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TEACHING COMMERCIAL LAWYERS LANGUAGE ASPECTS OF DRAFTING CONTRACTS IN ENGLISH

Abstract. The article focuses on methods of teaching commercial lawyers, whose native language is not English, some linguistic aspects of drafting a contract in English. The author, whose principal occupation is teaching legal English, has created a Course on Language Aspects of English Contract for in-service lawyers. The course is aimed at teaching learners to understand and interpret English contracts written in traditional legal English (legalese) and help them develop some drafting and redrafting techniques taking into account the modern tendency growing in English speaking common law countries towards simplifying traditional legal English. A number of contracts written in different styles have been analysed, basic contract categories each characterised by certain operative words and phrases, have been established and terminology glossary have been compiled. The purpose of this paper is to present the course's syllabi, outline and teaching methods.

Keywords: contract drafting, course syllabi, needs analysis, plain legal English, traditional legal English.

Designing any particular ESP course requires a thorough needs analysis of the learners as the aim of any ESP class is to prepare them "to communicate effectively in the tasks prescribed by their study or work situations" (Dudley-Evans, Jo St John 2006: 1) developing skills necessary for performing their professional tasks.

In general, commercial lawyers negotiate business transactions, review company paperwork, particularly contracts, and draft business documents. They usually spend a lot of time researching, writing and editing commercial papers. This might entail examining national, international and local laws to identify any rules they must follow or conflicts that might arise.

Thus, drafting is a very important skill in corporate law practice that commercial lawyers have to develop and good drafting largely depends on the good language choice.

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Due to globalization, the number of duel-language cross-border agreements, one of the languages being English, is increasing. A lawyer who deals with such agreements should be able to draft a contract in his native language and ensure that its translation into the English language should correspond to the original text. Hence, the lawyer should understand how to phrase contract provisions in correct and concise English and be able to review and revise precedent contracts critically.

When law teachers teach drafting they mostly focus on topics such as the building blocks of a contract, turning the deal into a contract, spotting issues, and negotiating. That usually refers to "*what* you should say in a contract; hardly any attention has been paid to *how* you should say it" (Adams 2006).

Legal English practitioners cannot develop their students' drafting skill in full, as they are not professional lawyers. However, being experts in the English language, they can teach their students how to phrase certain contract provisions in correct English. In a legal English classroom, it is possible to study contract terminology and phrases, analyse precedents (model form contracts) written in traditional legal English and in Plain legal English, compare precedents, evaluate the similarities and differences of related provisions across the precedents, work out some language principles for clear and effective legal drafting, and interpret different contract provisions.

Traditional Legal Language of English Contract

Traditionally, the language of contract has been a special variety of Legal English that is very difficult for a non-lawyer to comprehend. "Its terminology and style remain largely frozen in the form they had reached by the early years of the nineteenth century" (Butt 2013: 2). Antiquated words such as *hereinafter*, *whereas*, *aforementioned*, *henceforth*, *hereinbefore* flourish in the contract though they are rarely used in everyday language. Any traditional contract has many unnecessarily formal expressions including *in cases in which*, *for the reason that*, *in the event that*, *during the course of*, *pursuant to*, *subject to*. Thus, any traditional contract is larded with legalese that is using "pretentious legal language when a simple word will do" (Adams 2013: 119).

Precision in traditional contracts is often achieved through the use of *the same*, *the said*, *the aforesaid*, etc. and through the use of word pairings or coupled synonyms. The use of *null and void*, *faith and credit*, *full and*

sufficient, *etc.*, dates back over 500 years, when both English and French were commonly spoken in England (Adams 2013: 121).

Needless repetition (redundancy) is common in traditional contracts. For example, numbers are presented in both a coupled word and numeral format (*on the sixteenth (16th) day of the month*, *four (4) copies of the report*, *etc.*).

Trying to foresee any possible development or event in the contractual relationship a traditional contract provision tends to be all-inclusive (*Ex. … place the Equipment in good repair, condition and working order…*), which makes it very long and difficult to follow. Hence, contract sentences become very long and verbiage.

The language of traditional contracts is chaotic, archaic, and confusing. Legalese, verbosity and redundancy impede understanding and readability of traditional contracts.

