Diachronic and Synchronic Aspects of Legal English

Diachronic and Synchronic Aspects of Legal English:

Past, Present, and Possible Future of Legal English

By

Giuseppina Scotto di Carlo

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PREFACE

Legal English is generally seen as a specialised type of language which is spread among a set of people, as students of Law, lawyers, judges whose main intent is to interact among themselves for professional needs through a powerful unambiguous means of communication.

In spite of this generic and superficial statement, it should be added that many people, although not belonging to a specific working community, use legal English in many occasions of their routine life, as they conclude social and legal acts, activating a legitimate democracy in everyday communication.

The amount of texts written in ESP Legal English is increasingly reinforcing the idea that Legal English produces linguistic data which can be studied and classified through text analysis.

Pina Scotto di Carlo in her fascinating work focuses on this synchronic aspect of the language in chapters two, three and four, giving result to syntactic aspects of the different components of the language and evidentiating the problems arising from the use of some criteria of textuality.

Apart from this, the newest point of view of this book is the diachronic dimension it shows.

Legal English (LE), as well as any other legal language, gives historic linguistics the opportunity to stress how a language constantly develops. More specifically it shows - through many examples - how a language gives the research on historic linguistics new and fundamental bases for enlarging the view of the many changes LE has had during the centuries. In other words, it proves to have been performed for a very long time, thus rendering it possible to focus the investigation on two aspects of the language, the synchronic one and the diachronic one. In particular, the study of legal English language, under the well-known Saussurean dichotomy, highlights how new referents, neologisms, and formulaic items have been performed and changed during the centuries. In the same time it constitutes a good starting point for understanding why its modern syntax reached its status.

Far from being defined as obsolete, this syntax is shared by people who have a great knowledge of law, and refers to both written and oral language which formally represents at the very best level of communication, how it works, thus contributing to the definition of Legal English as a Sub-Branch of ESP.

Pina Scotto di Carlo, in Chapter 1, focuses some of the basic diachronic aspects of LE which lead to modern Legal English. The assumption is that the diachronic dimension of LE, seen as a Sub-Branch of ESP, gives us the opportunity to derive the origin of some terms and items, phrases and clauses. The inferential and deep understanding of diachronic studies implies that languages and cultures are strictly interdependent and, what is more, refer to a particular historical period.

Just to conclude this brief Preface, I think that the book is devoted not only to researchers of ESP-LE at a first level of investigation, but it should be of great interest for university students whose aim is to be introduced into the fascinating world of Historic Linguistics, through which it is possible to deeply understand the close interdependence of language and culture.

Professor Silvana La Rana
University of Naples 'Suor Orsola Benincasa', Italy

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LIST OF ABBREVIATIONS

CRC	Convention on the Rights of the Child
EAP	English for Academic Purposes
EGAP	English for General Academic Purposes
ELT	English Language Teaching
EOP	English for Occupational Purposes
ESAP	English for Specific Academic Purposes
ESP	English for Special Purposes
EU	European Union
GA	General Assembly
ICC	International Chamber of Commerce
LE	Legal English
LSP	Language for Special Purposes
UN	United Nations
UNICEF	United Nations international Children's Fund

INTRODUCTION

A tutti gli scrittori un consiglio:
ogni volta che scrivete una pagina,
scrivetela due volte. La seconda volta
più corta della prima. Poi se avete un
amico ignorante, fatela leggere a lui.
Se la capisce allora vuol dire che
funziona, se invece non la capisce,
allora la dovete riscrivere.

An advice to all writers:
Whenever you write a page, write it
twice. The second time shorter than the
first. Then, if you have an illiterate
friend, read it to him. If he understands
it, it means that it works, but if he does
not understand it, you have to rewrite
it.[1]

—Luciano de Crescenzo

The purpose of this handbook is to provide a detailed description of the field of Legal English as a professional language. It is intended for a broad audience of specialists and non-specialists interested in linguistics and Legal language as part of the spectrum of English for Special Purposes (ESP). In particular, it could be useful for law students (L1 English and especially L2 English speakers), and practicing lawyers who need Legal English for their studies and legal profession. As it aims at using simple words to explain the development and features of Legal language, it is also intended for the general reading public interested in understanding the basis of Legal language that is part of our everyday lives. However, it would also be attractive to readers interested in ESP, discourse analysis, and diachronic studies.

