academic writing education. Therefore, what we have is an end product, so to speak. What is missing is how the participants arrived at this point. How was their writing when they started out and what exactly did they have to change or include, to make it more acceptable to the academic discourse community. Researchers have detailed this progression in other disciplines (Thompson (2009) for history and engineering, Woodward-Kron (2009) for education and Baratta (2010) for language, literature and communication) but an empirical analysis for law was not found. The corpus was also overwhelmingly native speaker. Given the significant number of non-native speakers who do Masters in Law programmes, this absence affects the universality of the claims. Ideally, the corpus should have included an equal number of texts from native and non-native speakers, this would have allowed the research to address not just the differences between these two language groups, but it would also have provided insights to how those educated through other (non-Common Law) legal systems initially approached the writing tasks, what sort of development path was followed and whether there was a convergence of styles between Common Law and non-Common Law graduates in the end.

Another criticism is that the corpus could have benefitted from extra contributions. While it has been argued that a specialised corpus of almost 1 million words is sufficient in size (see Chapter 4.1.4), the period's analysis meant that the corpus shrunk further to about 650,000 words. In light of the fact that it took two years to collect the data for two cohorts, time constraints did not permit the collection of a third or fourth cohort. Nevertheless, a higher token count would have served to shore up the corpus’ foundations, upon which all findings are based.
9.4 Implications for Theory

Given that the study was primarily exploratory in nature, the corpus analysis approach enabled the discovery process through the initial application of quantitative methods. However, even here there was a clear theoretical stance on what constituted semi-technical vocabulary. The approach did not assume that the most frequently used words in English (as evidenced by the BNC K1 and K2 lists) could not have a role in establishing the unique identity of the discipline and hence no stop-lists were used. The validity of such an approach was borne out by the WordSmith analysis results, particularly in relation to keywords with low keyness values but high frequencies of occurrence. This reinforces the stance of Martinez et al. (2009) and Hyland and Tse (2009) on the need to investigate the full range of vocabulary used in a corpus for discipline-specific applications.

The discourse analysis stage was informed by the view that genres are “highly structured and conventionalised” (Bhatia 1993: 13). Research Question 3 effectively relied on the theory that genres are relatively stable entities and hence it would be possible to use a corpus linguistics approach to track nodes of language around which there are regularly occurring patterns of use. Furthermore, the hierarchial view of discourse communities as advanced by Clark (1992), which implied that rules were more likely to be observed by students, only served to increase the likelihood that conformity in the student body would indeed lead to clearly defined patterns of rhetorical functions. The concordance analyses appear to confirm both Bhatia and Clark and hence the legitimate assertion that the rhetorical functions identified are representative of the core epistemology of PGALW. Assuming the genre stability conditions hold for other disciplines, then this raises the prospect of ESP tutors now being able to gain access to the core principles around which any discipline is based, with the concomitant linguistic constructions. Such knowledge can only serve to make for more effective ESP programmes.

To illustrate the potential unlocked by the analysis of semi-technical language, this study revealed a feature unique to academic legal discourse through the high level of occurrence of the ‘or’ node. While ‘or’ has received some attention from researchers, its implication for any theories of academic writing is not directly connected to its use in legal writing. Instead, it raises the question as to what other specific language features exist in other
disciplinary fields. The prevalence of ‘or’ should act as a catalyst for further research into ESP contexts, and while maybe not challenging already well established theories of academic writing, it does demonstrate the need to fine-tune these theories so they can more accurately cater for the multitude of contexts in which they are to be applied.

The findings of the thesis would also appear to confirm that academic law occupies a mid-position on the hard discipline/soft discipline continuum. It would seem to take its ‘hard’ features from the professional aspect of the discipline, on which it relies to provide the legal framework necessary for any analysis. This needs to be fixed in some way as the law itself is required to provide certainty for the society it regulates. The ‘soft’ features can be found in the level of evaluation being brought to bear by the student writers on the propositions of others and their own.