For many centuries traditional legal English flourished and there were several reasons for that. Firstly, legal English arose at a time when using phrases from multiple languages made legal documents more clear. Latin was the predominant legal language in England before the Norman Conquest. French subsequently became the language of culture, education, and law. However, English endured among the population and in 1362 the Crown declared that English should be used in oral pleadings and eventually in statutes and written pleadings (Cohen 2009). But, though documents became to be written in English, the principal sources of the legal lexicon continued to be Latin and French. Secondly, drafters were often paid by the word, rather than by the job, so they tried to make their documents as long as possible. What is more, "litigious environment of legal practice" when "there is always the risk that documents will come under the hostile scrutiny of other lawyers" made drafters prefer to use tried and tested clauses rather than risk using alternative language (Butt 2013: 39).

Nowadays "the need for traditional contract drafting is being questioned" (Butt 2013: 3). As the English language has assumed the position of a global lingua franca in international commercial transactions, more and more business people from different countries conclude duel-language agreements or contracts in English. Such contracts often contain provisions that make no sense to the parties as contract drafters rely heavily on copying traditional contracts. These provisions can cause a lot of problems if a dispute arises between the parties. Therefore, nowadays more and more business people prefer clear, modern, and consistent contract language. Thus, in the current situation "plainness" in contract drafting "might prove an advantage

over gobbledygook; for when a document is drawn in straightforward, up-to-date, no-nonsense English, clients are hard pressed to assert afterwards that they did not understand it" (Butt 2013: 3).

Plain Legal Language of English Contract

A contract is a legally binding agreement that translates business terms reached in the course of the party-to-party negotiations into the legal concepts. A contract is a term sheet that navigates the parties through their transaction. A well-written contract is like a story because it explains the agreement from the beginning to the end in a way that a reader can clearly understand. It sets out the parties' rights and obligations. If the parties do not understand what they are agreeing to in full, they cannot exercise their rights properly and cannot take responsibility. So, the clearer, the more precise, the more concise the contract is drafted, the better the parties will understand the nature of their transaction, the fewer problems they will have in the course of their dealing. Nothing in the contract should complicate its readability. A lot of disputes could have been avoided if the parties had realized the importance of proper drafting of the contract. M. Cohen is of the opinion that "contract litigation is almost always the result of poor drafting" (2009).

Since 1970s, the Plain English Movement has been in progress at stake of which is to make the law speak with a clearer voice to those who are bound by it. "Legalese, verbosity, and redundancy hinder the reader's understanding" and "may result in misunderstanding and expensive litigation" (Adams 2013: 119).

Over the years, many definitions of plain English has been given by scientists. Martin Cutts, research director of the Plain Language Commission in the United Kingdom, defines plain language as "the writing and setting out of essential information in a way that gives a cooperative, motivated person a good chance of understanding the document at the first reading, and in the same sense that the writer meant it to be understood" (1998: 3). M. Asprey describes plain English as "language that is not artificially complicated, but is clear and effective for its intended audience" (2010: 12). Proponents of plain English claim that documents drafted using plain language techniques enjoy several advantages. C. Baldwin lists the following of them:

– Readers understand documents better.
– Readers prefer plain language.

– Readers locate information faster.
– Documents are easier to update.
– It is easier to train people.
– Documents are more cost-effective (Baldwin 1999).

In order to make the language contracts more understandable, principles of plain English developed by its proponents are applied to modern contract drafting. C. Adams, P. Cramer, P. Butt, C. Baldwin and others suggest a few rules that can be followed in modern contract drafting.

Readability of the contract is achieved by its effective organisation. In a plain English document, design serves the goal of communicating the information as clearly as possible (Felker 1981: 37). The contract should be divided into short successive sections. Long, dense sections with no white space are visually unappealing and make the contract seem incomprehensible. Paragraphs in the sections should develop a single idea and contain no more than 5–6 lines of text (Stephens http://www.cherylstephens.com) The headings of the sections must be short, informative and boldface. All the terms or phrases in the contract that "could have more than one reasonable but conflicting meaning" must be defined (Adams, Cramer 2013: 47). Sentences must not be too long. Some authors even suggest readability formulas. C. Stephens believes that a single sentence should express one full thought in less than 35 words. Embedding, where subjects and predicates are kept apart, and multilayer subordination should be removed from the contract sentences. Active voice is preferred to passive voice as passive writing distances the writing from the reader and usually adds unnecessary words. Double negatives should be avoided.

To increase readability of the document C. Stephens recommends to use the language that is simple, direct, consistent, economic and familiar, to omit needless words, to use sentence structures that are evident and unambiguous, to organise and structure the material in an orderly and logical way (http://plainlanguage.com/newreadability.html).

