

DR CHRISTOPHER HAFNER:
PROMOTING EFFECTIVE LEGAL COMMUNICATION: AN INTERDISCIPLINARY COLLABORATION

For the last couple of years, I've been working on this UGC-funded project that we've been talking about and that is a project that brings together the three law schools in Hong Kong and my own department of English at CityU. I'm really fortunate actually to have found such great people to be working with. Anne Scully-Hill from Chinese University of Hong Kong who unfortunately can't be here today. Rajesh who I still count as CityU. And Jack Burke from CityU as well. And Katherine Lynch from Hong Kong University. I just want to say how much I appreciate their efforts on this project because it's been a really good, good team effort, so thanks very much. Of course, Rajesh has now moved on to RMIT in Melbourne, which perhaps that gives us a bit of an international edge on our project now as well. Who knows? I'd like to focus on the main outcomes of this project, which are digital videos about reading, sorry, about writing and speaking in legal contexts. So what I'll be talking about today is first giving a bit of background about the challenges that are associated for Hong Kong students in particular about learning the language of the law. I'd then like to introduce an approach to language that is I've found to be especially useful in language education that is for specific context like the law and this is a discourse or genre approach to language. And then I'll take you through the multimedia materials, show you one video that we've created and try to give you a background to the rationale.

So first of all, let's take a look at some of the problems that might occur in learning the language of the law. I think it's fair to say that the language of the law doesn't have a very good reputation. You could say over hundreds of years, it's actually got quite a bad reputation. And in this cartoon, you could perhaps see why. Here we have a client complaining to the lawyer that this doesn't look like a legal document at all because 'I can understand every word of it.' A bit like your student in fact.

Well, joking aside, we can probably all agree that language is essential to the legal process. As Maley puts it, 'Language is medium, process and product in the various arenas of the law.' We use words when we make laws, we use words when we interpret laws and make arguments that help us through the legal process, and we use words when we create decisions such as judgments in order to resolve legal disputes. And in all of those functions, the language of the law has developed into a very complex, specialized variety, which is a variety that can pose great challenges to our students. Initially, of course, students need to develop a good, sound understanding of the language system,

but that on its own isn't enough. They also need to know how to use that language to strategically achieve the goals that they are seeking to achieve. And finally, as they're going about writing, they need to also write in a way that's consistent with the conventions of legal English, meeting the expectations of the community, both the academic community that they're writing for and the professional legal discipline as well. So there's quite a bit going on there and it involves both legal knowledge and language knowledge, and that's why in an interdisciplinary approach, like the one we have taken on this project, is particularly fruitful.

Another thing that I've found to be very, very useful over the years is to take a kind of discourse or genre approach to language. This is an approach that sees language as being essentially, socially situated. That means you're always writing for a particular audience with a particular purpose in mind. And in that activity, language acts as a kind of strategic resource that you can draw upon in order to achieve your goals. So rather than seeing language as a formal system, which, of course, it is too, you also see language as a set of resources and tools.

Okay. So when it comes to genres, when we look into the legal context, we see there are many different kinds of genres and Vijay was alluding to some of them. All of these and more. Now, genres can be seen as a kind of text type, that's one way of thinking about a genre, but these are types of texts that regularly occur for specific purposes and therefore have developed into particular forms. So we can say they're text types that fulfill particular, regularly occurring, communicative purposes of the legal discourse community. And this means that over time, they become conventionalized and we start to expect certain things. For example, if you take a barrister's opinion which is written when a solicitor needs some advice on a case that's probably going to go to court, you'll see that after a time, the barrister's opinion will develop a structure that the solicitor comes to expect. And so not conforming to that structure would do something that can interfere with communication. Similarly, the kind of language that you use, the kind of grammar and vocabulary also becomes conventionalized and therefore, a failure to adopt those kinds of linguistic strategies would also have some impact on communication.

Another way, therefore, of looking at genre is not just as a text type, but as staged, goal-oriented,

social action. It's staged because you can break it down into an organizational structure that recurs regularly. It's goal-oriented because you're trying to achieve something as you write that genre. And it's social action because it engages readers with writers for a particular purpose. It's getting stuff done with language. And I've found that when I look at language in this way, it makes a lot easier to determine what sorts of things are need to be taught to students.

I'd like to give you a sort of extended example of that and take a look at the genre of barrister's opinion which is one that I have studied a little bit and look at some sort of strategic language used in that opinion. Now, the trick with a barrister's opinion is that it's usually impossible to give an opinion that is a hundred per cent foolproof. You can't say it's definitely going to go this way, at least not most of the time. At the same time, a barrister can't say they don't know how things are going to work out because that wouldn't be an opinion either, so they need to somehow resolve this conflict, and here is an example of one Hong Kong barrister doing just that.

Okay. The first thing, if you look at the sentence, this is a Hong Kong barrister summarizing their opinion in a particular case. The first thing you notice is the use of this phrase – 'I believe' – that's an epistemic word. Well, judging by the chuckles, you're recognizing that this is distancing the barrister from the opinion a little bit and is lessening, weakening the commitment that the barrister is expressing to the truth value of that proposition that they're coming up with. Now, on the other hand though, if you look at the main proposition here, we could say, 'There may be an enforceable tenancy,' or, 'There might be an enforceable tenancy,' but the barrister doesn't do that. They stick with this non-modal or certain form of the verb here. So there's some hedging going on, but it's not too much.