Regardless of the hard/soft discipline features in the corpus, one feature which remains impervious to such classifications is the level of abstraction in the texts. With Williams (1961) defining law as an idea rather than something perceived by the senses, the frequency of noun forms dealing with abstract notions (e.g. ‘concept of’, ‘principle of’, ‘application of’, ‘case of’, ‘court of’ – Chapter 6.2.1.1) reinforces this point of view. Indeed, Chapter 5’s binomial forms are also largely non-experiential in nature as students use them to deal with what might be or what is required rather than what has actually happened. This abstraction behaviour was also prevalent in the law articles studied by Coulson (2009), where far more text was dedicated to the epistemic aspects of the legal problems rather than their phenomenal aspects. While such agreement with the literature would certainly reinforce the academic credentials of the corpus, it must also be remembered that hybrid legal texts such as court decisions will also dedicate much more space to the ratio decidendi, and hence the formulation of abstract rules that can then be applied to the case at hand, as already noted in Chapter 3.5.3.2. Therefore, abstraction is a feature that fits comfortably with both academic writing and legal English writing. It could be argued that abstraction belongs more to the world of soft disciplines, due to the absence of empirically-based knowledge, though the fixed tools of analysis, particularly the setting of issues in a legal framework through the description of the laws governing those issues, means abstraction can also be subject to hard discipline-type processes.
Perhaps the main message one can take from the review of the findings with regard to theoretical implications is that the investigation sought to largely find connections to relevant theories in explaining the semi-technical phenomenon. As describing PGALW was, to a very large degree, unchartered territory, the primary focus of the study was one of identification and interpretation. Theories helped place the findings in a larger academic/ESP context and rather than challenging these theories, the thesis was able to illustrate how theories of writing manifested themselves in the PGALW context. Now that something has been written about PGALW, it will be possible to add to its findings, challenge them or confirm them.

9.4 Directions for Future Research

In highlighting the shortcomings above, one already has many areas where further research could be of benefit. Despite this, the study and findings should not be dismissed so easily and indeed they prepare ample terrain for further research projects. As a starting point, one could test the methodology to see if core epistemological features can be identified in other disciplines such as medicine or business studies. This could be of particular benefit for the occluded genres of student writing. Such a databank could be of value to ESP teachers and students that are new to the discipline, be they native or non-native speakers. Recognising patterns of analysis used in expert published material would also be useful in an academic reading context, where the reading of academic journals and books are likely to present a challenge to novices. If one had the luxury of a sufficiently large databank, then the general discipline corpus could act as a reference corpus for a sub-discipline corpus. This would then allow one to determine how the sub-discipline is different to the general principles of analysis identified in the reference corpus. The sub-discipline corpus would be subject to the same methodology for identifying general discipline semi-technical language, with the exception of not having to cater for subject bias and some adjustments might have to be made for the definition of periods, selection of authors and selection of genres.

Chapter 8.3 highlighted that the essay and thesis shared some characteristics with hybrid professional genres such as court judgements, legal memoranda and barrister opinions. Certainly the court judgements represent a significant body of literature which is relied
upon by students. While some research has already been done on court judgements (Bhatia 1993, Harris 1997, Mazzi 2007, Orta 2010), it would be interesting to see in more detail how student writing concurs with this genre. From a more practical point of view, the same could be said about legal memoranda, a genre students are likely to produce in the not uncommon event of joining a law firm after they graduate.

From a more applied point of view, the results of the study represent the sort of material that could be used in a pre-session course for Masters in Law students, and particularly for those who are new to the discipline (most likely because they have studied another legal system and hence in another language). As noted previously, further information on the genres in terms of a structure and move analysis could be useful here. Combining these two approaches, students would have a breakdown of how to progress through a thesis or essay and also be aware of the core features that any should include, along with the appropriate ways of expressing these features. The construction of a programme, its testing and reporting on student writing performance thereafter, contrasted with a control group with no such input, could test the question of whether interventions in such cases are really of value or not.

Remaining with the blending with genre analysis, an alternative approach could be taken whereby individual texts are read by starting with the semi-technical language located in those texts. Location, broader functional context and possible connections between terms could be determined in order to see if the semi-technical language adheres to set patterns of use in the texts. This bottom-up approach would help provide a more comprehensive view of the role of semi-technical language in the structural moves in the texts.

