

15.2 The function of legal language

The language of the law is used to regulate society by establishing obligations that must be fulfilled and by ensuring that rights are granted. Although legal language can be difficult to understand, we all come into contact with it on a regular basis. Statutes dictate what is and what is not acceptable behaviour in society; contracts are made with insurance companies and mortgage lenders; property conveyancing is completed; and wills are drawn up. The spoken language of the courts is portrayed on television in the numerous courtroom dramas and in live trial coverage like that in 1995 of the O. J. Simpson murder trial in America, which was broadcast on British television.

The main function of legal language is **referential** (to convey information). Its subordinate functions are **conative** (persuasive) and **metalinguistic** (discussing language itself). It is always formal, whether it is written or spoken, although a meeting between solicitor and client will be less formal than a cross-questioning in court.

15.1 The nature of legal language

The language of law is very distinctive and its lexical and syntactical patterns owe much to traditional forms of English. Its conservatism is linked directly to the need for unambiguous language that has already been tried and tested in the courts. By retaining traditional lexis and syntax, lawyers can be confident that the language of the law is consistent and precise. Campaigners for **plain English** (English that is straightforward and easy to understand) argue that legal language could be simplified so that it is both more comprehensible to ordinary people and more practical for lawyers themselves. Many lawyers fear, however, that if changes were made, new simplified language structures could create legal loopholes.

Legal language is used in a range of legal contexts in both written and spoken forms. It is marked by complex grammatical structures, technical lexis, archaic expressions and limited punctuation, which together make it quite different from other varieties. Nothing is left implicit and there is perhaps no other variety in which anything not stated explicitly is disregarded. Such linguistic features make it easily recognisable even to people who are not part of the profession.

- I swear by Almighty God to tell the truth, the whole truth and nothing but the truth ...
- You may approach the bench ...

Legal language is the domain of a specialist occupation and the intended audience are experts in the field. Because the same kinds of legal transactions occur regularly, linguistic formulae have been developed. This means that legal language is not spontaneous – it is quite unlike informal speech with its irregular patterns, and quite unlike the language of literature with its personal, often idiosyncratic approach. Instead, it draws on structures that have been predefined and pretested, and uses jargon that is familiar only to the experts and grammatical structures that are difficult to decode.

The **lexis** and **syntax** can make it difficult for an ordinary reader to understand a legal document, as can the **layout**. Traditionally, the contents were often written as a solid block with no paragraphs or spacing to mark out sections of the text. To avoid any ambiguity in the interpretation of written documents, punctuation was used sparingly. Examples of blocked layout and minimal punctuation can still be found, but more recently legal documents have tended to use typographical devices to make the variety less obscure. Capitalisation, underlining, different print styles, numbered lists and paragraphs are now often used to highlight the development of key points.

15.3 Features of written legal language

Modern printing techniques and attempts to simplify legal language have had some effect on the nature of written documents, but for the main part the legal variety has changed little over the centuries. In analysing legal texts, linguists must be aware of both the customary approaches and the ways in which these are being changed in order to make the variety less obscure. For instance, whereas traditional documents used no paragraphing and often used Gothic script for the opening letter, modern documents will usually divide the text into distinct units and will avoid decorative printing. Such changes are linked to the desire for plain English in all public official language. Despite this, the basic language structures remain unchanged.

Manner

The **manner** is always formal and the language of the law has little similarity with the language of conversation. There are, for instance, no contractions for negatives or auxiliary verbs in written documents. Because it is a traditional form of language, it retains archaic features. These and the many formulaic utterances like 'signed in the joint presence of...' contribute to the ceremonial tone. It is a public form of language, but its intended audience is legal experts rather than the general public.

Typography and layout

The **typographical features** are designed to draw attention to key elements of the text. The overall **layout** is often distinctive. Traditional documents are printed in a solid block with no indentation, but more modern examples tend to be indented and subdivided. Although the traditional style gives an overall visual coherence to legal documents, modern layouts are more acceptable to the non-specialist. Variations in **typeface** are used to reveal the structure of the content. Capitalisation, underlining and variations in typeface can emphasise important lexical items. References to people, companies or parts of a document may be highlighted by using such techniques.

Punctuation is used sparingly in legal documents because it can cause ambiguity. Commas are often omitted in lists and for clauses in parenthesis; colons and dashes can mark the beginning of a list of subsections, but are also often omitted; brackets are

sometimes used to identify parenthesis. Sentences in legal documents tend to be very long and full stops are only used at the end of key sections or at the very end of the document.

1 There is reserved for the benefit of any adjoining property of the Vendors or their predecessors or successors in title the free and uninterrupted passage and running of water and soil and gas and electricity from and to other buildings...

A comma following the past participle *reserved* (1.1) and following the post-modified noun phrase *successors in title* (1.2) would make this sentence easier to read. By isolating the adverbial, the relationship between the dummy subject *there* (1.1) and the delayed subject *the free and uninterrupted passage...* (1.2) would be clearer.

Lexis

The lexis of legal language is very distinctive. There is a mixture of **subject specific jargon** or 'terms of art' like *tort*, *alibi* and *bail* which all lawyers will interpret in the same way, and other **ordinary words** like *damage*, *malice* and *valid* which will be interpreted differently depending upon the context. The **specialist terminology** can be divided into two categories: ordinary language used in a specialist way, like *proposal* and *life*, and specialist language used in everyday contexts, like *liable*. The subject specific lexis contributes to the formal tone of legal language.