Another thing that this barrister does, if we look at the first part of the sentence, is to use a kind of boosting strategy here. Here she is referring to the amount of research that she's done. She says that she has perused the correspondence between the parties, which is perhaps a rather flippant way of putting it. Other barristers may say something like, 'I have considered in depth all of the circumstances of the case.' Or something like that. But this also is quite a common strategy and it functions to elevate the opinion of the barrister. Now, these kinds of things when I describe to you

here, don't seem particularly difficult. They seem probably rather obvious. But when our students are faced with this sort of thing, and they haven't had a talk like this one, then it can be quite difficult to strike the right balance.

So this is the kind of background to the multimedia materials that we developed. I wanted to incorporate these kinds of insights as much as possible.

So here's a little bit about the rationale for the multimedia materials design. If you go to our website which, by the way, is legallengish.hk and I hope you will visit it, you'll see that our website is divided basically into three different series of videos. We have expert interviews and a number of you have helped us in that regard providing your own expert opinions. We also have two series of how-to videos. And the idea here is to combine linguistic knowledge or description in terms of the how-to videos with the expert interviews, so combining legal knowledge with language knowledge on the site.

Let me just say a little bit about these different things. The expert interviews are, as the title suggests, interviews with legal professionals and legal academics on questions like 'What makes good legal writing?', 'What makes good oral advocacy?', 'What makes for a good writing process?', and then, of course, 'What advice do you have for students about that?' Now, these are supported by language-focused videos – the other two series. These are sort of research-based how-to videos, where we teach students how they can write like a lawyer, what kind of organization structures they can use, what kind of language strategies they can use. Initially, when I had the idea that we'd interview experts and provide language-focused support, I thought that language-focused support would be in a form of some kind of interactive exercises or some kind of legal English reference guide, like a legal English grammar, or something like that. But as we were doing this project, I thought of all of the many, many how-to videos that you find on Youtube these days – you can learn to do just about anything on YouTube – and I thought, 'Why don't we do something like that?' And so we've come up with video-based materials for these language-focused materials as well.

In terms of the way that we've designed them, here are some principals that immersed in the

design process. We, first of all, wanted to have a unified series of short, engaging videos, so it's very unusual for these videos to be longer than about five minutes. They should be based on research, the kind of thing that I was just demonstrating to you, and introduce key legal genres. So we've begun with legal problem questions and also oral advocacy in arbitration mooting. And each series is organized around the central case which we introduce in the first episode, a set of facts that provide the fodder, if you'd like, for subsequent episodes where we talk about particular linguistic strategies. And each episode is clearly signposted, has an introduction and a review section. That means we're following the standard, 'tell them what you're going to say, then say it, and then tell them what you've said' structure. The examples that we use are as much as possible authentic examples of students actually using language and we have a very good bank, especially in terms of the oral advocacy, of videos of students presenting and giving us some good examples. Also, when we draw attention to linguistic structures, we try to visually highlight these. You'll see what I mean in a minute.

Finally, we've tried to be careful in a way that we use metalanguage – that is the language that you use to describe language – so that linguistic terminology doesn't get in the way. We always try to hook it up with clear examples. You don't need to be a linguist to be able to understand what we have to say.

So, as one example, I'd like to take an episode from the Quick Guide to Legal Writing. This is the series that looks at legal problem question answers and there are eight episodes. For those of you who are not familiar with the genre of legal problem question, it's whether the professor provides a fact situation and then the student is asked to give an opinion about what might happen and advise certain parties in that fact situation. And here we have the series overview. The overview episode gives us the fact situation that we're going to exploit it later in the series, and then you can see there're varies different kinds of functions that are addressed in the other seven episodes.

I'd like to start by telling you a little bit about the fact situation. So the fact situation that we used came from a business law question in one of the CityU exam databases. And it involved this woman Susan, who had bought a hairdryer from the retailer, Hair Goods, made by Hair Production Co. Ltd.,

the manufacturer. And on the box of that hair dryer was this warning label that said you were not to use the hair dryer with wet hands. And so, of course, you can imagine what happened. Susan was applying some tonic which contained a small amount of alcohol, and then at the same time used this hair dryer and at the same time had wet hands. And this was the result of that. So here she is having survived her ordeal with a little bit less hair and getting ready to prepare lawsuits against these two companies. That's basically the background that we then use and we have a kind of model problem question answer, which we exploit at various different points of the series.

One particularly difficult thing to do, as I've mentioned already, is stating your conclusions, so I want to just play through the full five minutes of this one and show you how we handled that.

[VIDEO]

Have I got a moment to just say one other thing? Okay. So unless you want me to be quiet, then I understand that.

Basically, what I wanted to highlight was the way that we approached language here as a resource. You can see that we were trying to show lots of different ways of achieving the same goal, but of course, those aren't the only ways that they can be done, and so this does leave it open for teachers to ask their students, 'What do you do in your problem question answers?' and 'Do you think that that would be an effective strategy or not?'

Finally, I'd just conclude by talking a little bit about where we go from here. Because what we now need to do is create that bridge between what the experts are saying in the expert interviews and those expert interviews are now coming out about once a week actually and these language-focused materials here. And we're doing that by having a related videos section on each video page, so every time that an expert says – and they do this quite a lot, by the way – 'You have to be clear,' or, 'You have to give a clear opinion,' then we can link to this video here and students can get some idea of what linguistically that might mean. And the other thing that we obviously need to do is keep driving traffic to this website, so I'll be using it in my classes and I hope some people here will

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[Transcript](#)

be moved to use these videos in their classes as well. They're freely available resource, so you're really most welcome. Thanks.