Language variation in working environments, such as the medical, legal, and educational fields, has been a topic of great interest for more than five decades.

Several terms such as *register*, *special language*, *sublanguage*, and *languages of the professions* have been introduced in linguistics to attempt a classification of language used in specific work fields. These studies are based on the assumption that context is an integral component of language variation. In Hiltunen's (1990: 12) words:

> Language does not function in a vacuum, but has a complex network of intra and extra linguistic ties with the context in which it is used. Conversely, it could be assumed that if the contextual features are known, it should be possible to reliably predict occurrences of so-called style markers, i.e., linguistic features characteristic of a given stylistic variant.

It is obvious that any specialist language should actually be considered as a *continuum* from a relatively tight relationship between context and language, to a relatively loose relationship between these two elements. Legal English, the main theme of this work, is closer to the former end of the continuum, when referring to some genres such as written legislation, but closer to the latter end when referring to the type of Legal language used in university textbooks or journals. Therefore, Legal English should be analysed as part of an existent language system: like any other language usage, Legal English is the result of a historical and social practise, and thus this language bears the imprint of such practise and cultural background.

Only in the last decades, social scientists, lawyers, and linguists have started to thoroughly analyse this professional language that is frequently referred to as meant for 'expert-to-expert' communication, frequently associated with the properties of consistency, objectivity, clarity, and specificity. Multidisciplinary studies have been studying this branch of ESP, which is commonly seen as a profoundly alien linguistic area, controlled by means of an archaic, professionalised, and impenetrable language. Already president Jefferson, the main author of the *American Declaration of Independence* (1776), had commented on the complexities of English legal documents, which:

> […] from their verbosity, their endless tautologies, their involutions of case within case, and parenthesis within parenthesis, and their multiplied efforts at certainty by *saids* and *aforesaids,* by *ors* and by *ands,* to make them more plain, do really render them more perplexed and incomprehensible, not only to common readers, but to the lawyers themselves. (In Tiersma 1999: 46)

The study of Legal language has been affected by new theories introduced by sociolinguistic approaches, which separate oral Legal English (e.g. lawyer-client interactions and courtroom interactions) from written Legal language. Spoken Legal English is considered a different genre, for its very tight connection between what is said, how it is said, why it is said, and the situation in which speech is uttered. Conversely, written Legal English is characterised by its constant, stable quality.

For this reason, this discussion will narrow its focus down to the written variety of Legal English, as it is concerned with the fixed conventions and linguistic characteristics of Legal English.

The work is divided into four chapters. The theoretical part is composed of the first three chapters; each deals with a different issue related to the domain of Legal English, while the last chapter will propose a practical analysis of a legal text, in order to reveal how the typical stylistic markers of Legal English are systematically used in an authentic legal text.

As Legal English is considered a sub-branch of ESP, the first chapter of this work introduces the concept of ESP, providing some background information about the development of this discipline. From a diachronic perspective, the chapter provides a brief introduction to the evolution of Legal English, from its origins to modern times, observing how it has changed lexically, structurally, and conceptually throughout the centuries. It analyses the historical background of Legal English and discusses the origins of modern legal institutions, by describing Celtic, Anglo-Saxon, Viking, and Norman law, up to the development of the 19th century modern English legal system. These historical notes are given to emphasise how law is a result of an accumulation of idiosyncratic historical development and traditions influencing its linguistic aspects.