Archaic lexis like *hereafter* and **collocations** like *it shall be deemed* also make the variety formal. **Synonyms** are common, reflecting the influence of both French and Latin on legal language and the need to be all-inclusive.

made and signed: make (OE *macian*); sign (Fr *signe*, L *signum*)
able and willing: able (OFr *ableté*, Fr *habileté*, L *habilitas*); will (OE *willa*)

As would be expected, words marking grammatical relationships are mainly descended from Old English, but there is evidence of many French and Latin **loan words** which have since been assimilated into the language.

proposal: Fr *proposer* conveyance: OFr *conveier*
contract: L *contractus* evidence: L *evidens*

Other borrowings are not used in ordinary discourse but have been retained as specialist terms.

estoppel: a conclusive admission which cannot be denied by the person(s) it affects
estop: to hinder or prevent (OFr *estoper*)
res gestae: facts relevant to the case and admissible in evidence (L)
caveat emptor: let the buyer beware or 'it's the buyer's lookout' (L)

Many nouns are **abstract**: *valuation*, *bonus*, *evidence* and *policy*. Legal language is not concerned with the creation of mood, nor with description or evaluation, so **pre-modifiers** are used infrequently except where they can provide exact information: *the first premium*, *the current monthly payment* and *the freehold land*. The determiner site in a noun phrase is nearly always filled: *the Valuer*, *a Mortgagee*, *the Lease* and *the Life Insured*. If the determiner is omitted, it is usually because the phrase is part of a formula: *details of proposed occupiers and interest accruing*. The use of *said* and *aforsaid* (meaning *mentioned before*) as pre-modifiers allows legal documents to be very precise in any aphoristic references that are made: *the sum of £5000... the said sum; the period of 28 days... the said period*. **Post-modification** is common, however, since it provides factual information like names, addresses and legal conditions. Long sequences of post-

modifying subordinate clauses can mean that the head noun of the subject and predicator are separated, making the text difficult to decipher.

(b) (A conveyance of the land in this title dated 23 May 1946 made between SC1-NFCI

1. Mark Stephens and Brian Morris [Vendors] and 2. Julie Mary Ryan and others

[Purchasers]) (contains) (the exceptions and reservations as set out below) ...

The verbs are distinctive in legal language because few other varieties have as many non-finite and modal auxiliary verbs. The auxiliary and lexical verbs are often separated by sequences of phrases and clauses, making the documents difficult to read. The lexical verbs found in written legal documents tend to be limited and the same ones are used regularly: *indemnify*, *accept*, *be conveyed*, *be deemed*. **Adverbials** are used frequently and tend to cluster at the beginning of sentences. They are often linked to the archaic prepositional words like *hereto*, *hereafter* and *thereof*. The use of adverbials is one of the distinctive features of legal language.

(if the loss of or damage to the Insured Vehicle is caused by theft or attempted

theft) (where the Insured Vehicle has been fitted with an immobilising system or

an alarm system recognised by the Company) (and) (where the Insured is in

possession of all the keys and/or activating accessories and the Certificate of

Installation as provided by the manufacturer of the immobilising system or alarm

system) (the excess as specified in Section 2 of the Policy) (will not apply).

Pronoun referencing is not often used in legal documents, so that any ambiguity can be avoided. Instead, nouns are repeated throughout, as in the previous example where noun phrases like *the Insured Vehicle* and the compound noun phrase *immobilising system or alarm system* are repeated in full. So that references can be all-inclusive, neuter words focusing on function like *the Insured Party* or *the Life Insured* are chosen. This avoids words that are marked by gender. Where a pronoun is used, however, it will usually be the third person singular *he* or the third person plural *they*.

Grammar

The grammar of legal language is complicated by the length of the sentences. Strings of dependent clauses are used to provide precise information about the legal conditions attached to each transaction, whether it is a life assurance or car insurance policy, a will or a property sale. The embedded clauses make the legal terms of reference clear, but the reader has to retain a lot of information to decode the meaning. The **mood** is almost always declarative, but imperatives are used occasionally. Interrogatives are used in the spoken legal language of the courts, but not in written documents. The **passive voice** is often used.

If the Insured Vehicle has been owned by one owner only since the date of its first registration as new . . .

As an active sentence the noun phrase *one owner only* would fill the subject site of the adverbial clause. The passive voice is more appropriate in this example since it brings the noun phrase *the Insured Vehicle* to the front of the sentence. The focus of this insurance policy is the car and it is logical to bring that lexical item forward. It does, however, make the sentence more difficult to read. Campaigners for plain English believe that the use of the passive voice is one of the linguistic and stylistic features of legal language that unnecessarily complicates meaning.

Sentences in legal documents are long because they have to include all relevant points in a single statement. Although the high number of co-ordinated phrases and clauses make the variety seem list-like, they insure that it is inclusive. The **sentence structure** is usually complex, compound or compound-complex. Few sentences are simple and none are minor sentences.

(If the Life Insured shall pay or cause to be paid to be the Society or to the duly authorised Agent thereof every subsequent premium at the date due thereof) (on

the expiration of the term of years specified in the Schedule hereto or on the

previous death of the Life Insured) (the funds of the Society) (shall) (in

accordance with the terms and conditions of the said Table) (become and be)

(liable to pay to him/her or to his/her personal representative or next-of-kin the sum due).

As can be seen in this example, the word order is distinctive: adverbials are often clustered at the beginning; almost all clauses contain adverbials to clarify the meaning; and there are many co-ordinated phrases. Such chain-like constructions make legal language distinctive. **Cohesion** is created through **repetition of lexical sets**. Because of the interrelated sequences of clauses, sentences in legal language tend to be like self-contained units — they do not need to be linked closely to what has gone before or what follows. This makes anaphoric and cataphoric referencing less important between sentences and avoids any possible ambiguity which might constitute a loophole in the law.

15.4 Types of legal language

Statutes

A **STATUTE** is a formal set of rules or rules of conduct which have to be observed. The Government makes policies that establish general principles for guidance and then legislation makes them into law: *Offences Against the Person Act 1861* and *Theft Act 1968*. The **tone** is formal and each word is important because a statute has to convey its meaning precisely so that it can be upheld in law. **Words used loosely in ordinary conversation** take on special significance. **Modal auxiliaries**, for instance, each have a specific meaning which will dictate the way in which a statute is interpreted and enforced: *may* denotes that you can do something, while *shall* denotes that you must do something.

Statutes have a distinctive structure. They are named formally.

