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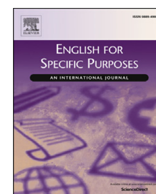

Lexical verb hedging in legal discourse: The case of law journal articles and Supreme Court majority and dissenting opinions

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ABSTRACT

Hedging can play a particularly important role in nuancing language in such language-dependent disciplines as law. This article presents a corpus-based study of the use of epistemic lexical verbs as hedging devices in three written legal genres: The law journal article, the Supreme Court majority opinion and the Supreme Court dissenting opinion. These genres were chosen due to the role they potentially play in international higher education law studies, with the corpus deriving from the legal jurisdiction of the United States. Realization, frequency and function of speculative, quotative, sensorial and deductive lexical verb hedges are compared. Results indicate that patterns of use of epistemic lexical verb hedges can be identified for each genre and can be linked to differing communicative purposes. The article concludes that better understanding of hedging use in different genres can enhance hedging competence, especially hedging interpretation skills.

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1. Introduction

Hedging is a linguistic phenomenon which serves many important functions in discourse. For example, hedging can help a writer to express uncertainty of knowledge and show less commitment to a proposition (Mauranen, 1997; Salager-Meyer, 1997), thus indicating the true level of knowledge and understanding an author has in relation to the results found. In addition, it can tone down a claim, presenting it as an opinion rather than a fact (Hyland, 1998; Markkanen & Schröder, 1997; Salager-Meyer, 1997), which is useful in cases when categorical statements could lend themselves to potentially face-threatening criticism and opposition. Hedging can also enable the author to express humility and deference to the reading public (Salager-Meyer, 1997), not only helping to ward off unwanted conflict, but also indicating a willingness to engage in dialog and exchange of opinions. Thus, the important interactional and social functions hedging can perform, as well as the role it plays in conveying nuances in meaning having to do with certainty and commitment, have been well established (Poos & Simpson, 2002). That is why a certain degree of hedging has, in many disciplines, become conventionalized and its inclusion allows the author to conform to an "established writing style" (Salager-Meyer, 1997, p. 109) expected by members of the discourse community.

Hedging can play a particularly important role in nuancing language in such language-dependent disciplines as law. However, its ability to add shades of meaning to a proposition can make its interpretation challenging for novice or aspiring

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members of a discourse community, especially those from other linguistic backgrounds. If dealing with subtle language is not easy for someone who is working within their own legal, academic and general culture, then it is particularly challenging for someone from a completely different background, trained within a different legal educational system, and whose first language is not English. This is the case where non-native International students are undertaking a higher education law degree in the UK or the US, such as an LLM (Master of Laws) for example.

Competent ability to interpret hedges in legal writing can be "notoriously problematic" for even advanced-level non-native speakers, although it is crucial to a system which relies so heavily on interpretation of precedents (Abbuhl, 2006, p. 152). This can be due to several factors including lack of knowledge of items which can be used as hedges (Abbuhl, 2006), lack of understanding of both sociopragmatic (Alonso Alonso, Alonso Alonso, & Torrado Mariñas, 2012; Tessuto, 2011) as well as disciplinary rules (Abbuhl, 2006) regarding the use of hedging, and lack of targeted instructional activities that help non-native students notice and interpret hedging correctly (Hyland, 2003; Wishnoff, 2000). In the end, the inability to interpret hedging can result in second-language speakers failing to understand a native speaker's meaning (Fraser, 2010).

To date, while there has been a significant amount of research undertaken on hedging in scientific and academic discourse (Crompton, 1997; Grabe & Kaplan, 1997; Hyland, 1996a, 1998; Markkanen & Schröder, 1997; Salager-Meyer, 1997), there appear to be far fewer studies focusing on legal discourse. Bhatia, Langton, and Lung (2004) and Tessuto (2011) focused on student writing and explored the use of hedging in the legal problem question answer genre. Bhatia, Langton & Lung concluded that both lexical surface hedges and non-lexical strategic hedges (based on Hyland's 1996a taxonomy) are "crucial for deductive reasoning and legal argumentation" (2004, p. 218), while Tessuto, who compared English and Italian writers, found differences in incidence and purpose of hedging which he attributed to "discoursal differences embedded within differing socio-cultural and legal systems" (2011, p. 309). Hafner (2010; 2014) studied the barrister's opinion, a genre used by counsel to advise their clients on the strength of their case, and found that hedging is used to reflect the degree of confidence counsel has in a particular position.

Hinkle, Martin, Shaub, and Tiller (2012) looked at judgments at the U.S. District Court level and found that the greater the ideological distance between the district court judge writing the judgment and the circuit court judge reviewing his decision, the greater the amount of hedging used. Toska (2012) analyzed a phenomenon often related to hedging, epistemic modality, and found that UK Supreme Court Justices express epistemic attitude through the modal verbs 'may', 'might' and 'could'. In addition, Cheng and Cheng (2014) studied epistemic modality in court judgments from Hong Kong and Scotland and found that its use in both corpora indicate that there is a comparatively similar standard of the balance of probabilities in both contexts.

This article, therefore, aims to contribute to the body of knowledge regarding hedging in legal discourse by focusing on the use of epistemic lexical verbs in written genres which a non-native international higher education student of law would potentially be required to read and interpret correctly, and which are regularly used to inform and underpin a law student's research: The law journal article, the Supreme Court majority opinion and the Supreme Court dissenting opinion, all taken from the U.S. legal jurisdiction in the interest of uniformity. The law journal article constitutes a genre in its own right, while the Supreme Court majority and dissenting opinion can be considered part-genres as they occur together in the same written document in which justices provide their reasoning concerning a given case.

All three are frequently encountered, particularly majority and dissenting opinions, and are important for law students for several reasons. Law journals, such as the Harvard Law Review (2016), for example, are "designed to be an effective research tool for practicing lawyers and students of the law". Law journals as well as judicial opinions often underpin student research, for example. In addition, Supreme Court and lower appellate court opinions, both of which have a similar structure and style (Federal Judicial Center, 2013; Office of the Reporter of Decisions Supreme Court of the United States, 2016) aid law students in developing an understanding of legal reasoning and thought.

The contents of a law journal typically include a variety of written genres. Student writing typically takes the form of Notes, Comments, Recent Cases, Recent Legislation, and Book Notes (or Book Reviews). In contrast, law journal articles are generally longer pieces of writing, preferably no more than 25,000 words (Harvard Law Review, 2016; Yale Law Journal, 2016) written by "professors, judges and practitioners" (Harvard Law Review, 2016) including practitioners from other disciplines such as economics or sociology, who have a special interest in a particular legal matter (Volokh, 2010). The *Columbia Law Journal* (2016) specifies that,

> Articles tend to analyze a problem and suggest a solution. Such analysis usually articulates some background information to inform the reader, before turning to a novel argument. Along these lines, published articles regularly follow a traditional roadmap of introduction, background, analysis/argument, and conclusion, and provide a comprehensive treatment of a particular area of law. Articles tend to be formal in both the author's tone and in the obligation to ground information and analysis in comprehensive substantive support via consistent citation.

The readers of law review articles may comprise members of the legal discourse community, or related fields, who wish to keep abreast of current issues, academics and students who read and discuss them in scholarly settings, and the U.S. Supreme Court and other federal and state courts who cite them "at the rate of at least 500 citations per year" (Volokh, 2010, p. 6).

The Supreme Court reviews the decisions of lower federal courts for errors of law (as opposed to errors of fact), and it also reviews constitutional issues raised in both federal and state courts. Supreme Court opinions include a majority opinion as well as, often, concurring opinions and dissenting opinions. As the name implies, majority opinions are supported by a

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