The second chapter focuses on a more extensive analysis of the lexical and syntactic characteristics of the contemporary legal register. Resorting to the conceptual properties of text analysis categorised by Dressler and De Beaugrande (1981), the chapter discusses the main visual, lexical, discourse, and syntactic features of Legal English that differentiate it from General English. The chapter includes a special focus on the relationship between the role of intentionality and the other criteria of textuality used in legal texts.

A third chapter discusses the complex debate between linguists, legal specialists, and sustainers of a reform of Legal English. The chapter illustrates some of the main points of criticism put forward by the Plain English Movement against Legal English, its suggestions for a simplified Legal language, and the number of serious limitations regarding what a

language reform could accomplish. The last section of the chapter examines the delicate issue of the use of Legal English in international institutions, such as the multilingual and multicultural European Union. In particular, the chapter analyses translation complexities from languages used in Common Law countries (such as Great Britain), into languages of Civil Law countries. The section emphasises how lawyers and linguists should be aware of both positive aspects and pitfalls of Legal English, especially in the wider perspective of international contexts. A balance between tradition and simplification of Legal language is proposed as a challenge for the future of professional English.

Finally, the fourth chapter of the work stems from the theoretical basis set forth in the first three chapters. It offers a textual analysis of a sample document, the *UN Convention on the Rights of the Child* (1989), with the intent of identifying the stylistic markers of Legal English in an authentic text, and studying how these devices help achieve its communicative aims. Bearing in mind the diachronic and synchronic aspects of Legal English described in the first chapters, the analysis is put forward following Dressler and De Beaugrande's (1981) conceptual properties of text analysis. The data obtained demonstrates that it is possible to reach a balance between time-honoured legal expressions and citizens' rights to understand legislation binding them or granting them their rights.

CHAPTER ONE

ORIGINS OF LEGAL ENGLISH

> What is generally denominated Legal language is in reality a mere technical language, calculated for eternal duration, best suited to preserve those memorials, which are intended for perpetual rules of action.
>
> —William Blackstone

1.1 Legal English as a Sub-Branch of ESP

The concept of ESP emerged during the post-World War II development of science and technology, as an answer to students and specialists' needs to learn English to communicate in their fields of work. Hutchinson and Waters (1986: 6) have identified three main factors that have led to the development of ESP: the demands of a "brave new world", a revolution in linguistics, and the birth of the Learner-Centred Approach. First, in the aftermath of World War II, English suddenly became the language of international communication as a consequence of the United States' commercial and technological growth. As Hutchinson and Waters (1986:7) remark:

> Whereas English had previously decided its own destiny, it now became subject to the wishes, needs, and demands of people other than language teachers. English had become accountable to the scrutiny of the wider world and the traditional leisurely and purpose-free stroll through the landscape of the English language seemed no longer appropriate in the harsher realities of the market place.

This phenomenon gave rise to a new generation of learners who needed to learn English to satisfy the demands of modern times. Second, the birth of ESP can be considered a revolution in linguistics: English

courses were no longer to be centred only on formal grammar features, but especially on real communication within specialist work and study areas. Third, communicative and functionalist approaches began to consider learners as individuals with different needs, motivations, and interests. In this new learner-centred approach , learners were no longer seen as passive *tabulae rasae* to be filled up with notions, but as motivated and active subjects of the teaching-learning process (La Rana 1997).

Though ESP should not be considered a monolithic universal phenomenon, as it has developed at different speeds in different countries, Hutchinson and Waters (1987:14) divide its development into five periods. A first stage of development is associated with the importance given to register analysis during the late 1960s and 1970s. This approach aimed at the identification of the linguistic features of different registers, operating only on the word and sentence level. For this reason, Swales (1988:21) refers to this first stage as an approach based on lexicostatistics. During the second period, attention shifted from the word level to the higher level of discourse analysis. As a reaction against register analysis, this stage focused on how to recognise textual patterns and discourse markers, with the aid of text-diagramming exercises. The overall aim was to understand how sentences were meaningfully linked within a discourse. The third stage was based on target-situation analysis, in which learners' needs began to be placed at the centre of English courses, enabling students to communicate adequately and appropriately in several contexts. The fourth stage was characterised by the so-called 'Skills-Centred Approach', which analysed the mental processes that enable the extraction of meaning from discourse. The teaching skills used during this period focused on the interpretation strategies used by learners to cope with surface forms. The fifth stage was based on the advent of the Learner-Centred Approach. Learners were given central importance in the didactic process and thus motivation started to be considered as a highly influent factor in the effectiveness of learning.