Race Relations Act 1968

ELIZABETH II

1968 CHAPTER 71

An Act to make fresh provision with respect to discrimination on racial grounds and to make provision with respect to relations between people of different racial origins. [25th October 1968]

Complex prepositions like *with respect to* and the number of abstract nouns like *provision*, *discrimination* and *origins* make the tone public and official. The statute name is made up of the noun phrase *An Act* which is post-modified by two non-finite clauses beginning with *to make*... The parallelism of the structure and the formality of the lexis are typical of this kind of legal language. The title is then followed by an **enacting formula**.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same as follows:— . . .

There is a clear pattern to the structure: an imperative in the passive voice, *Be . . . enacted*, is followed by a sequence of adverbials: *by the Queen's most Excellent Majesty, by . . . the Lords Spiritual and Temporal, and Commons, in the present and by the authority*. The use of the passive voice allows the sentence to be refocused: the long subject of an active sentence becomes the sequence of *by + agent* adverbials, allowing greater emphasis to be placed on the past participle *enacted*. The style of the formula introducing the Act adds to the ceremonial tone. It is followed by numbered sections which categorise the different elements of the law.

1

PART I DISCRIMINATION General

1.—(1) For the purposes of this Act a person discriminates against another if on the ground of colour, race or ethnic or national origins he treats that other, in any situation to which section 2, 3, 4 or 5 below applies, less favourably than he treats or would treat other persons, and in this Act references to discrimination are references to discrimination on any of those grounds.

After the official naming of the Act, it opens with a formula. The prepositional phrase *For the purpose of this Act . . .* (1.4) establishes the legal definition of discrimination. Repetition highlights key words and avoids ambiguity: for instance, the abstract noun *discrimination* (1.2) and the verb *discriminates* (1.4), the abstract noun *references* (1.7) and the verb *treat* (1.5). The example is typical of legal language in a number of ways: third person pronoun references to *he* (ll. 5, 7) are seen to be inclusive of 'she'; lists of alternatives like *colour, race, or ethnic or national origins* (1.5) ensure that all possibilities are legally covered; there are many abstract nouns; and the sentence structure is complex with adverbials in each part of the compound sentence.

(For the purpose of . . .) (a person) (discriminates against) (another) (if . . .) (and)

(in this Act) (references . . .) (are) (references . . .) (on any . . .)

ACTIVITY 15.1

Read through this example of a statute taken from the Income and Corporation Taxes Act 1988 and comment on the distinctive features of legal language.

1

PART I THE CHARGE TO TAX Income Tax

4- (1) Any provision of the Income Tax Acts requiring, permitting or assuming the deduction of income tax from any amount (otherwise than in pursuance of section 203) or treating income tax as having been deducted from or paid on any amount, shall, subject to any provision to the contrary, be construed as referring to deduction or payment of income tax at the basic rate in force for the relevant year of assessment.

10 (2) For the purposes of subsection (1) above, the relevant year of assessment shall be taken to be (except where otherwise provided) —

(a) if the amount is an amount payable wholly out of profits or gains brought into charge to tax, the year in which the amount becomes due;

15 (b) in any other case, the year in which the amount is paid.

The Taxes Acts, 'Income tax, Corporation tax and Capital gains tax'

COMMENTARY

The **manner** is formal: there are no contractions, and formulaic utterances like the prepositional phrase *For the purposes of...* (1. 10) are typical in this kind of legal language. The book from which this extract is taken is clearly written for experts rather than the general public and this also contributes to the formality of the tone.

The **typographical features** show that this is a modern document since the layout has been divided for easier reading. **Paragraphs** are marked numerically and **subdivisions** make each point clear. **Punctuation** is used more extensively than in more traditional documents. Lists of verbs are divided with commas — *requiring, permitting or assuming* (1. 4); parenthesis is marked by commas and brackets; and a dash marks the beginning of a list of subsections. These typographical marks help the reader by dividing the text into semantic units that are more easily readable.

The **lexis** is **subject specific**. **Abstract nouns** like *deduction* (1. 5) and *profits or gains* (1. 12) and **collocations** like *the relevant year of assessment* (1. 10) indicate that the field is financial. Nouns like *assessment* (1. 9) are ordinary words used in a specialist context in tax law. The origins of many words can be traced to Latin and French sources:

deduction (1. 8): L *dēductiō* tax (1. 2): Fr *taxe*, L *taxare*
assessment (1. 9): L *assidēre* payment (1. 8): Fr *payer*, L *pacāre*

The only **pre-modifiers** make the information provided more precise:

income tax (1. 4) the basic rate (1. 8-9) the relevant year of assessment (1. 9)

Post-modifying prepositional phrases and non-finite clauses are common:

Any provision of the Income Tax Acts requiring, permitting or assuming ... (1. 4)

By placing adverbial clauses in listed subsections after the predicator, this example avoids the clusters of adverbials at the beginnings of sentences associated with traditional legal documents. Each semantic unit still begins with an adverbial, however.

(For the purposes of ...) (the relevant year ...) (shall be taken to be) ...

(a) (if the amount is ...) (the year in which the amount becomes due);

(b) (in any other case), (the year in which the amount is paid). (11. 10-15)

The **verbs** are typical of legal language: the modal auxiliary *shall* (1. 7) is repeated; there are many non-finite verbs where other varieties would use a finite clause: *requiring, permitting or assuming* (11. 4-5); and the verbs are part of a limited lexical set that is linked to the field: *deducted* (1. 6) and *paid* (1. 7).

The **grammar** is complicated despite the fact that modern visual features divide the long sentences into discrete units.

(Any provision of the Income Tax Acts requiring, permitting or assuming the

deduction of income tax from any amount ... or treating income tax as having

been deducted from or paid on any amount), (shall), (subject to any provision to

the contrary), (be construed) (as referring to deduction or payment of income tax

at the basic rate in force) (for the relevant year of assessment). (11. 4-9)

The **mood** throughout is declarative and all sentences are major. The **passive voice** is used in verb phrases like *having been deducted from* (1. 6), (*having been paid on* (11. 6-7) and *be construed* (11. 7-8). No agent is used, but the implication is that the unnamed agents are the legal or accounting profession and the Civil Service who establish and uphold the rules. In this context, it is not important to include the subject of the active sentence because the document is merely providing the regulations that tax inspectors must follow. **Marked themes** draw attention to information that is important in interpreting the legal conditions: *For the purposes of subsection (1) above...* (1. 10). **Cohesion** is created through the repetition of key words like *income tax* (1. 3), *deduction* (1. 5) and *amount* (1. 5). Pronoun referencing is avoided so that there can be no doubt about the intended interpretation.