To avoid a semantic ambiguity it is necessary to either define the symbol, word or phrase or to use a more precise symbol, word or phrase. Syntactic ambiguity occurs when the relationship between words or phrases in a sentence gives rise to conflicting interpretations (Ex. *'tax-free bonds or mutual funds'* → *'tax-free bonds or tax-free mutual funds' or 'mutual funds or tax-free bonds'*). Such phrases as *'best efforts'*, *'good-faith efforts'*, *'reasonable efforts'* create vagueness and confusion in the contract. If they are used in the contract, they should be clearly defined (Adams 2013: 77).

In contract drafting the choice should be made in favour of simple words and constructions. For example, it is better to use *'try'* than *'endeavour'* or

'give' than 'furnish' or to use 'may' instead of 'have the discretion'. It is advisable not to use Latin or archaic words and expressions if there are ordinary English substitutions for them. Thus, *'goods'* is better than *'chattels'*; *'effected'* can be replaced with *'done'*; *'ab initio'* can be substituted by *'from the beginning'*, *'herein'* – *'in this contract'*.

To make the language of the contract more concise the drafter should follow several rules. Glue, unnecessary prepositions, should be removed from the contract sentences. For example, instead of the *'obligation of the Seller'* say the *'Seller's obligation'*; instead of *'the orders placed by Distributor'* say *'Distributor' orders'*. Modern drafters also try to take off 'fluff', that is two or three words phrases from the contract sentences. For example, *'because'* is used instead of *'for the reason that'*, *'under'* instead of *'pursuant to'*. Kernel words, such as *'pay'*, *'state'*, *'declare'*, should prevail over *'to make a payment'*, *'to make a statement'*, *'to make a declaration'*. Coupled synonyms, such as *'assumes and agrees'* or *'just and reasonable'*, can be replaced by one word.

It is also advisable not to use contranyms, the words that carry contradictory meanings within themselves, in the contract. For example, *'sanction'* can indicate either *'approval'* or *'censure'*. There are also terms that carry a different meaning. For example, the word *'demise'* carries all of these meanings: *'death'*, *'lease'*, *'convey'*, *'transfer'*, *'rent'*, *'grant'* and *'bequeath'*.

Consistency is the cornerstone of contract drafting. To achieve it drafters must try to be consistent with their terminology throughout the contract: "Never change your language unless you wish to change your meaning, and always change your language if you want to change your meaning" (Piesse 2004: 19). If the drafter has chosen the words *'Seller'* and *'Buyer'* to indicate the parties to the contract, he should not use the words *'Vendor'* and *'Purchaser'* or the parties' proper names later. If the drafters choose the word 'shall' to express obligations between the parties, they should stick to that choice throughout the whole contract. If they start using 'bank fees', they should not switch to 'bank charges' later. A contract is not a piece of writing where one should be eloquent.

Nowadays Plain English Movement is gaining momentum. A lot of papers have been written containing guidelines for document drafting in plain English, a number of documents, including contracts, have been drafted in Plain English. However, many lawyers, law firms and international companies still have difficulty in accepting anything other than traditional legal English. Copying, cutting and pasting without thought from templates and precedents that contain convoluted expressions and wordy clauses often form the basis of contractual drafting. At present, documents written

in traditional legal English and the ones written in plain English co-exist and are equally valid, and commercial lawyers taking part in international transactions should be aware of that.

Needs Analysis of Russian Commercial Lawyers in Contract Drafting

Any ESP course requires accurate analysis of the needs of the learners. It helps to determine the content of the syllabus that will meet specified needs (Munby 1978). Many problems in ESP classes result from the fact that teachers do not pay any attention to learners' interests and ignore students as a source of essential information. If a course designer wishes to gather information about the content of any ESP course, he should use a comprehensive needs analysis as the first step.

Russian companies which do business internationally expect their lawyers to be able to do a lot of legal work in English including negotiating, reviewing, editing and drafting contracts. Fewer and fewer medium-sized, cost conscious companies hire interpreters and translators. This choice is often justified as, being experts in the subject, professionals can often provide a more adequate interpretation or translation.

Meeting the current requirements the Law Departments of The Moscow State Institute of International Relations, The Russian Foreign Trade Academy and other educational establishments give special attention to legal English, making it an obligatory subject in the university curriculum. Their graduates get a degree of lawyer with the knowledge of the English language. The Universities also arrange many courses on legal English basics, legal translation, and legal writing in English, etc., which in-service lawyers may attend in order to improve their practical professional linguistic skills.