Moreover, since its emergence, many arguments have been given to define ESP and its constituents. For instance, Dudley-Evans and St. John (2002: 5) distinguish ESP in two subsections, namely English for Occupational Purposes (EOP) and English for Academic Purposes (EAP). EOP responds to the needs for English for specific professions, such as doctors, lawyers, hotel staff, and other professions. EAP is usually taught to students who need English for their studies in educational institutions, such as universities. EAP can be further divided into English for Specific Academic Purposes (ESAP), such as medicine, engineering, and

economics, and English for General Academic Purposes (EGAP), such as academic listening and writing, as can be seen in Table 1 below:

Dudley-Evans and St. John's (2002: 5) ESP Classification			
English for Academic Purposes (EAP)		English for Occupational Purposes (EOP)	
-English for Specific Academic Purposes (ESAP) -English for (Academic) Science and Technology -English for (Academic) Medical Purposes -English for (academic) legal Purposes -English for Management, Finance and Economics	-English for General Academic Purposes (EGAP)	-English for Professional Purposes -English for Medical Purposes -English for Business Purposes	-English for Vocational Purposes -Pre-Vocational English -Vocational English

Table 1-1: Dudley-Evans and St.John (2002:5) ESP Definition

Furthermore, Strevens (1988:3) makes a distinction between four absolute characteristics and two variable characteristics of ESP:

Absolute characteristics:
• It is designed to meet the specific needs of the learners
• It is related to content (that is in its themes and topics) to particular disciplines, occupations and activities
• It is centred on language appropriate to those activities in syntax, lexis, discourse, semantics and so on, and analysis of the discourse
• It is different from General English

Variable characteristics:
• It may be restricted as to the learning skills to be learnt (for instance reading only)
• It may be taught according to any pre-ordained methodology

However, the distinction between EAP and EOP is not clear-cut. As Hutchinson and Waters (1987: 16) comment:

> People can work and study simultaneously; it is also likely that in many cases the language learnt for immediate use in a study environment will be used later when the student takes up, or returns to, a job.

According to Dudley-Evans (1998: 9), it would actually be more appropriate to talk about a *continuum* of English Language Teaching (ELT) course types, based on the specific syllabus of each course. For instance, Legal English has frequently been at the centre of debates on whether it is a branch of its own or a sub-branch of ELT shared by both EAP and EOP. In the following classification, it is set in position number four, in the broad disciplinary or professional area of the ELT *continuum*:

Dudley-Evans and St John's ELT *continuum*				
Position 1	Position 2	Position 3	Position 4	Position 5
English for beginners	Intermediate to advanced courses with a focus on particular skills	Courses based on common-core language and skills not related to specific disciplines or professions	Courses for broad disciplinary or professional areas, for example Medical English, Legal English, Negotiation/meeting skills for business people writing for scientists and engineers	I) An 'academic support' course related to a particular academic course II) One-to-one work with business people

Table Error! No text of specified style in document.**1-2: Dudley-Evans and St John's ELT** *continuum*

In all the classifications briefly described above, the main aim of ESP is to meet learners' specific needs; it aims at preparing learners to be more familiar with the kind of language really needed in a particular domain, vocation, or occupation. In fact, Hutchinson and Waters (1987:19) acknowledge that ESP "is an approach to language teaching in which all decisions as to content and method are based on the learner's reason for learning". They (1987: 18) clarify that:

ESP is not a matter of teaching specialised varieties of English. The fact that language is used for a specific purpose does not imply that it is a special form of the language […]. ESP is not just a matter of science words and grammar for scientists, hotel words, and grammar for hotel staff and so on…ESP is not different in kind from any other form of language teaching, in that it should be based in the first instance on principles of effective and efficient learning.