Campaigners for plain English have argued that it is unnecessary to use archaic language, to eliminate punctuation and to conform to traditional block layouts. The example of statute law here is still complicated but modern approaches to the presentation of legal language have made it more accessible than traditional documents. The extract is clearly typical of the legal variety with its complex sentence structures, lexical repetition and French and Latin loan words. It is less daunting, however, because it attempts to guide inexperienced readers by dividing the document into smaller semantic units.

Contracts

A legal CONTRACT is a written document in which a legal agreement of some kind is undertaken between two or more parties. Contracts determine when a promise or set of promises is legally enforceable. Transactions like selling houses, leasing property or insuring lives and possessions are covered by legal contracts.

In signing a contract, the participants are agreeing to carry out a series of acts or to fulfil a series of conditions. Because these can be enforced by the law, the language is formal and the syntax complicated.

(Where agreed with the Applicant) (the insurance of the property to be mortgaged)

(will be arranged) (by the Society) (unless the property is leasehold and

the lease contains a covenant to insure through a specified agency).

There are a number of linguistic and stylistic features making this extract from a mortgage contract typical of legal language.

- **Subject specific words** define the nature of the contract: the verb *mortgaged* and the abstract nouns *insurance* and *covenant*.
- The noun *property*, which is used in ordinary discourse in a loose way, is used here in a **specific way** to refer to the building to be insured.
- **Collocations** like *where agreed...* and *will be arranged...* are formulaic.
- **Determiners** are used to pre-modify every noun except one where other pre-modification is used to provide precise information:

the specified agency

- **Post-modification** is used on several occasions:

the insurance of the property to be mortgaged a covenant to insure...

- The **adverbials** provide exact information about the conditions to be met: insurance arranged by *the Society...*, *Unless...*
- The **passive voice** is used to place the object of the active sentence, *the insurance of the property...*, in the subject site of the passive sentence to give it more emphasis.
- Nouns like *property* are **repeated** instead of being substituted by pronouns, to avoid ambiguity.

Despite the fact that contracts like this are now divided into subsections to make reading easier, the typical features of legal language are still clear. Contracts are legally enforceable, so the language must ensure that there are no loopholes and this inevitably makes the text complicated.

Wills

A **WILL** is a declaration of a person's intentions concerning the allocation of property after death. It can be altered at any point up to death. It must be a written document and it must be signed *at the foot or end*. Two or more witnesses must authenticate the signature of the **TESTATOR** (the person making the will).

A will is a formal document and the language is formulaic. Much of the lexis is subject specific:

devise (N): the arrangements for disposing of freehold land
legacy/bequest (N): the arrangements for disposing of any other possessions
grant of probate (N): an official acceptance that a will is genuine

The structure follows certain patterns, although an official will can be no more than a letter.

ACTIVITY 15.2

Read through the following example of a will and comment on the linguistic and stylistic features making it typical of the legal variety.

1 I, JONATHAN MOORES, of 123 Wood Lane, Newtown, HEREBY REVOKE
all Wills and testamentary documents heretofore made by me AND
DECLARE this to be my LAST WILL and TESTAMENT.

1. I DESIRE my body to be donated to medical science.

5 2. I APPOINT my wife Alice Moores (hereinafter called 'my wife') to be my
sole executrix of this my will but if the foregoing appointment shall fail for any
reason then I appoint my children Edward Moores of 456 Smithfield Road,
Newtown and Louise Moores of 789 Church Street, Newtown (hereinafter
together called 'my trustees' which expression where the context admits
10 shall include the trustees or trustee hereof for the time being) to be the
executors and trustees of this my will.

3. I BEQUEATH to my wife all my real and personal property whatsoever
and wheresoever for her own use and benefit absolutely if she shall survive
me by thirty days but if she does not survive me by the thirty days then

15 4. I DIVIDE and BEQUEATH all my real and personal property whatsoever
and wheresoever unto my trustees UPON TRUST that my trustees shall sell
call in and convert into money the same and shall therefore pay my funeral
and testamentary expenses and debts and inheritance-tax due and shall
stand possessed of the residue of such moneys (hereinafter called 'my resid-
20 uary estate') UPON TRUST for my children Edward Moores and Louise
Moores in equal shares absolutely PROVIDED ALWAYS that if any shall
have predeceased me leaving a child or children who attain the age of 18
years such child or children shall stand in place of such deceased and shall
take by substitution and equally between them if more than one the share of
25 my residuary estate which such a deceased child of mine would have taken
if he or she had survived me.

IN WITNESS whereof I the said Jonathon Moores the Testator have to this
my LAST WILL set my hand this twenty-first day of May One Thousand Nine
Hundred and Ninety-Five.

30 SIGNED AND ACKNOWLEDGED by the above-
named Jonathon Moores the Testator as and for
his LAST WILL in the presence of us both present
at the same time who at his request in his pres-
ence and in the presence of each other have here-
35 unto subscribed our names as witnesses:

COMMENTARY

The **manner** is formal and the relationship between writer and addressee is official despite the fact that the participants are well known to each other. There are no con-
tractions, and formulaic utterances like *IN WITNESS whereof* (1.27) and *last will and testament* (1.3) add to the formal tone. The document is legally binding and the lan-
 guage and style are therefore typical of the legal variety.

The **typographical features** are typical of a modern will: each point is clearly **num-
 bered**; **capitalisation** is used to highlight key lexical items; **italic print** is used to draw
 attention to the names of the trustees; and **block paragraphs** are used to indicate differ-
 ent sections of the document. **Punctuation** is closer to standard written usage than in
 traditional legal documents, but commas are still omitted in lists like *sell call in and
 convert* (ll. 16-17) and for much of the parenthesis.