When a university starts designing a course, it conducts a thorough needs analysis of the target learners. Needs analysis usually includes professional information about the learners: the tasks and activities learners are/will be using English for; personal information about the learners, such as previous learning experiences, cultural information, reasons for attending the course; English language information about the learners: what their skills and language are; what learners want from the course (Dudley-Evans and Jo St John, 2006: 125)

Before developing the Course on Language Aspects of English Contract for in-service lawyers, the author carried out a survey in which 25 lawyers

working for different medium-sized companies in Russia participated. They all wanted to be able to work with contracts in English. A questionnaire was constructed and distributed among the future learners. After that every lawyer was interviewed. The results obtained showed that all the respondents worked with contracts mostly in the Russian language and occasionally they had to work with contracts written in English. 55% of them studied legal English at universities or attended a legal English course. 35% considered their level of general English as intermediate, 45% as upper intermediate and 20% were not sure. 55% of the respondents wanted to attend the course to have better chances for promotion at their present job, while 45% of the respondents wanted to find another job. After doing the course 100% of them expected to be able to understand and interpret contracts written in English better, 70% wanted to be able translate and draft contracts themselves.

It was necessary to determine what sort of materials were of interest to commercial lawyers. The content of any ESP course should be useful to the students. Being new and interesting, it should cover the learners' needs to reinforce basic language.

A checklist was distributed among the future learners. It was found out that 85% of the lawyers were interested in sales and distribution agreements. 45% of the lawyers wanted to study business consultant and lease agreements.

Having analysed the data obtained, the author started to design the course.

Course on Language aspects of Drafting a Contract

ESP course design involves a complex set of activities. It should primarily focus on the purpose of the course and the participants' specific needs.

Course framework

The Course on Language Aspects of English Contract is designed for in-service commercial lawyers who want to improve their language proficiency in contract drafting. It runs for 60 academic hours, with two evening 90-minute sessions a week. The learners are divided into groups, each including 10–12 students. To take part in the course in-service lawyers are given a written test on General English. Their level should be at least B2. It is an assessed course. At the end of the course the students have a final test. The perspective assessment of the learners' performance makes the stud-

ies more goal-oriented and the students more motivated. The students also evaluate the course by answering the questions of the final questionnaire and by being interviewed during and at the end of the course. The analysis of the results of the test, the questionnaire and the interviews leads to further development and improvement in the course design.

The first course on Course on Language Aspects of English Contract was held in 2014. There were two groups, with 11 students each.

Objectives of the Course

Any ESP course must set out clear objectives. In his book D. Nunan (1988) gives a clear description of how a teacher should state the learners' objectives. Depending on what is desired, objectives may sound like the following:

- Students will learn that ...
- Students will be aware of ...
- Students will develop ...

Within the framework of The Course on Language Aspects of English Contract, the students will:

- get acquainted with contracts written in traditional legal English and plain legal English;
- acquire some contract terminology, collocations and phrases;
- learn to define contract terms;
- improve their ability to read authentic contracts and understand their structure and purpose;
- learn to interpret contracts written in traditional legal English and redraft them relying on the plain legal English principles;
- learn to translate contract provisions from Russian into English using the plain legal English principles;
- improve their ability to work with contracts, i.e. research information presented in the contract, review the contracts critically, make some amendments to the contracts and edit them.

In determining the objectives for the Course on Language Aspects of English Contract we always have to remember that we can never give the learners an exact prescription what language to rely on to draft a good contract. All templates and precedents are drawn up by real lawyers and they all have some shortcomings. C. Adams and P. Cramer are of the opinion that "there is no such thing as a perfect contract" (2013: 2). What is more, each company has its own culture and uses its own collection of precedents. In this situation a question arises: how can practitioners of legal English help their students in contract drafting?

Role of the Legal English Practitioner in the Course

Legal English practitioners, as any other ESP teachers, are not 'primary knowers' of the carrier content of the material. "The students may in many cases, certainly where the course is specifically oriented towards the subject content or work that the students are engaged in, know more about the content than the teacher" (Dudley-Evans and Jo St John 2006: 13). So in designing any ESP course practitioners rely heavily on the feedback they get from their students. Thus, the Course on Language Aspects of English Contract is undergoing constant development, with changes made after teaching each group of students.

