



Conceptual blending in legal writing: Linking definitions to facts



Alissa J. Hartig*

Department of Applied Linguistics, Portland State University, P.O. Box 751, Portland, OR 97207-0751, USA

ARTICLE INFO

Article history:

Available online 19 January 2016

Keywords:

Legal writing
English for legal purposes
Conceptual blending
Mental spaces
Legal memoranda

ABSTRACT

Although the body of research on legal language is significant, analysis of the kinds of texts that lawyers learn to write in the vocational stage of their training remains limited. While some legal writing textbooks explicitly address the lexicogrammatical resources necessary to write common genres such as the legal memorandum, the use of features such as tense and articles is largely tied to explanations based on generality or specificity. Drawing on conceptual blending theory, this study examines the use of such features in the “Question Presented” section of eleven legal memoranda. Textual analysis is further supplemented with questionnaire data from legal writing professionals. Analysis suggests that rather than representing a clear distinction between general and specific reference, these linguistic features indexically reference and blend various “mental spaces” that are necessary for common law argumentation. The study highlights the need to connect discipline-specific concepts to linguistic meaning in English for Legal Purposes, particularly for L2 students trained in other jurisdictions.

© 2015 Elsevier Ltd. All rights reserved.

1. Introduction

Legal education in common law jurisdictions comprises three stages of training: academic, vocational, and professional (Hafner, 2013). While much research has addressed the academic genres that students write (e.g., Feak, Reinhart, & Sinsheimer, 2000; Howe, 1990; Iedema, 1993; Langton, 2002; Swales, 1982), fewer studies have explored the vocational stage of legal training, or the “professionally oriented legal practice courses designed to prepare law graduates for their professional lives” (Hafner, 2013, p. 134). In the United States, such courses are taught in legal writing programs that are a required part of the J.D.¹ curriculum (American Bar Association, 2014). These courses, which facilitate students’ transition from academic to professional writing, simulate legal practice while at the same time presenting key principles of legal argumentation and research.

The legal memorandum is the first and most common genre taught in these courses (Rideout & Ramsfield, 2010). In an article tracing the early development of the field of legal writing, Rombauer (1972–1973) noted that 87% of professors surveyed across legal writing programs in the U.S., both in required first-year writing courses and in upper-level courses, included memoranda among their course assignments. While academic and professional legal genres, like legal problem

* Tel.: +1 (503) 725 9986; fax: +1 (503) 725 4139.

E-mail address: ahartig@pdx.edu.

¹ *Juris Doctor*. This is the graduate law degree that is typically required to practice as a lawyer in the United States.

question answers (Bruce, 2002; Howe, 1990; Tessuto, 2011) and barristers' opinions (Hafner, 2010; Tessuto, 2006), respectively, have been more widely researched, the legal memorandum has remained largely unexamined.

1.1. *The legal memorandum in legal education: context, audience, and purpose*

The first semester of legal writing instruction typically involves the writing of two or more legal memoranda, ranging in length from four to twenty pages. Each memorandum is drafted over several weeks. These assignments “involve areas of law as well as fact patterns with which students are familiar or can easily become familiar” (Bannai, Enquist, Maier, & McClellan, 1999, p. 204) and are designed to be “similar to an assignment a new associate would receive in practice” (Bannai, et al., 1999, p. 193). Students are given an assigning memo from a “supervising attorney” (a role played by the instructor) that begins with a summary of the client’s facts and a request for the “junior attorney” to research and prepare a memo addressing a legal issue relevant to the client’s problem.

In their memoranda, students provide a prediction on the outcome for the client if the dispute were to go to court. Students conduct research on the relevant statute, if one exists, but most of their research focuses on case law. To find these cases, students consult the same databases that they will use in professional practice. Their analysis then focuses on analogical arguments comparing the facts of the client’s case to the facts of binding precedent cases in the client’s jurisdiction. While the exercise is constructed as a simulation of legal practice, students are also aware of being evaluated by the instructor, which likely shapes the ways in which they present their arguments (see Maclean, 2010). This evaluation focuses on “legal reasoning, structural organization, grammar, and citation form” (Hoffman, 2011, p.5).

1.2. *Structure of the legal memorandum*

While the legal memorandum is presented to students as a professional genre that they will use in legal practice, the format that students learn in textbooks is an idealized model (Hoffman, 2011). These textbooks acknowledge that each law firm’s house style will vary, but a few obligatory moves are identified. As one manual indicates:

There is no required format that all lawyers use or that all law schools use for a legal memorandum. Most memoranda, however, are divided into from three to six sections, each of which performs a particular function within the memo and conveys a necessary core of information: the Statement of Facts, the Question Presented, the Short Answer or Conclusion, the Applicable Statutes, the Discussion, and perhaps a final Conclusion. Under some formats, the Question Presented may come before the Statement of Facts.

(Shapo, Walter, & Fajans, 2008, p. 175)

These moves correspond to elements of common law argumentation, such as the “IRAC” (Issue-Rule-Application-Conclusion) framework, or variations such as “CREAC” (Conclusion-Rule-Explanation-Application-Conclusion). These moves appear consistently in descriptions of the memorandum in other legal textbooks and manuals (see, e.g., Oates & Enquist, 2010; Thompson, 2010; Wellford Slocum, 2011). Some textbooks provide separate templates for single- or multi-issue memos, but these are variations on the moves described here.

The Statement of Facts provides a summary of the client’s situation with particular attention to those facts that are relevant to the central legal issue. The Question Presented (or “Issue Statement”) summarizes this legal issue in terms of the relevant client facts and statutory or case law, and the Short Answer provides a conclusion. The Applicable Statutes section may be substituted with a synthesis of existing case law and relevant sections of legal treatises in the event that there is no applicable statute. The Discussion typically centers on the presentation of precedent cases with either binding or persuasive authority within the jurisdiction of the client’s case as well as the use of analogical reasoning to apply the court’s rationale in these cases to the facts of the client’s case.

As Hoffman (2011) points out, legal English courses that use the memorandum as a model tend to focus on the formal features of each of these sections. This model is often so prescriptive that Hoffman (2011) has critiqued such courses as being “template-production classes” (p. 4). At the same time, many instructors describe this focus on using a prescribed format as being intended not so much to ensure that students master a single “correct” form as it is to help students become familiar with the common law analytical framework and pay greater attention to the kinds of details that will be expected in a given firm’s house style.

1.3. *The question presented*

Not every section of the legal memorandum is equally challenging for students or equally important to the success of the document as a whole. Shapo et al. (2008) argue that the Question Presented (QP) represents “the most important inquiry for the memo writer” (p. 179), as it frames the central legal issue that the memorandum will address. Shapo et al. (2008) describe the QP as “a sentence that poses the precise legal issue in dispute that the problem turns on” (p. 179). Exploring which aspects of the memorandum legal writing professors comment on most in student work, Breland and Hart (1994) found that “issue and key fact identification” were commented on in 81.4% of student samples, more frequently than all other features (p. 17).

In a survey of attorneys, judges, and legal writing professors, Hanley Kosse and ButleRitchie (2003) found that the two most important aspects of the QP for readers were that it not be conclusory and that it “include the legal claim and the

Download English Version:

<https://daneshyari.com/en/article/355323>

Download Persian Version:

<https://daneshyari.com/article/355323>

[Daneshyari.com](https://daneshyari.com)