The **lexis** is typical of legal language. **Subject specific words**, like the verb
REVOKE (1.1), the plural noun *trustees* (1.9) and the prepositional phrase *UPON
 TRUST* (1.16), reflect the exact nature of the legal language. Because a will deals with
 the theoretical division of property at a time in the future, there are many abstract
 nouns like *substitution* (1.24), *presence* (1.32) and *shares* (1.21). **Ordinary words** like the
 nouns *appointment* (1.6) and *estate* (1.25) take on a specific legal meaning in this con-
 text. **Archaisms** are typical of the legal variety as a whole: for instance, prepositional
 words like *hereinafter* (1.5), *hereof* (1.10) and *heretofore* (1.2); and the collocation *set
 my hand* (1.28). **Collocations** like *real and personal property* (1.15) and *SIGNED AND
 ACKNOWLEDGED* (1.30), however, are characteristic of wills in particular. Some
 collocations are made up of **synonyms** – an Old English and a Latin word are used
 together to ensure that the meaning is all-inclusive.

will and testament (1.3): OE *willa*, L *testamentum*
 divide and bequeath (1.15): L *dividēre*, OE *becwethan*

Because Latin and French were for a long time the languages of the legal system and
 the courts, there are many examples of **loan words** that have now been assimilated.

executor/executrix (1.6): L *execuq* appoint (1.5): OFr *apointer*
 revoke (1.1): L *revocare* estate (1.25): OFr *estat*
 residuary (ll. 19-20): L *residuum* deceased (1.23): OFr *deces*

Modification provides precise information. Where pre-modification is used it is always
 factual and never descriptive:

the foregoing appointment (1.6) medical science (1.4)

my real and personal property (1.12)

Post-modification is more common:

the residue of such moneys (1.19) Edward Moores of 456 Smithfield Road (1.7)

the share of my residuary estate which such a deceased child of mine (ll. 24-5)

The **verbs** are distinctive and make up a limited lexical set which is typical of any
 will: *REVOKE* (1.1), *appoint* (1.5), *divide and bequeath* (1.15) and *declare* (1.3). **Modal**

auxiliaries like *shall* (1.6) denote actions that have to be undertaken in the future and
adverbials like the prepositional phrases *UPON TRUST* (1.16), *by thirty days* (1.14)
 and *for her own use* (1.13) define the exact conditions that must be met.

The **grammar** is less complicated than older legal documents because the text is
 broken up into smaller units in numbered sections. The **mood** is declarative. The pre-
 sent **tense** is used because the document will be read as a current declaration of intent
 at the death of the testator. The will does not construct sentences with the **passive voice**
 because the actor (subject) and affected (object) must be clear if the declared inten-
 tions are to be carried out appropriately. Although there are many adverbials, there
 are not many **marked themes**. Most sentences have the subject in the initial position
 because if the testator's wishes are to be fulfilled after death, the declaration needs to
 be as clear as possible. Clause elements, therefore, are not often rearranged. Examples
 like *IN WITNESS whereof* (1.27), however, draw attention to the final act of signing
 the will and therefore officially authorise the declarations it contains.

Sentence structures are often complex:

(I, JMI of ...) (HEREBY) (REVOKE) (all Wills and testamentary documents...)

made... (and) (declare) (this to be my...) (ll. 1-3)

(I) (divide and bequeath) (all my real and personal property...) (unto my trustees)

(upon trust that my trustees shall sell... and shall therefore pay... and shall stand

possessed of...) (provided always that if any shall have predeceased me leaving

a child or children who attain... such child or children shall stand... and shall

take... the share... which such a deceased child... would have taken... if he or

she had survived me). (ll. 15-26)

The need to include detailed conditions that must be met after the death of the testator
 means that the sentence is complicated by numerous adverbials. Many of the clauses
 are co-ordinated and ellipsis makes it even more difficult to identify the clause struc-
 ture. The **cohesion** is typical of legal language in using repetition of key lexical items
 like *trustees* (1.9) and *property* (1.12) to avoid pronoun referencing which might cause
 ambiguity. The use of the first person singular pronoun *I* is appropriate here, however,
 since the document is a written statement from the testator who is clearly named in the
 post-modification of *I* in the opening sentence of the will. Object pronouns are used
 where the reference is clear: *them* (1.24) is used as an anaphoric reference to the possi-
 ble future children of one of the testator's own children; and the object pronoun *us*
 (1.32) is used as a cataphoric reference to the signatures of the witnesses.

The will has a distinctive format which will only vary slightly from example to
 example. The language and syntax are typical of the legal variety as a whole, but are
 also marked by characteristics of this particular kind of legally binding contract.

The language of the courts

The spoken legal language of the courts is governed by complex rules: witnesses
 are not allowed to say what other people have said (hearsay); they are not allowed to

evaluate (opinion); and they are not allowed to show emotions. Instead all contributors must do no more than respond directly to the questions.

Lawyers are advised to vary the way in which they ask questions in order to draw more from the witnesses' and to use different questioning approaches for different kinds of people. For example, a good lawyer will choose different styles for expert witnesses, for the elderly and for the very young. Repetition can be used as a rhetorical device, but overuse can bore the jury. Prosodic features like rhythm, pitch and pace are also important variants if the jury are to be persuaded to agree with the particular interpretation of events put forward.

Different kinds of courts deal with different kinds of offences and the manner of a particular hearing is therefore dependent on the legal context. Civil offences are tried in both county courts and the High Court. The county courts are less formal since they deal with local affairs in which small sums of money are involved, social matters like housing and the welfare of children, and undefended matrimonial cases. The High Court deals with problems on a larger scale, like mortgages, bankruptcy and divorce appeals, so hearings are far more formal. Criminal cases are heard in the magistrates' courts and the crown court. In magistrates' courts, there is no jury; people can choose to defend themselves or to be represented by a barrister or solicitor; the justices decide whether the defendant is innocent or guilty and fix a sentence where appropriate. The tone here is less formal than in the crown court, where all serious indictable crimes are dealt with.