A more complicated endeavour though definitely very interesting, would be to conduct a bi- or multilingual comparison with student texts from other civil law jurisdictions. This would help determine if semi-technical language in Civil Law countries shared common rhetorical features, despite the differences in languages. One would then be better informed about the legal approaches availed of in Civil Law jurisdictions and therefore be in a better position as a teacher to guide learners as to what they need to change to engage with the new disciplinary environment.
Bibliographical references


Baratta, A. (2010a) ‘Academic writing development in the LLC program’, [online] available:
http://www.campus.manchester.ac.uk/ceebl/resources/papers/Academic_Writing_Development_in_the_LLC_Program.pdf [accessed 16 January 2011].


Binchy, J. (2010) 'Who are you and why are you here: reader involvement in undergraduate Philosophy essays', accepted for The Fifth Inter-Varietal Applied Corpus Studies group International Conference (IVACS 2010), June.


Contemporary Studies of Writing in Professional Communities, University of Wisconsin Press, Madison, WI, 336–357.


Koskenniemi, I. (1968) *Repetitive word-pairs in Old and Early Middle English prose*, Turku: Turun Yliopisto


*TESOL Quarterly*, 37(3), 389-418.


Appendix A

Letter of Approval from University Research Ethics Committee

From: Jennifer.Schweppe
Sent: 10 September 2008 13:54
To: Fiona.Farr; 'mactoft@aol.com'
Subject: Research Ethics Committee

Dear Fiona and Michael,

Thank you for your application to the FAHSS Research Ethics Committee.

The Committee are pleased to give your project ethical approval, subject to the following considerations:

1. Please ensure that the memory sticks on which information is stored is password protected, or that it is deleted once information is saved onto a computer
2. Please ensure that students know that their participation in the research study is purely voluntary
3. Please ensure that students are told that the information gathered in the research is not communicated to either the lecturer of the course, nor the Department involved.

I wish you the best of luck with your project.

Best wishes,

Jennifer Schweppe
Lecturer in Law
University of Limerick
Appendix B

Letter to programme directors for permission to have access to students

UNIVERSITY OF LIMERICK
OLLSCOIL LUIMNIGH
College of Humanities
Department of Languages and Cultural Studies

Dear__________.

As a PhD student of linguistics at the University of Limerick I write to you about the possibility of collaborating in my research project. My thesis is about the writing development of students of a
Master of Laws programme. To fulfil this task I need to collect samples of writing that students produced during the programme (excluding time-limited formal exam scripts).

Ideally, to do so, I would need to speak briefly to the students explaining to them what I want to do and what I would like them to do. I would then provide them with an information sheet and consent form (see attached) where, if they were willing to participate, they could provide their email details. Thereafter it would then be possible for me to contact them directly in order to solicit the written texts.

In particular, the permission I seek from the School of Law is to gain 5 minutes access to students at the start of a lecture in order to carry out the tasks above.

The University of Limerick Research Ethics Committee have approved my research application details of which can be found at http://www.ul.ie/researchethics/ or by contacting Dr Helen Kelly Holmes at 00353 61202340.

Hoping my request receives favourable consideration.

I look forward to hearing from you.

Yours sincerely,

Paschal Maher
Appendix C
Information sheet provided to prospective participants

UNIVERSITY of LIMERICK
O L L S C O I L L U I M N I G H
College of Humanities
Department of Languages and Cultural Studies

Subject Information Sheet

Working title of project

The development of academic legal writing skills among students of Master of Laws programmes: from legitimate peripheral participation to full community membership - a longitudinal study.

What is the study about?

The research looks at how both native and non-native English speaking students of a Master of Laws programme develop their writing skills as they progress through the course. In particular, what is of interest is the manner in which they organise their texts to present information to the reader.

What will I have to do?

If you agree to participate then you should send me by email your tutor/lecturer marked written texts (thesis, essays, reports, case studies etc) that you completed for your courses during the Masters. Time-limited formal exam scripts should not be included. In addition, you will be required to fill out a short profile questionnaire (about your nationality, language status etc) and for each written text there are 6 questions concerning the name of the relevant course, the mark you received, when
the paper was handed in etc.

What are the benefits?

In the short term, requests from students for feedback on how the research analysis applies to their texts is welcome. In the long term, the research will hopefully provide insights into what type of writing is typically expected at this level so those providing writing support to students will have a clearer framework to work with in the future and students can become more efficient writers.

What are the risks?