The amount of classifications certainly reveals the difficulty to circumscribe such an extensive and complex field, which is the result of social, historical, cultural, and linguistic processes. As there is a close relationship between language and context, it would be appropriate to observe some events that have influenced the long and complicated process of the development of contemporary Legal English.

1.2 Historical Background of Legal English

The origins of British legal institutions date back to the 1066 Norman Conquest of the British islands, which led to the creation of a centralised and organised administration of the Common Law legislation. The adjective 'common' refers to the fact that this type of law is common to all parts of English and Wales. In fact, before the Norman Conquest, different rules and customs were applied throughout the country. Only after 1066, the English monarchs began to unite both the country and its laws.

The main characteristic of Common Law is that it is a non-conventionally codified case law based on precedents. The Latin expression used to define this kind of law is *stare decisis*, meaning *let the decision stand*, a legal principle by which judges are obliged to respect precedents established by prior decisions. The principle derives from the Latin maxim *Stare decisis et non quieta movere* (to stand by decisions and not disturb the undisturbed). This means that previous decisions are to be applied to similar cases. By contrast, countries respecting Roman law, better known as 'Civil Law', follow continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense. In Hiltunen's (1990:13) words, the main difference between Common and Civil Law is that:

British legislation has grown in a way inductively, through individual cases and decisions, while in many other countries the development has been almost the opposite, the legal practices having developed

deductively, with individual decisions following from a pre-established general rule.

The first official British legal institutions developed some years after the Norman Conquest. The King's Court, called *Curia Regis*, was the main institution of the kingdom, and it originally detained the legislative, executive, and judicial powers. This institution was meant to assist the King in his judicial work, and its activities could be considered the beginning of the Common Law system. In fact, when the King and his court travelled around the country, citizens would present their grievances for a judgement. Later on, other courts such as the Court of the Exchequer, the Court of Common Pleas, and the Court of the King's Bench were established for particular kinds of royal justice.

The main roles of the Court of the Exchequer were to keep the King's accounts and to collect royal revenues. Its jurisdiction was applied to cases arising out of withholding debts to the crown. This court was inferior in rank to both the King's Bench and the Court of Common Pleas. The latter was devoted to 'common pleas', which were actions between private subjects that did not concern the King. Created during the 12th century, it served as one of the central English courts for around six hundred years. Because of its wide remit, it has been considered by Sir Edward Coke (1797: 99) as the "lock and key of the Common Law". The Court of the King's Bench, formally known as 'the Court of the King before the King Himself', was also established during the late 12th century and it initially followed the monarch during his travels. In 1318, it eventually joined the Court of Common Pleas and Exchequer of Pleas in Westminster Hall, where the King used to sit with the judges to make decisions on disputes.

As far as concerns the initiation of a law proceeding during the medieval era, Common Law proceedings began with the issue of a writ, complied by a member of the Chancery. As Barker (2007:13) explains:

> A writ was a formal document addressed to the sheriff of the county, where the defendant resided commanding him to secure the presence of the defendant at the trial, and setting out the cause of action or ground of claim of the plaintiff.

This procedure meant that plaintiff had to find a suitable writ for their cases; otherwise, they would have been in severe disadvantage at the trial. However, the law system soon became unable to meet the growing needs of the community and thus the Chancery began to write new writs for the cases for which none existed. The problem with this approach was that

plaintiffs' rights were defined and limited by the writs available. Thus, the ability to create new writs was close to the power to create new rights, a new form of legislation. This led to the emergence of the Court of Chancery and of its legislation known as 'Equity', "a gloss on the Common Law used to fill the gaps and to make the English legal system more complete" (Barker 2014: 12). This institution gained great popularity and importance, as it was not bound by the writ system or other formalities and it considered petitions based on conscience and right. In case of conflict between Common Law and Equity, the latter would have prevailed.