The spoken language of the courts is often similar to that of written legal documents, but because it is spoken rather than written it tends to be less complicated. Its formal manner, nevertheless, is marked by **formulaic utterances** which are immediately recognisable from the courtroom dramas that appear on television: *You may approach the Bench, if your Lordship pleases, leading counsel for defence. The naming of participants also contributes to the formality of the setting: the judge is called My Lord and Your Lordship; lawyers address each other as my learned friend; and witnesses are addressed by their full names and title - for example, Mr Philip White.*

The structure of a court case is patterned and the proceedings of any trial will be opened and closed formally. In a crown court, the clerk of the court will probably begin the hearing by saying:

Members of the Jury, the Prisoner at the Bar is charged that on _____ s/he _____ . To this indictment s/he has pleaded not guilty and it is your charge to say, having heard the evidence, whether s/he be guilty or not.

The official tone and the subject specific lexis immediately mark this as an example of the legal variety. Although not as complicated as a legal contract, the sentence structure is still noticeably complex.

(Members. . .) (the Prisoner. . .) (is charged) (that (on. . .) s/he. . .). (To. . .) (s/he) (has pleaded) (not guilty) (and) (it) (is) (your charge to say), (having heard the evidence), (whether. . .)

The number of subordinate clauses makes the sentence structure elaborate and clearly marks spoken legal language as more similar to a written register than to an informal spoken one. The use of the subjunctive *s/he be* is also more common in formal written discourse.

Many lexical items are **subject specific**, like the nouns *witness-box*, *Common Law* and *jury*, and the verbs *adjourn*, *cross-examine* and *prosecute*. In a spoken as in a written register, legal language uses many **loan words** of French and Latin origin.

defendant: L *défendeur* adjourn: OFr *ajourner*
prosecution: L *prosequi* verdict: OFr *verdit*
evidence: L *évidéns* counsel: Fr *conseil*

Archaisms are less common in court because the language has to be appropriate for the general public as well as the experts. **Questions** often require closed *yes/no* responses, but equally lawyers may force witnesses to develop their answers by framing questions using *wh-* question words.

In a spoken context, there is no time for lengthy reconsiderations of unfamiliar words and complex sentence structures, so although the language is always formal, it is not usually marked by the convoluted style of legal written language.

ACTIVITY 15.3

In October 1960 at the Old Bailey in London, Penguin Books Ltd was charged under the 1959 Obscene Publications Act with publishing an obscene article - D. H. Lawrence's book *Lady Chatterley's Lover*. The court case revolved around the issue of whether the novel would 'deprave' and 'corrupt' its readers. After a trial lasting six days, the jury decided that Penguin Books was not guilty of publishing obscene material.

The following extract taken from the court hearing is part of the fifth day's proceedings, in which Mr Justice Byrne began his summing up for the jury. Read through the court transcript and comment on it:

- 1 linguistic features that are typical of the legal variety;
- 2 ways in which spoken and written legal language are different.

SUMMING UP BY MR JUSTICE BYRNE

1 MR JUSTICE BYRNE: Members of the jury, you have listened with the greatest care and attention to this case, and you have read this book. Now the time is rapidly approaching when you will have to return a verdict . . .

5 You will recollect that publication has to be proved: the offence is publishing an obscene article. All that is meant by 'publishing' for the purposes of this case is handing a copy of this book to somebody . . .

10 . . . And you, of course, will not exercise questions of taste or the functions of a censor, but you will decide whether it has been proved beyond reasonable doubt that this book is obscene. That is the first question. How the Statute puts the matter is this: it provides that an article shall be deemed to be obscene if its effect is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely having regard to all relevant circumstances, to read the matter contained in it.

15 Of course, the first thing you would want to know is, what is meant by the words to 'deprave and corrupt', and you have had those words defined from dictionaries, one was the Oxford Dictionary, and I think it would be quite fair to put it in this way, that to deprave means to make morally bad. To pervert. To debase or corrupt morally.

20 The words 'to corrupt' mean to render morally unsound or rotten. To destroy the moral purity or chastity of, to pervert or ruin a good quality, to debase, to defile . . . Having read the book the question is, does it tend to deprave or corrupt?

25 The next matter you have to consider is this, that you have to decide whether there is in this book a tendency to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read the matter contained in it.

Now what are the relevant circumstances? Who are the people having regard to the relevant circumstances, who are likely to read the book? ...

30 If you have any reasonable doubt as to whether it has been proved to your satisfaction that the tendency of the book is to deprave and corrupt morals, of course you will acquit, and that would be an end of this case. But, on the other hand, if with your knowledge of the world and with your knowledge now of the book, having read it for yourselves, you are satisfied beyond reasonable doubt that the book has a tendency to deprave and corrupt those who might, in the circumstances, be expected to read it, you, of course, will not hesitate to say so.

35 And that really is the first limb of this case, and, as I said to you, before 1959, before the passing of the Obscene Publications Act of that year, the defendant company felt, although they wished to do so, that they could not publish that book because, prior to the passing of the Statute under which this charge is made, defendants were not allowed by law to call any evidence with regard to the literary or other merits of the book ...

But in 1959 a change in the law was made, and by virtue of Section 4 of the Statute the defendants are enabled to call evidence.

45 That section ... provides that a person shall not be convicted, that is to say, of publishing an obscene publication, if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning or other objects of general concern ...

50 I am going to break off now, members of the jury, because I want to refer you to some of the evidence given by the witnesses who were called on behalf of the defendant company with regard to this second limb about which I have been telling you, that is the question whether the probability is that the merits of the book are so high that they out-balance the obscenity so that its publication is for the public good.

55 Members of the jury, rather than begin that and then break off again I think we will adjourn now until to-morrow morning. Then I shall not take so very long to complete my observations, and you will then be able to retire to consider your verdict. Will you kindly be in your places again at half-past-ten to-morrow morning, and in the meantime, forgive me once again if I remind you of the warning which I gave you, keep your own counsel.