There are no foreseeable risks as the texts will have already been marked.

What if I do not want to take part?

Then please do not provide your email details on the consent form.

What happens to the information?

Firstly, the information will be anonymised. Then it will be analysed both by reading and performing various computer analyses. Subsequent access to raw data will be limited to results presentations at conferences, publications and PhD thesis.

Who else is taking part?

The participating Master programmes belong to the universities of Trinity College Dublin, University College Cork and the University of Zurich.

What if something goes wrong?

In the unanticipated event of the loss of data, participants may be asked to resubmit their files.

What happens at the end of the study?

The material forms the basis of a PhD thesis. The data might afterwards be used to compare with undergraduate legal writing or doctoral level writing. Data confidentiality is to be maintained at all times.

What if I have more questions or do not understand something?
Please contact me (Paschal Maher) at maherp@ethz.ch or Dr. Fiona Farr at fiona.farr@ul.ie

**What happens if I change my mind during the study?**

You should contact the researcher (me) to inform me that you no longer wish to have your material included in the study and I will delete it from my files.

**Contact name and number of Project Investigators.**

Paschal Maher  
Email: maherp@ethz.ch

Dr. Fiona Farr  
Email: fiona.farr@ul.ie

Dr. Michael McCarthy  
Email: mactoft@aol.com

---

**If you have concerns about this study and wish to contact someone independent, you may contact:**

*Dr Helen Kelly Holmes*

*Chair of Faculty Ethics Committee*

*Department of Languages and Cultural Studies*

*University of Limerick*

*Limerick*

*Tel: 00353 61202340*
Appendix D
Participant consent form and profile questionnaire

UNIVERSITY of LIMERICK
O L L S C O I L L U I M N I G H
College of Humanities
Department of Languages and Cultural Studies

Consent Form

- I have read and understood the subject information sheet.
- I understand what the project is about, and what the results will be used for.
- I am fully aware of all of the procedures involving myself, and of any risks and benefits associated with the study.
- I know that my participation is voluntary and that I can withdraw from the project at any stage without giving any reason.
- I am aware that my data will be kept confidential

Date:
Name (Block letters):

Signature:

Email address:
UNIVERSITY of LIMERICK
OLLSCOIL LUIMNIGH
College of Humanities
Department of Languages and Cultural Studies

Profile Questionnaire

*Please fill in the below in block letters*

1. Name of university:

2. What is your gender? Male ( ) Female ( )

3. What is your nationality?

4. What educational qualifications do you have and from where?

5. What professional training/full-time work experience do you have?

6. What is/are your mother tongue/s?
7. If Q.6 does not include English then:
   a. If you have an English language certificate such as those issued by Cambridge or TOEFL:
      - what is your highest level of certificate?
      - what score did you receive?
   
   b. If you have no English language certificate, on what basis were you accepted on the programme?
Appendix E

Meta data in file names

File names

Example: C1fCrimEss1Ucc

C1 = Author (Capital letter or capital letter and number)
f = Male/female (m/f): Subject: Genre: Period: University

Crim = Subject abbreviations:
  Business law – Bus
  Criminal law – Crim
  Human Rights law – Hr
  Miscellaneous law - Misc

ESS = Genre abbreviation:
  Essay – Ess
  Thesis – Th
  Assignment – Ass
  Case study - Cs