Many centuries with all their historical and social events have contributed to the birth and development of Legal English. Innumerable historical events have caused irreversible shifts in the society of the British Isles, resulting in cultural changes that have altered British spoken and written language both structurally and lexically.

Most of the research on Legal English has been achieved from the 19th century onwards, when scholars began to recognise the strong relationship between law and language, as law is one of the main social institutions regulating social behaviour in communities. Many disciplines such as psychology, sociology, anthropology, and linguistics have taken an interest in Legal language; however, the expansion of interest in Legal English seems to be connected to the growth of three disciplines: pragmatics, which considers the usage of language in real life contexts; applied linguistics together with the development of the concept of ESP and EAP; and the development of social studies, which consider language as a means to realise social actions. The following sections will attempt to provide a brief introduction to the evolution of Legal English from its origins to modern times, observing how it has changed lexically, structurally, and conceptually throughout the centuries, as a consequence of the influences of the numerous populations that have given birth to the British legal system.

1.3 Before 1066: Celts, Anglo-Saxons, and Vikings

Before the 1066 Norman Conquest, Great Britain underwent significant changes in the composition of its population. In 449, the Anglo-Saxons and Jutes' migration began to drive the original Celtic population into the fringes of the British islands, causing the gradual replacement of Celtic with Anglo-Saxon. Although much of the written material has been preserved in post-conquest copies of the twelfth century, the oldest British legal texts date back to the Anglo-Saxon period. Most of

the documents contain the first laws promulgated by King Æthelberht of Kent (c. 558-635 AD), up to Cnut's decrees of the 11th century (1016-1035). However, these first documents should be classified more as codifications of custom than actual legislation. According to the *Dictionary of Medieval Terms and Phrases* (Corredon and Williams 2013), the native term for them was *folcriht,* a compound word from the Anglo-Saxon *folc* (common) and *riht* (law). These early rules were highly affected by variability, as the islands did not have any central administration yet, and small issues were solved following local traditions, discussed during open-air meetings called *folcgemot.* However, these manuscripts are of great historical importance, as some of them attest King Alfred's will to create a central law system, as mentioned in the introduction to his code (trans. Drout 2006: 14):

> (1) *Ic ða Ælfred cyning þas togædere gegaderode awritan het, monege þara þe ure foregengan heoldon, ða ðe me licodon; manege þara þe me ne licodon ic awearp mid-minra witena geðeahte, on oðre wisan bebead to healdanne. Forðam ic ne dorste geðristlæcan þara minra awuht fela on gewrit settan, forðam me wæs uncuð, hwæt þæs ðam lician wolde ðe æfter us wæren. Ac ða ðe ic gemette awðer oððe on Ines dæge, mines mæges, oððe on Offan Mercna cyninges oððe on æþelbryhtes, þe ærest fulluhte onfeng on Angelcynne, þa ðe me ryhtoste ðuhton, ic þa heron gegaderode, þa oðre forlet. Ic ða ælfred Westseaxna cyning eallum minnum witum, þas geeowde, hie ða cwædon, þæt him þæt licode eallum to healdanne.*

> (Then I, King Alfred, collected these [laws] together and ordered to be written many of them, which our forefathers observed, those which I liked; and many of those which I did not like, I rejected with the advice of my councillors, and ordered them to be differently observed. For I dared not presume to set in writing at all many of my own, because it was unknown to me what would please those who should come after us. But those which I found anywhere, which seemed to me most just, either of the time of my kinsman, King Ine, or of Offa, King of the Mercians, or of Æthelberht who first among the English received baptism, I collected herein, and omitted the others).

