

THE CHALLENGES IN TEACHING AND LEARNING LEGAL WRITING

To include English into the curriculum of law schools throughout the world is essential since it has become an international language of communication practically in all the spheres of our life and legal sphere is not an exception. Basically, legal English is used by legal professionals (solicitors, barristers, prosecutors, judges) in their work. It stands to reason that international law students need to be trained by specialists in legal English. When it is taught at university level challenges of various character arise: the interference of the first language; the differences between common law jurisdictions and that of the learners' jurisdiction; cultural differences between the culture of foreign students and the legal culture studied/taught; the lack of qualified English language teaching practitioners; the lack of appropriate textbooks and reference materials for language learners. This article focuses on the challenges experienced by teachers and students when designing and doing a course of legal English. Special attention is paid to teaching legal writing when assisting students to prepare for the Cambridge examination in legal English (ILEC). The article considers the advantages of obtaining ILEC, its requirements in the part of legal writing and some ways to overcome the difficulties in compiling a preparation course for law students. Competence-based approach is recommended to implement.

Key words: legal writing, competence-based approach, language interference.

Introduction

Legal English is considered difficult to understand even for native English speakers. One of the reasons is that Legal English “similarities to contemporary English deceive the ear; it sounds as though it should be understandable to speakers of English; but the assumption that it is comprehensible is merely an assumption rather than a demonstrated fact” [1].

As a matter of fact there exist two kinds of legal English, those are: professional legal English practiced by legal professionals and legal English

occurring in legal contexts. The latter is close to general English and it is used by lawyers and non-lawyers. The problem is that teachers of English very often have to combine both: teaching professional legal English (i.e. to train them to use it in a professional manner) and the semi-formal kind of it in one and the same course. Law students also need to be trained in writing letters to colleagues and clients.

One of the public examinations for testing Legal English skills for English second language learners is the International Legal English Certificate (ILEC) administered by Cambridge University. It was created in cooperation with TransLegal, Europe's leading firm of lawyer-linguists from the US and Great Britain based in Stockholm. The examination is a high-level legal-oriented language qualification for lawyers and law students set at levels *B2* to *C1* of the Common European Framework of Reference for Languages. The examination tests the full range of communication skills needed by legal practitioners in their daily work, and consists of reading, writing, listening and speaking.

In 2008 Russian learners of English got the opportunity to sit for this exam and Law students of the National Research University – “Higher School of Economics” (HSE), started participating in taking ILEC, too. Now every academic year up to 20% of students of the Law Department of the University obtain this certificate in order to be able not only to verify the level of their legal English but also to develop the communicative competence in English at large.

Why should foreign law students sit for ILEC?

One of the reasons which motivates law students of Russia to get ILEC is that English is an international legal language, thus, for lawyers specializing in international law ILEC is a way to their professional success.

ILEC is recognized by leading associations of lawyers including the European Company Lawyers Association, the European Law Students Association, the International Association of Young Lawyers, and the European Young Bar Association. It is also recognized by leading academic institutions such as the College of Europe. Examination at the C1 level provides non-native English speakers with internationally recognized legal English (<http://www.cambridgeorg>).

In Europe and the United States some Universities and colleges accept ILEC as a vital requirement for admission to preparatory courses (IFY in the UK) or to some of the courses for students and graduates of law departments. For instance, with *B2* Pass you get a possibility to do the Bachelor's program in Richmond, the American International University in London. In other institutions, such as, for example, Bourneville College, *B2* level will allow you to be admitted to the Foundation course. Queen Mary University in London offers admission to Master's programs to those who got ILEC with *C1* Pass. A number of European governmental organizations and international associations of lawyers provide internships, grants for participating in seminars, trainings, conferences on the condition that one has got ILEC.

The exam levels are progressive steps towards reaching the standard of legal English required by employers both in the Russian Federation and abroad.

Nowadays Russian students are quite aware of the importance of getting a competitive advantage in terms of having sufficient competence in legal English, which may be considered as such by the employers when time comes to find a job.