1 = Period:
  Oct to Dec – 1
  Jan to March – 2
  April to May – 3
  Thesis – 4

UCC = University:
## Appendix F: Top 20 Frequency Items

| Period 1 semi-technical | Freq. | Authors | Keyness | | Period 2 semi-technical | Freq. | Author | Keyness | | Period 3 semi-technical | Freq. | Authors | Keyness | | Period 4 semi-technical | Freq. | Authors | Keyness |
|-------------------------|-------|---------|---------|--------------------------|-------|---------|---------|--------------------------|-------|---------|---------|--------------------------|-------|---------|---------|
| OF                      | 5524  | 14      | 97.26661| OF                        | 5749  | 15      | 28.57328| ON                       | 880   | 14      | 49.919812| OF                        | 12457 | 14      | 27.576  |
| THAT                    | 1729  | 14      | 31.93793| IN                        | 3298  | 15      | 24.07282| AT                       | 771   | 14      | 252.03817| THAT                      | 4274  | 14      | 80.808  |
| OF THE                  | 1671  | 12      | 150.223 | THAT                      | 1880  | 15      | 25.30458| OR                       | 573   | 14      | 50.609039| OF THE                    | 3798  | 14      | 190.6   |
| ON                      | 943   | 14      | 61.93373| OF THE                    | 1580  | 15      | 36.78007| LAW                      | 562   | 14      | 1249.8872| ON                        | 2000  | 14      | 26.858  |
| LAW                     | 748   | 14      | 1947.258| LAW                       | 956   | 15      | 2693.112| S                        | 513   | 14      | 1106.3759| AT                        | 1905  | 14      | 525.96  |
| AT                      | 697   | 14      | 139.7214| AT                        | 789   | 15      | 169.5132| THAT THE                 | 366   | 14      | 48.1251717| OR                        | 1852  | 14      | 428.52  |
| OR                      | 675   | 14      | 106.6856| OR                        | 756   | 15      | 123.7685| IBID                     | 347   | 14      | 811.504272| NOT                       | 1801  | 14      | 79.567  |
| COURT                   | 525   | 13      | 2250.796| S                         | 615   | 15      | 1344.479| MAY                      | 309   | 14      | 48.513036| AN                        | 1771  | 14      | 141.87  |
| S                       | 522   | 13      | 1096.985| CRIMINAL                  | 463   | 12      | 2026.384| O                        | 294   | 14      | 1215.2874| S                         | 1543  | 14      | 3465.1  |
| RIGHTS                  | 473   | 13      | 1426.545| AND THE                   | 438   | 15      | 24.44417| CRIME                    | 257   | 8       | 1133.35986| TO THE                    | 1499  | 14      | 100.93  |
| CRIMINAL                | 435   | 12      | 1949.565| THAT THE                  | 409   | 8       | 43.12501| CRIMINAL                 | 249   | 8       | 921.36187| THAT THE                  | 1136  | 14      | 293.44  |
| JUSTICE                 | 422   | 12      | 1535.628| STATE                     | 384   | 15      | 420.743| BY THE                   | 249   | 13      | 39.2166977| LAW                       | 1106  | 14      | 1871.2  |
| THAT THE                | 420   | 12      | 80.74397| JUSTICE                   | 363   | 14      | 1163.13| CASE                     | 245   | 12      | 203.516815| ARTICLE                   | 957   | 13      | 3132.3  |
| ACT                     | 326   | 13      | 738.3968| CASE                      | 363   | 14      | 416.7919| CASE                     | 245   | 12      | 203.516815| ACT                       | 900   | 14      | 2065    |
| STATES                  | 305   | 14      | 449.1902| RIGHTS                    | 340   | 14      | 780.5728| COURT                    | 217   | 11      | 642.068298| COURT                     | 884   | 14      | 2974    |
| HUMAN                   | 305   | 11      | 398.3817| COURT                     | 336   | 14      | 1139.046| ARTICLE                  | 212   | 12      | 567.768188| SUCH                      | 878   | 14      | 122.07  |
| CASE                    | 301   | 14      | 312.2292| MAY                       | 324   | 15      | 29.68645| LEGAL                    | 194   | 13      | 412.395233| V                         | 873   | 14      | 1987.3  |
| NO                      | 274   | 14      | 35.66449| PUBLIC                    | 312   | 15      | 568.3348| JUSTICE                  | 193   | 11      | 472.871979| MAY                       | 867   | 14      | 181.6   |
| BY THE                  | 261   | 14      | 40.70203| BY THE                    | 301   | 14      | 54.86239| V                        | 187   | 14      | 281.058807| IF                         | 784   | 14      | 101.4   |
| N                       | 251   | 14      | 551.4156| SHOULD                    | 289   | 15      | 74.75875| N                        | 167   | 14      | 273.312164| COMMISSION                | 770   | 11      | 2776    |
## Appendix G: Top 20 Keyness Items