Legal English practitioners usually have linguistic educational background. They can analyse the contract language from the linguistic point of view picking out the most typical contract terminology, collocations and phrases or explaining difficult subordination and grammar structures. That is why one of the main roles that they perform in the classroom is the role of a language adviser and a researcher. Together with their students they examine different precedents thoroughly, construing and translating contract provisions and working out language principles for contract translation and drafting. Sessions involve a lot of discussion during which the legal English practitioner provides the learners with linguistic information while the students support their teacher's efforts with their knowledge of the subject content. The learner must always remember that legal English practitioners cannot give them legal information or advice.

Syllabi of the Course

The course syllabus usually determines "a plan that states exactly what students at a school or college should learn at a particular subject" (Longman 2009: 1788)

When designing an ESP course it is necessary to create three syllabi: a content syllabus, a language syllabus, and a learning/skills syllabus (Principles 2009).

The content syllabus is determined by the subject and by the materials that are available. It is always desirable to build an ESP course on authentic materials. However, the problem with authentic materials is that they are not created for language learning (Sierocka 2008). One can find a great number of precedents and templates in different law books and on the Internet. They are drawn up by lawyers from different countries. Some of them are

written in traditional legal English, others – in plain legal English. Some contracts combine both styles.

The Course on Language Aspects of English Contract focuses on extracts from different authentic contracts, mostly sales contracts and distribution agreements taken from different law books. The companion website to the book *"Drafting Contracts in Legal English"* provides hundreds of pages of contracts. These contracts are mostly written in plain English. The TOLES materials also include different contract clauses. Here you can find contract extracts written in traditional legal English and their plain English version. What is more, in such a course there must a strong connection between the learner's native language and the English language. In order to be able to work with duel-language cross-border agreements such agreements must be introduced in class. In this respect we rely on the book "Внешнеторговый контракт" written by N. Gromova where we can find extracts from duel-language cross-border agreements. Students also provided examples of such contracts which were examined critically in the course of studying.

It is quite time consuming to develop a language syllabus for such a course. It should include some core contract vocabulary, area specific collocations and abbreviations used in the contract language. Furthermore, the list of vocabulary sometimes includes three layers: a term or contract phrase in traditional legal English, its plain English version and its translation into Russian. To make students aware of the fact that traditional legal English and plain English co-exist in modern contract drafting, the students under the legal English practitioner's supervision fill in the following table during the course.

Table 1

Vocabulary List

	Traditional Legal English	Plain Legal English	Russian Translation
1.	bona fide	in good faith	добросовестно
2.	facilitate	assist	помогать
3.	in as much as	since	с

We have also developed a glossary which contains different contract terms. The aim of the glossary is to explain complicated contract terms in English and suggest their translation into Russian. When selecting the items for the glossary we relied on the book by C. Mason "The Vocabulary of Commercial Contracts" and the advice of law teachers and Russian lawyers who work with cross-border agreements.

Table 2

Glossary

	Legal Term	Definition	Explanation	Translation
1.	Arrears	money that is owed to someone but wasn't paid on the agreed date.	In most commercial contracts the payment clause says that interest will accrue on any arrears at a specific rate. Arrears is not the same as debt. Arrears is a debt that has not been paid on time.	задержка платежа
2.	Bill of lading	document used when goods sold under a contract are being transported by ship.	It is a list that is usually issued by the master of the ship. A bill of lading has several legal functions, including serving as evidence of loading the goods, stating the terms and conditions of carriage and providing a statement as to ownership of the goods during the journey.	коносамент
3.	Business day	means normal working days. In Russia this usually means Monday to Friday during the hours of 9am–5pm and excludes Saturday, Sunday and public holidays.	In cross-border contracts, the term 'business day' or 'working day' is usually defined.	рабочий день

A number of matching, multiple choice, cloze and word-building exercises have been created to help students to learn the contract vocabulary.

To be able to understand and draft contracts it is not sufficient to learn contract terminology. It is important to know the mechanisms and technical vocabulary with the help of which contract provisions are phrased. It is

difficult to teach the language of traditional contract drafting within the framework of such a short course. We can only teach learners to understand certain contract provisions written in traditional legal English. Therefore, we decided to rely on plain English principles when instructing our students how to phrase certain contract provisions.