Challenges

The biggest challenge when preparing for the ILEC examination, both for teachers and students, is legal writing. There are several reasons for that. First of all the secondary school curriculum focuses on building up oral speech skills as the main goal and only then it takes care of the rest of the skills (listening, reading, writing). Foreign languages teachers sometimes also feel the lack of the necessary level of competence of writing memos and business letters, since they were never taught how to do it when they were students.

In law, where the language needs to be used with great precision, these challenges are particularly apparent. This article identifies some strategies for improving teaching and learning in this area.

Taking into consideration the coming reform of the programs and curriculum at universities in the Russian Federation, the pressure increases for foreign languages departments to be efficient in their teaching. So to submit to a new quality standards

regime, methodologists need to rethink some of the teaching and learning strategies that have been adopted in classrooms.

This article describes the perspective with regard to approaches to the teaching of legal writing, and is based on reflections and observations which have been made over the last three years arising from the course which has been taught by the author of this article.

A law student of the HSE whose mother tongue is not English enrolling in a law course will be led by the teacher through the various units included in the textbook on Legal English (ILEC by Amy Krois-Linder and Translegal. Cambridge University Press) in the form of assignments and tutorials and will usually sit for a final state examination in English.

From a law student's perspective, a great part of this preparation process is an exploration exercise and the indicator of whether they have learned and retained any knowledge and information rests in the grade received for doing a 'screen test' after every unit, the grade received for the credit test and the final grade in the state exam. Some students choose to take the Cambridge exam in case they need a certificate; so far it is not obligatory to have one. In this case they register at the language exam Centre for taking the international paper (ILEC).

Another difficulty is that, foreign languages teachers are not specialists in law and they can only rely on the amount of the information, definitions and comments given by the authors of the ILEC course in the teacher's book. The teachers feel the need to gain more information and they have to apply to different sources on their own. But it requires a lot of extra time and effort. We consider specialized training or instruction should be introduced by the University that would give the teachers an opportunity to become exposed to tried and proven techniques of teaching legal writing and become more efficient in preparing students for the ILEC exam.

The requirements of ILEC

According to the Guidelines for Teachers the requirements of ILEC concerning writing skills are as follows:

Part 1. Writing a concise and clear formal letter covering five specific content points (120-180 words). This part tests the candidate's ability to produce a letter in response to an input text. The range of functions in the task may include evaluating, expressing opinions, comparing and contrasting as well as advising, correcting, describing, explaining, recommending, etc. The usual conventions of letter writing, i.e. opening salutation, paragraphing and closing phrasing, are required.

Candidates need to adopt an appropriate style, layout and register for the task: the overall aim of the task being to have a positive effect on the target reader.

Part 2. Writing a clear and well-structured memorandum developing four specific content points (200 – 250 words): The range of functions in the task may include presenting and developing arguments, expressing and supporting opinions, evaluating ideas, describing, reassuring, complaining, etc.

Attention to every element in the rubric is essential for effective task achievement and candidates will be expected to develop law-related topics in a non-technical way in their answers.

On the one hand the assignments seem to be rather complicated but on the other hand everything is specified, the points to cover are given, the objectives are quite clear, which gives the teacher an opportunity to provide students with the necessary strategies of formal writing. It is possible and critical to teach students not only writing skills and to raise their awareness of the assessment criteria of writing but also to develop their examination skills so that they feel confident when performing in the exam.

Teaching legal English in Russia

Legal education in Russia traditionally consisted of a five-year "specialist" degree, directly after secondary school. Recently institutions of Russia have started offering a four-year bachelor's (LL.B.) degree. Officially, the LL.B. and specialist's degree are considered equivalent, both permitting the graduate to take the state bar examination. The advocates' chambers, however, sometimes require a specialist's degree and or a Master's degree which law students can obtain after completing a two-year course after getting their Bachelor's degree.

Undergraduate legal education in Russia begins at the age of 18; thus, graduating lawyers are typically 23 years old. Because the students are entering their legal studies directly from secondary school, their curriculum includes 40% of non-law subjects, one of which is English.

At the HSE as in many other nonlinguistic universities of Russia English is taught for 3 or 4 years. Legal writing skills instruction is integrated into the course of English at the Law Department. The component on legal writing skills includes: research essays, case notes, memos and letters, academic project proposals.