<table>
<thead>
<tr>
<th>Period 1 semi-technical</th>
<th>Freq.</th>
<th>Authors</th>
<th>Keyness</th>
<th>Period 2 semi-technical</th>
<th>Freq.</th>
<th>Author</th>
<th>Keyness</th>
<th>Period 3 semi-technical</th>
<th>Freq.</th>
<th>Author</th>
<th>Keyness</th>
<th>Period 4 semi-technical</th>
<th>Freq.</th>
<th>Author</th>
<th>Keyness</th>
</tr>
</thead>
<tbody>
<tr>
<td>COURT</td>
<td>525</td>
<td>13</td>
<td>2250.8</td>
<td>LAW</td>
<td>956</td>
<td>15</td>
<td>2693.1</td>
<td>COURT</td>
<td>562</td>
<td>14</td>
<td>1249.9</td>
<td>ARTICLE</td>
<td>957</td>
<td>13</td>
<td>3132.3</td>
</tr>
<tr>
<td>CRIMINAL</td>
<td>435</td>
<td>12</td>
<td>1949.6</td>
<td>CRIMINAL</td>
<td>463</td>
<td>12</td>
<td>2026.4</td>
<td>COURT</td>
<td>217</td>
<td>11</td>
<td>642.07</td>
<td>COURT</td>
<td>884</td>
<td>14</td>
<td>2974</td>
</tr>
<tr>
<td>LAW</td>
<td>748</td>
<td>14</td>
<td>1947.3</td>
<td>JUSTICE</td>
<td>363</td>
<td>14</td>
<td>1163.1</td>
<td>ARTICLE</td>
<td>212</td>
<td>12</td>
<td>567.77</td>
<td>COMMISSION</td>
<td>770</td>
<td>11</td>
<td>2776</td>
</tr>
<tr>
<td>JUSTICE</td>
<td>422</td>
<td>12</td>
<td>1535.6</td>
<td>COURT</td>
<td>336</td>
<td>14</td>
<td>1139</td>
<td>IRELAND</td>
<td>125</td>
<td>13</td>
<td>548.33</td>
<td>ACT</td>
<td>900</td>
<td>14</td>
<td>2065</td>
</tr>
<tr>
<td>RIGHTS</td>
<td>473</td>
<td>13</td>
<td>1426.5</td>
<td>IRISH</td>
<td>167</td>
<td>12</td>
<td>780.84</td>
<td>LAW</td>
<td>956</td>
<td>15</td>
<td>2693.1</td>
<td>LAW</td>
<td>1106</td>
<td>14</td>
<td>1871.2</td>
</tr>
<tr>
<td>IRELAND</td>
<td>236</td>
<td>12</td>
<td>1230.6</td>
<td>RIGHTS</td>
<td>340</td>
<td>14</td>
<td>780.57</td>
<td>IRELAND</td>
<td>403</td>
<td>11</td>
<td>1679.3</td>
<td>EURPEAN</td>
<td>1106</td>
<td>14</td>
<td>1871.2</td>
</tr>
<tr>
<td>IRISH</td>
<td>165</td>
<td>12</td>
<td>801.59</td>
<td>PROTECTION</td>
<td>33</td>
<td>10</td>
<td>265.68</td>
<td>RIGTHS</td>
<td>672</td>
<td>14</td>
<td>1343.1</td>
<td>CONVENTION</td>
<td>184</td>
<td>9</td>
<td>791.55</td>
</tr>
<tr>
<td>CONVENTION</td>
<td>184</td>
<td>9</td>
<td>791.55</td>
<td>RULES</td>
<td>126</td>
<td>14</td>
<td>237.67</td>
<td>CASE</td>
<td>245</td>
<td>12</td>
<td>203.52</td>
<td>JUSTICE</td>
<td>471</td>
<td>14</td>
<td>1038.6</td>
</tr>
<tr>
<td>ACT</td>
<td>326</td>
<td>13</td>
<td>738.4</td>
<td>ACT</td>
<td>234</td>
<td>14</td>
<td>368.2</td>
<td>COMMISSION</td>
<td>91</td>
<td>10</td>
<td>188.29</td>
<td>MEASURES</td>
<td>390</td>
<td>10</td>
<td>968.48</td>
</tr>
<tr>
<td>MEMBER</td>
<td>193</td>
<td>13</td>
<td>602</td>
<td>STATE</td>