Before Mr Justice Byrne - Regina v Penguin Books Limited:
Central Criminal Court, Old Bailey, London (Thursday, 20 October 1960)

COMMENTARY

The manner is inevitably formal because the trial is taking place in the Central Criminal Court at the Old Bailey. The relationship between the participants is official and the presence of 'experts' makes the context very specific. The language is a mixture of both legal and ordinary words since the spoken register used in court is less convoluted and more familiar than the written legal register. **Formulaic utterances** like the formal opening of the judge's summing up, *Members of the jury* (1.1) mark the gravity of the occasion.

Since this is a transcript of spoken language, there are no distinctive **typographical features**. Written legal language relies on its layout and typographical features to avoid legal loopholes and to guide the reader through complicated legal conditions. The language of the courtroom, however, is primarily a spoken register which is written down only for official records. Jurors, for instance, do not reach their verdict by reading what has been said in court, but by listening. This means that prosodic features like pitch, pace and rhythm replace changes in typeface, underlining and capitalisation. Transcripts of a trial do not mark the prosodic features because when such records are consulted, what is said is more important than **how** it was said.

The **lexis** is still recognisably part of the legal variety, but there are more ordinary words too. **Subject specific words** like the nouns *jury* (1.1), *offence* (1.4) and *verdict* (1.59) mark the variety, but there are also far more everyday words like the nouns *book* (1.2) and *knowledge* (1.32) and colloquial phrases like *in the meantime* (1.60) and *of course* (1.7). Some **ordinary words**, however, are used in a specialist way: *publication* (1.4) now has a specific legal meaning which is defined by the judge; the meaning of the verbs *deprave* and *corrupt* (1.15) is also established so that the jury are in a position to interpret the legal test for obscene publications. This is an example of the metalinguistic function of legal language. There are no **archaisms** because these would sound awkward in speech and might unnecessarily complicate the legal judgements being made. **Loan words** from French and Latin are still apparent, but technical legal jargon is used less frequently: *statute* (1.10) from *L. statutum*; *adjourn* (1.57) from *OFr ajourner*, *doubt* (1.9) from *OFr douter* and *L. dubitare*. While the verb *proved* (1.4) has its origins in OE *prōfian*, *OF prover* and *L. probāre*, other words like the verb *deemed* (1.10) and the noun *law* (1.43) have their origins in OE *dēman* and *lagu*.

The **legal collocations** are often familiar because they commonly appear in the media: for instance, jurors have listened with *the greatest care and attention* (1.1-2); they will have to *return a verdict* (1.3); and they must decide whether they have *any reasonable doubt* (1.29). Other collocations are associated with contexts that are not legal: for instance, *on the other hand* (1.32), *of course* (1.7) and *as I said to you* (1.37). This kind of almost informal language use clearly marks one of the key differences between written and spoken legal language. Another difference can be seen in the absence of any **synonyms**. Where written legal documents use these throughout to ensure that all options have been covered, courtroom language has a different purpose. There are still patterns and formulae that must be adhered to, but rather than being a watertight legal document which must guarantee an individual's or a group's rights, spoken legal language uses the law to make judgements. Even though the language is still used by experts, non-experts are also involved as jurors, witnesses, prosecutors and defendants - the spoken language of the courts must therefore be approachable for the general public too.

Abstract nouns are common because the trial is about concepts of taste and decency: *doubt* (1.9), *quality* (1.20) and *tendency* (1.24), for instance. **Modification** is still restrained, providing factual information rather than emotive or descriptive detail.

^m all relevant circumstances (1.25)
det Adj N

^m the passing of the Obscene Publications Act (1.38)
det VIN Prep

Verbs seem to be of a less restrictive lexical set because the discourse is spoken and therefore uses verbs that are appropriate for face-to-face exchanges. **Modal verbs** are used to convey attitude, just as they are in written legal language: for instance, *will* (1.3)

marks a time in the future; *shall* (1. 10) denotes the legal conditions under which an article can be deemed 'obscene'; and *could* (1. 39) marks possibility. While the first two have connotations of certainty, the latter is conditional. The use of the auxiliary *will* to frame questions is both polite and formal: *Will you kindly be in your places...* (1. 59). **Adverbials** defining specific conditions which must be met are not used in the same way and this makes the sentence structures seem less elaborate.

The **grammar** is still formal and standard, but there are features that link it to spoken language. Sentences are still long, but this tends to be because spoken language is less purposefully crafted; direct address makes the manner seem more personal; and adverbs like *now* (1. 2) and prepositional phrases like *of course* (1. 14) in the initial position (**marked themes**) give the discourse a less ceremonious tone. The **mood** is a mixture of declarative, imperatives like *keep your own counsel* (1. 61) and interrogatives like *Who are the people...?* (1. 27). This variation in mood is typical of the different kinds of exchanges that take place in a trial and is quite different from the declarative mood of most written legal documents. The **passive voice** tends to be used in direct references to the Statute: *shall be deemed* (1. 10); *was made* (1. 43); and *were not allowed by law* (1. 41). This adds to the overall formality and links the language of the court to written rather than spoken language.

The **sentence structure** is quite different from that of written legal language. Simple and compound sentences are more frequent:

- (Members of the jury) (you) (have listened) (with the greatest care and attention)
- (to this case) (and) (you) (have read) (this book). ... (Now) (what) (are) (the relevant circumstances?) (11. 1-2, 27)

Some sentences are grammatically incomplete, which is less likely in written legal language: *To pervert* (11. 17-18) and *To debate or corrupt morally* (1. 18). Complex and compound-complex sentence structures are common, but they tend to contain fewer dependent subordinate clauses.