For instance, when studying Contract Law students may be required to write a legal opinion advising an imaginary client about his/her rights and duties under a contract. In that task, the student is required to produce a piece of written work that, amongst other things, must conform to the norms of legal writing. Students are also given the opportunity to practise legal writing skills in hypothetical situations during tutorials. These settings provide opportunities for students to work with each other under the observation and guidance of the teacher.

The practical reality is that the teacher has limited time and space in which to teach the required skills especially in legal writing. The teacher introduces the exercise with the added hope that students will pick up the ‘hints’ and do well, which is often far from the reality, as many students require a high level of motivation. And only those who plan to get an ILEC are really motivated but more often than not even the motivated ones lack time to work hard enough being distracted by preparation for core subjects which are, of course, a priority for law students.

The present situation at the HSE for 4th-year law students (age 20) concerning English offers them two options when finishing the course of English at the University after studying it for four academic years:

- (1) To sit for ILEC and obtain the certificate of two possible levels (upper-intermediate – B1 or advanced – C1/C1 with Merit).
- (2) To take the regular state exam in English at the University (the format of this exam is very much like ILEC with a difference, such as during the Speaking session the students are to give a presentation on their academic legal research in English which

is held in spring before the state exam for obtaining their Bachelor's degree takes place.).

The passing grades in case they choose the state exam are from '4' to '10' (out of 10). Provided that a student gets a certificate (ILEC) the grades are converted in the following way:- for B1 Pass one gets an '8' or a '9' and for C1 or C1 with Merit – a '9' or a '10'. Grades from 8 to 9 are considered as “excellent”. So the students with the level of English lower than ‘upper-intermediate’ do not risk sitting for ILEC and prefer to get a satisfactory grade (4-5 out of 10) or a good one (6-7 out of 10) at the University. Thus, it is easier for a student to get a pass at the University without having to apply to the exam centre.

But the situation is changing now and very soon all the students of the HSE will have to get a certificate in English ILEC or IELTS, BEC or TOEFL, FCE or CAE or any other international certificate which will confirm the level of the competence of the student in English according to the common European scale.

Proposals for teachers

When preparing students for the examination, it is important to make sure they are familiar with the paper and the range of task types and topics. Students will need guidance on the particular features of each task type and the appropriate style and tone.

It is common for our students not to pay much attention to the tone in their writings. In many cases this concerns a letter to opposing counsel or a person in a position of authority which is often too informal to properly represent the interests of a lawyer's client. They tend to forget about the balance between the function required by the writing task and the relationship with the intended reader.

Thus, the teacher should pay attention to such things so that at the end of an ILEC preparation course, the learners are able to understand and use legal concepts and terminology in English which will help them write clear, well-structured letters and memoranda in a range of legal contexts using the appropriate style and tone at that.

In the beginning it is extremely difficult for students to allocate the fixed time properly, but the more practice they get doing writing in class, the sooner they learn how to manage time. Unfortunately, the teachers cannot afford to let enough time for such practice.

Integrating legal writing assessments into the course demands a relatively low level of design and planning. For example, a teacher setting a problem-solving exercise will state as one of the marking criteria the ability to write concisely and express a legal analysis of the problem by outlining the issues, the facts, the relevant law and application of the law to the facts in resolving the problem. If a student is able to do this, then marks are awarded for good legal writing as well as ability in legal analysis. Thus, integrating legal writing into the course enables writing skills to be taught in a context [2].

Since competence in legal writing cannot be achieved overnight or through a single major assignment [2], apart from the integrative course we would suggest organizing classes in legal writing skills specializing in writing memos and letters.

This would allow students to undertake intensive instruction on legal writing and to receive specific teaching on all aspects of legal writing as applicable to the practice of law [2].

Though, of course, we face the difficulty in finding teachers, who have some background both in law and in teaching English language skills. One should not forget about the cultural issues as well.

It is true that the community in which a person lives and the cultural practices to which they adhere have considerable impact on how they learn, both formally and informally [2].

It should be stated that “the classroom is important only as it is understood in its relation to the society and culture of the children who occupy it, and teaching will be effective only as it is related to society and culture” [3: 36]. Thus, a student’s cultural background should also be taken into account when designing courses in legal writing skills.