<td>384</td>
<td>15</td>
<td>420.74</td>
<td>COMMISSION</td>
<td>125</td>
<td>13</td>
<td>548.33</td>
<td>RIGHT</td>
<td>639</td>
<td>12</td>
<td>930.49</td>
</tr>
<tr>
<td>STATES</td>
<td>305</td>
<td>14</td>
<td>449.19</td>
<td>CASE</td>
<td>363</td>
<td>14</td>
<td>416.79</td>
<td>PROTECTION</td>
<td>90</td>
<td>11</td>
<td>175.64</td>
<td>TRIAL</td>
<td>298</td>
<td>9</td>
<td>874.03</td>
</tr>
<tr>
<td>ARTICLE</td>
<td>183</td>
<td>14</td>
<td>430.52</td>
<td>ACT</td>
<td>234</td>
<td>14</td>
<td>368.2</td>
<td>RULES</td>
<td>127</td>
<td>12</td>
<td>209.52</td>
<td>TRIAL</td>
<td>298</td>
<td>9</td>
<td>874.03</td>
</tr>
<tr>
<td>TRIAL</td>
<td>128</td>
<td>12</td>
<td>418.52</td>
<td>STATES</td>
<td>284</td>
<td>14</td>
<td>343.97</td>
<td>ACCORDANCE WITH RISK</td>
<td>128</td>
<td>12</td>
<td>148.98</td>
<td>LEGAL</td>
<td>436</td>
<td>14</td>
<td>782.62</td>
</tr>
<tr>
<td>PROVISIONS</td>
<td>95</td>
<td>12</td>
<td>381.07</td>
<td>JUDGE</td>
<td>107</td>
<td>10</td>
<td>338.79</td>
<td>RIGHTS</td>
<td>131</td>
<td>12</td>
<td>142.68</td>
<td>MEASURES</td>
<td>390</td>
<td>10</td>
<td>968.48</td>
</tr>
<tr>
<td>COMMISSION</td>
<td>138</td>
<td>12</td>
<td>366.89</td>
<td>PROVISIONS</td>
<td>78</td>
<td>11</td>
<td>273.36</td>
<td>JUDGE</td>
<td>57</td>
<td>9</td>
<td>137.66</td>
<td>PROTECTION</td>
<td>285</td>
<td>12</td>
<td>608.04</td>
</tr>
<tr>
<td>JURISDICTION</td>
<td>77</td>
<td>10</td>
<td>347.8</td>
<td>COURTS</td>
<td>98</td>
<td>13</td>
<td>265.78</td>
<td>RIGHTS</td>
<td>131</td>
<td>12</td>
<td>142.68</td>
<td>PROVISIONS</td>
<td>180</td>
<td>13</td>
<td>591.28</td>
</tr>
<tr>
<td>COURTS</td>
<td>105</td>
<td>12</td>
<td>316.17</td>
<td>RULES</td>
<td>127</td>
<td>12</td>
<td>209.52</td>
<td>JUDGE</td>
<td>57</td>
<td>9</td>
<td>137.66</td>
<td>LEGISLATION</td>
<td>231</td>
<td>12</td>
<td>559</td>
</tr>
<tr>
<td>CASE</td>
<td>301</td>
<td>14</td>
<td>312.23</td>
<td>ARTICLE</td>
<td>125</td>
<td>10</td>
<td>197.57</td>
<td>INTERESTS</td>
<td>85</td>
<td>10</td>
<td>129.62</td>
<td>COURTS</td>
<td>217</td>
<td>14</td>
<td>550.79</td>
</tr>
<tr>
<td>PROTECTION OF PUBLIC</td>
<td>39</td>
<td>9</td>
<td>310.23</td>
<td>PERSON</td>
<td>145</td>
<td>12</td>
<td>177.79</td>
<td>IN RELATION</td>
<td>62</td>
<td>10</td>
<td>105.52</td>
<td>ACCORDANCE WITH</td>
<td>82</td>
<td>12</td>
<td>508.91</td>
</tr>
<tr>
<td>PUBLIC</td>
<td>215</td>
<td>14</td>
<td>305.49</td>
<td>THE PRINCIPLE</td>
<td>69</td>
<td>11</td>
<td>176.46</td>
<td>PROCEEDINGS</td>
<td>29</td>
<td>11</td>
<td>92.542</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>