- (If you have any reasonable doubt as to whether it has been proved to your satisfaction that the tendency of the book is to deprave and corrupt morals) (of course) (you) (will acquit) (and) (that) (would be) (an end of this case). (11. 29-31)

Repetition is again used as a form of **cohesion**. Key legal lexical items like the noun phrases *reasonable doubt* (11. 8-9) and *relevant circumstances* (1. 27) are reiterated to ensure that the jury understand the legal implications of the trial. Other repetitions like *first limb* (1. 37) and *second limb* (1. 52) show how the judge is dividing his summing up into discrete sections to clarify the facts that the jurors must consider to reach their verdict.

The extract from the transcript clearly bears many similarities to written legal language, but also differs in marked ways. The following list summarises the key similarities and differences between spoken and written legal language.

MANNER

- The manner is formal in both instances, but in a courtroom context, some informal collocations and speech patterns may be used.

TYPOGRAPHICAL FEATURES

- The typographical features of written legal language are an integral part of the document since they ensure that interpretation is unambiguous – such features are unimportant in spoken legal language because what is said is more important than how it is said.

LEXIS

- In both instances, subject specific language identifies the legal variety.
- It is common in both written and spoken legal language to find ordinary words used in specialist ways and also specialist words that have become a part of everyday discourse.
- Archaisms are rarely found in spoken legal language whereas they are common in written documentation.
- The all-inclusive synonyms of written legal language are less common in courtroom language.
- French and Latin loan words form the basis of both written and spoken technical legal language.
- Abstract nouns are common in both kinds of discourse because both are dealing with abstract issues of justice and law.
- Modification is similar in both contexts since it provides factual information rather than descriptive or evaluative detail.
- Clusters of adverbials tend to be more frequent in written documents, but when judges are summing up they may also list various conditions that must be considered before reaching a verdict.

GRAMMAR

- Modal verbs are common in both legal registers.
- Spoken legal language is less likely to use limited lexical sets of verbs than are written documents, in which the context is far more specific.
- Pronouns are more likely to be used in spoken language because the immediacy of the context will prevent the possibility of ambiguous interpretation.
- The grammatical mood of sentences is more varied in a courtroom because the kind of exchanges are more diverse.
- The passive voice is less common in the courtroom – rearranging the word order of an active sentence could make interpretation more difficult in a spoken context as it is not immediately possible to reread a complicated sentence.
- In spoken legal language, informal phrases are sometimes used in the initial position. Although inappropriate for written legal language, these marked themes are accepted alongside the formal legal language of the courtroom.
- Repetition is used in both cases to give cohesion to the discourse.
- Simple sentences are more common in spoken legal language.
- Both types of legal language use complex and compound-complex sentences, but the sentences of spoken language tend to be less convoluted.

15.5 What to look for in the language of the law

The following checklist can be used to identify key features in examples of legal language. There will not be examples of all the features listed in every text or transcription, but the list can be used as a guide. The points made are general so discussion of specific examples will need to be adapted to take account of the specific context, audience and purpose of the given discourse.

The following are helpful questions to ask.

Register

- 1 What is the **mode**? – written? spoken?
- 2 What is the **manner**? – formal? traditional? modernised? relationship between participants?
- 3 What is the **field**? – the subject matter will reflect specific uses or kinds of legal language.

Typographical features

- 1 Is the written text in a **block** or divided into **paragraphs** and **subsections**?
- 2 Are any **typographical features** used to guide readers? – **capitalisation**? **underlining**? changes in **typeface**?
- 3 Is the **punctuation** used standardly? – are any commas omitted? are colons or dashes used to mark the beginning of sections? are brackets used for parenthesis?

Lexis

- 1 Is there any **subject specific vocabulary**? – general technical terms? words typical of a particular branch of the law?
- 2 Are any **ordinary words** used with a specific legal meaning?
- 3 Is there any **specialist language** which is now a part of everyday conversation?
- 4 Are there any **archaisms** that mark out the traditional nature of written legal language?
- 5 Are there **collocations** or **synonyms** that are typical of the formulaic patterns of legal language?
- 6 Are there examples of French and Latin **loan words** that go back to the establishment of the legal structures in society when English was not considered to be suitable for such formal contexts?
- 7 Are there any examples of **abstract nouns** that link to the abstract nature of law and justice?
- 8 Are there any examples of **pre- and post-modification** used to provide factual information?
- 9 Do **adverbials** cluster together, defining the legal conditions that must be met or considered?
- 10 Are there any **limited lexical sets of verbs** that indicate the kind of legal context of the example?
- 11 Are there lots of **non-finite verbs** and **modal auxiliaries**, making the legal variety distinctive from other varieties?

Grammar

- 1 Are there any examples of the **passive voice** used to refocus the reader on key lexical items by rearranging the word order?
- 2 Is the **mood** mainly declarative (written) or does it vary (spoken)?
- 3 Are **marked themes** used to draw attention to key legal conditions?
- 4 Are the **sentences** long and complicated? – are there sequences of **dependent clauses**? are there any **simple** or **compound** sentences? is there any difference between the structures of spoken and written legal language?
- 5 Is repetition used to create **cohesion**? – are pronoun references used anaphorically? cataphorically? is any ambiguity created with pronoun referencing?

Summary

The **function** of legal language is to enforce obligations and to confer rights. It must therefore say exactly what is intended. Clear interpretation is crucial, so documents are constructed extremely precisely.

The **audience** for written legal documents is not expected to be ordinary language users – instead they are written by one expert for another. The style reflects this: its complexity can alienate the ordinary reader. The spoken legal language of a courtroom context, however, must be accessible since the jury is made up of ordinary people and the witnesses called up are not always experts. The differentiation in intended audience is one of the key elements, making spoken and written legal language different.

Tradition plays a large part in making legal language distinctive. The variety is marked by its conservatism. It has preserved forms which, though abandoned in other varieties, have proved successful in legal practice. The ceremonial element of legal language is linked to its use of archaisms.

Legal language is often accused of being **obscure** and **lacking clarity**. Because all its intentions must be externalised to avoid ambiguity, legal language often appears to be unnecessarily convoluted. Paradoxically, while the complexity of the language makes legal documents obscure to the lay person, its precision gives clarity to the expert.