Russia has a civil law system and this fact creates another challenge because English speaking countries have common law jurisdictions. Russian students could be assisted in their learning of legal writing skills being required to write on topics with which they are culturally and socially familiar. Often the subject of assignments and exercises are foreign and distant. For example, students might be unfamiliar with a hypothetical problem concerning white collar crime, but will quickly express themselves on a hypothetical problem concerning breach of contract by an employer.

Students could also be asked to do reflective kind of work, that means doing translation (but not too much) which will stimulate them to think about the differences in expression and style that exist between a document written in Russian and a document written in English.

It is easy to forget that even values such as clarity, directness, and reader-friendly prose are not universal writing truths but very Western writing values. And teachers should instruct students on that, too.

Implementing competence-based approach

Competence-based education measures learning but not time. Students make progress by demonstrating their mastered knowledge and skills required for a particular course. The bottom line for any successful program on teaching legal writing includes consistent, systematic, individual attention and instruction specifically tailored to the special purposes of legal writing.

In our perspective, competence-based learning in any course should be emphasized. As there is an increasing demand for practical skills in English by the legal profession, the importance of competence-based teaching also grows.

It is clear that as universities begin to focus on competence-based learning, the role of universities will house on preparing adaptable graduates suited for the society.

Thornton, an American author, accentuates this notion of adapting and modernizing learning when he states that “the role of universities is to serve the state through the market” [4: 14].

It is recognized that competence-based learning should now be considered as a critical learning objective at all institutions of the Russian Federation. This is

particularly the case for the teaching of law students, as the legal profession tends to expect graduates to have acquired particular competences.

As Faerua puts it the term ‘legal writing has some unfortunate connotations, such as legalese, jargon, and even gobbledegook and gibberish’[2]. Meehan and Tulloch describe legal writing as having an ‘overwhelming emphasis on precise and comprehensive legal content. Instead of cobbling together loose, baggy monsters from inherited materials, lawyers should focus on communicating clearly, consistently and unambiguously.’ In legal writing English is used as a tool to explain legal issues to the reader. If a student is able to use the language of law in writing, they have a competence of legal writing [5: 77].

A Russian student’s ability to understand and use English for legal writing is very much dictated by his/her competence to read, speak and write general English in the first place. In addition to all of the mentioned challenges, for some reasons, Russian students have fewer chances and opportunities to practice English in English-speaking environment in comparison with their European peers.

And there is a need to consider the fact that the tips for teachers provided by Guidelines and other sources (by Translegal, for example) do not focus on such phenomenon as language interference both as a disadvantage and as another challenge in teaching and learning process. It should be mentioned that the issue of language interference is directly related to the place attributed to the mother tongue in the foreign language teaching system.

Contemporary practice of foreign language teaching proves that with methods ignoring the mother tongue good results cannot be expected. The mother tongue has established the learners’ language world and has acquainted students with the problems of language phenomena and therefore it is the mother tongue which will enable them to acquire a new language world. That is why teachers should know the systems of both the languages really well [6].

Thus, they must be aware of the mother tongue interference in order to take adequate measures when compiling course books or educational materials to consider

the native language system peculiarities and to bear in mind the common mistakes in the particular foreign language learning [6].

Summary

To sum up we would like to emphasise that meeting an increasing demand on the global legal community in English Cambridge University Press, the Boston University School of Law and Swedish language company Translegal have recently launched the world's first online language training program. The Program for Legal English Academic Development (PLEAD) is a training course for law students who wish to improve their skills in drafting legal documents, negotiating and practicing law in a foreign language (Boston University Law School: <http://www.bu.edu/law>).

It should be noted that overcoming the challenges of teaching and learning legal writing skills is a constant, but realizing that there are always solutions to be found and strategies to be used to overcome the existing difficulties raises the hope that teaching and learning writing skills can be done effectively.

There also needs to be recognition that, whilst law specialists know about law, they may know little about teaching, and that teaching a skill such as legal writing requires specialized knowledge. Finally, we need to move away from a traditional style of teaching towards the one that incorporates modern notions of competences building and equipping students with knowledge that would be relevant for the real world [2].

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