Each term agreed by the parties to the contract carries some idea. C. Adams and P. Cramer distinguish the following categories that are present in any contract:

- Obligations and rights
- Discretionary powers
- Procedural statements
- Declarations
- Performatives
- Conditions
- Exceptions (2013: 79).

A contract is primarily about the contracting parties undertaking obligations. With the creation of an obligation comes a corresponding right in the party who is entitled to the promisor's performance of the obligation. An obligation in a contract may be drafted in different ways. An obligation may be expressed with *'shall'*, *'agree to'*, *'shall be obliged'*, *'shall be obligated'*, *'undertake'*. However, according to C. Adams and P. Cramer, 'shall' is arguably the best operative word for obligation. Therefore, when students start translating contract provisions, we ask them to use *'shall'* describing obligations undertaken by the parties to the contract. We also recommend drafting obligations in active voice.

Every obligation creates a corresponding right to the promisee. It should be remembered that a term is stated either as an obligation or a corresponding right and does not include both. A right is drafted using *'to have the right'* or *'to be entitled'*. It is advisable to state the agreed term as an obligation.

A discretionary power provision gives one or both of the contracting parties the right to act or to refrain from acting. It is possible to describe it with the help of *'have discretion'* or *'is not required'*. But, a more concise way to state a discretionary power is to use 'may'. For clarity and consistency, it is advisable to use *'may'* in the contract only to express a discretionary power. 'May not' should not be used as it is illogical to draft a negative discretionary power. Rather, if the party does not have a choice, it is recommended to use *'shall not'* for an obligation that prohibits action and *'will not'* if it is merely a fact statement. Parties to the contract may expand a discretionary power by using such phrases as *'within its discretion'*,

'in its sole discretion', etc., or restrict a discretionary power by applying *'shall not'*.

Procedural statements are used to create defined terms and rules for administering and enforcing the contract. Unlike obligations, they do not give rise to a legal remedy if the rules are not followed. Procedural statements often provide details related to an obligation or a discretionary power. The subject of the procedural statement is never the party to the contract. Procedural statements are usually drafted in active voice in the Present Simple. If it is necessary to express a possible future situation, it is possible to use the model verb 'will'.

Representations, warranties and acknowledgements are declarations made in the contract. They are usually subordinate sentences the first part of which is usually written in the Present Simple (*Seller represents that...*, *Seller acknowledges that...*, *Seller warrants that...*) and the subordinate part may be written either in the Present Simple, or the Present Perfect, or with the help of the model verb 'will'. Here we should remind the students that past tenses are never used in the contract.

Performatives recognize actions taking place simultaneously with signing the contract. The operative phrases here are *'by signing this agreement'* and *'hereby'*.

The simplest way to express condition in the contract is to use if-clauses. We do not recommend using 'should – clauses' or 'in case' as students usually make grammar mistakes using them.

Exceptions are usually placed at the end of the sentence after stating the general rule. The operative phrases for exceptions are *'except that'*, *'except for'* and *'except as'*.

C. Adams and P. Cramer argue that each category in the contract can be phrased by using some operative word or phrase. Using the information provided in their book we have made the following table that the learners can rely on in their drafting.

However, we do not insist that the learners use only operative words and phrases presented in the table in their translation. For example, they can use 'undertake' or 'be obliged' to express obligation. The table is for those who have never translated contracts before and find it difficult to find appropriate words.

The learning/skills syllabus reflects the objectives of the course mentioned above. The learners develop an up-to-date contract vocabulary; a familiarity with contracts written in different language styles; ability to interpret and translate contracts written in English; a basic understanding of modern drafting techniques.

Table 3

Operative Words and Phrases of the Basic Contract Categories

	Basic category	Operative word/Phrase		Example
1.	Obligation	Shall		Buyer shall notify Seller if it is seeking indemnification in writing, and with reasonable promptness
2.	Right	Have the right		The Corporation has the right to suspend deliveries
3.	Discretionary power	May		The Corporation may, at its option, terminate the order and hold the Distributor liable for damages.
4.	Procedural statement	Present Simple		This Agreement constitutes the entire understanding of the parties with respect to its subject matter, and supersedes any prior agreements and understandings
		Will		All notices or other documents under this Agreement will be in writing and delivered personally or mailed by certified mail
5.	Declaration	Seller represents that... Seller acknowledges that... Seller warrants that...	Present Simple Present Perfect Will	Seller represents that it has obtained all the necessary business and governmental licenses, permits, and authorisations to perform its obligations under this agreement.
6.	Performative	By signing this agreement Hereby		the Corporation hereby grants to Distributor the non-exclusive right and license to use in the Territory
7.	Condition	If		If distributor is judged by a court to be bankrupt, the agreement terminates.
8.	Exception	Except that		.... except that the parties shall, at their own expense, pay
		Except for		....except for rights previously granted....
		Except as		Except as provided in Section 3.1...

Outline of the Course

The course consists of two parts:

I. Introduction;

II. Analysis of contract provisions.

During the introduction stage the sessions are devoted to contract drafting in general. Students are explained what ideas contract sentences convey (basic categories of the contract); the rules of organising a contract into a piece of writing that is easy to read: appropriate headings, numbering formats, table of content, clear and concise defined terms and introductory statements. We also pay special attention to the purpose and language of the recitals.

There are several lectures on contract drafting available on www.youtube.com. We recommend learners to listen to the lecture "Contract Drafting in 90 minutes" given by Ch. Fox and J. Scott on 4–5 June, 2010 at the Emory University School of Law-Atlanta, Georgia. We usually analyse and discuss this lecture in class.

We also explain to the students the difference between traditional English and plain legal English introducing several plain English principles.

In the sessions that follow we discuss different core provisions of the contract separately. They include payment, delivery, acceptance, warranties, dispute resolution, indemnification, force majeure. We introduce to the students several examples of each provision taken from different contracts. For each contract provision we have made a vocabulary list and created a number of exercises. The work at each contract clause implies the development of such skills as interpretation, redrafting, reviewing and translation.

Assessment and Evaluation of the Course

The students' performance is assessed by the final test at the end of the course. It consists of two parts. The first part is aimed at interpretation. The students are given a contract extract in traditional legal English and are asked to redraft it in order to make it more understandable. The second part of the test is devoted to translation. The learners translate several contract previsions into Russian and several contract previsions into English. The results of the 2014 course were good. 90% of the students passed the test.

The course is evaluated through:

– questionnaires filled in by the learners at the end of the course;
– student-teacher interviews during the course and at the end of the course.

At the end of the course, the learners were asked to answer the questions of the final questionnaire. The questionnaire consisted of the following issues: overall assessment of the course; pace of the course; the teacher's presentation of the course; professional usefulness of the materials and exercises presented in the course

The results of the questionnaire showed that in general learners were quite satisfied with the course. 60% of the students found the course excellent, 30% considered it to be good and 10% – satisfactory. 80% of the students found the pace of the course quick. 80% of the students considered the teacher's presentation of the course excellent and 20% – good. 100% of the students thought that the materials and exercises used were useful for them.

When the learners were interviewed individually, we were able to get their ideas how the course can be improved. They all suggested that the course should be less intensive and run longer, contain more exercises on terminology and phrases of the contract. 70% of them wanted all the materials of the course to be compiled in a textbook claiming that a textbook gives a learning process more structure and reliability.

Conclusions

Knowledge of the English language is indispensable for the Russian commercial lawyers who take part in international commercial transactions. The skill of drafting contracts in plain legal English is very important at present as prospective readers comprehend well-structured, clearly-written documents better, and parties can avoid costly disputes that often stem from ambiguous contract language. Clear, concise and consistent language makes the contract readable and understandable helping to avoid costly disputes.

The Course on Language Aspects of English Contract is an attempt to develop a skills-oriented course for commercial lawyers and teach them to draft, redraft, translate and edit contracts applying plain legal English principles. The course tries to bridge the gap between traditional contract drafting and plain legal English contract drafting. Practical advice on how to apply plain legal English rules to drafting and redrafting and many examples from contracts written in different styles make the course easy for non-lawyer

legal English practitioners to teach. Some parts of the course may be used in teaching pre-service lawyers.

The development of the course takes time and many questions arise in the course of work which can be solved only with learners', colleagues' and law teachers' support. Though the course proved to be quite effective with the first group of learners, it still needs further elaboration and improvement.

The course's flexibility allows it to be adapted to each new group of learners. The blocs of the course can be easily added by new contract extracts, additional exercises and terminology. Writing a textbook on the course may facilitate the process of studying and teaching, but it will also make the course more rigid and less adaptable to the learners' needs.

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Appendix

YouTube Video Links

Charles Fox and Jane Scott "Contract Drafting in 90 minutes" http://www.youtube.com/watch?v=d3VuHSmeAIw