These manuscripts are interesting also because they contain descriptions of Anglo-Saxon life and traditions. For instance, most of the laws of that period described trials by ordeal, oaths*,* and *wergild. Wergild* (from *wer>* man *+ geld>* payment, tribute) can be defined as the compensation that the defendant was liable to pay to the King for several kinds of offenses; trials by ordeal consisted in a physical test and an appeal

to the gods to test whether the defendant was guilty. For instance, Hiltunen (1990: 22) describes the case of the hot iron trial by ordeal:

> A piece of hot iron was put in the hand of the accused. The hand was then bound, and inspected a few days later. If the burn had festered, a god was taken to have decided against the party.

Another practice consisted in the correct repetition of oaths with the guidance of other kinsmen. These practises were used before the spread of Christianity into the islands. However, the Roman Church did not eradicate these rules altogether, and this led to a gradual amalgamation between Christian and pagan traditions. For instance, in the late Anglo-Saxon period, trials by ordeal began to be addressed to the Christian god, and thus (Hiltunen 1990: 23)

> The impact of Christianity had in turn the effect of upholding such ancient customs as *wergild*, trial by ordeal, and oath much longer than they would have otherwise survived.

Moreover, the first Anglo-Saxon laws of this period were written in vernacular and not in Latin, although according to Hiltunen (1990: 23):

> Latin would have seemed an obvious choice in view of the fact that the appearance of the first English legal code of King Æthelberht I of Kent coincided with the supposed date of the conversion of the King to Christianity by Saint Augustine.

In fact, the introduction of the Holy Roman Church in the British islands did not lead to the introduction of the Roman law system into Great Britain; law continued to follow the Germanic tradition. It is also interesting to notice that most of the Anglo-Saxon laws continued to be translated into Latin during the 12th century, in works such as the *Quadripartitus* (1114) (in Irvine 2004), not only as a form of respect for the past but especially because copies of old laws were required as a guide for drafting new ones. Surviving material represents only the kingdoms of Kent and Wessex, such as the *Textus Roffensis,* a 12th century codex containing the unique text of the oldest Æthelberht laws and the pre-conquest Parker Manuscript (CCCC MS 173) (in Irvine 2004), which contains Ine and Alfred's West Saxon laws.

A general reading of these laws reveals the widespread use of stylistic features, such as alliteration, assonance, rhythm, and parallelisms, as can be seen in the examples below:

Examples of Anglo-Saxon Legal Phrases Containing Alliterations and Assonances	
Godes miltse and mildheortnesse	God's grace and mercy
Manslagan and manswaran	Murder and perjury
On life ge on legere	In life and death
Sib and socn	Peace and agreement
Word and weorc	Word and deed

Table 1-3: Examples of Anglo-Saxon legal phrases containing stylistic features

These stylistic choices were probably due to the oral transmission of laws during the prewritten period. While bards held the oral tradition of epics, laws were orally transmitted from one generation to another, and thus they had to be rich in alliteration, assonance, rhythm, and other effects used to facilitate memorisation. These features also had the rhetoric effect of triggering emotional participation in the solemn recitation of laws and oaths. As Bethurum has explained (2008: 279):

> Old English law can offer no parallel to the poetry of the Old Frisian and Old Norse documents. We may therefore conclude that those tribes which escaped longest the Christian influence kept the poetic cast which seems to have characterised Germanic legal speech in pre-Christian times and that in certain specific phrases of old English laws and a tendency to use alliteration wherever the subject-matter was archaic or of emotional importance, we still have traces of the vanishing tradition.

The terminology of this period is obviously predominantly Anglo-Saxon, with only a few loans from Latin, such as *Omnipotentus* (*ælmihtig*). Terminology from Scandinavian was limited to the field of technical terms, such as *grið* (truce), *sehtian* (to settle), *hamsocn* (offense of attacking a man in his own home), and the Norse word *lagu* (law), which replaced the Anglo-Saxon terms. Many Anglo-Saxon terms have disappeared from modern English for sociolinguistic reasons, such as the loss of referent or the replacement of the native words with loans. Among this group there are the words *wergild*, *bocland* (land held by written title), and *folcland* (land held by free men according to tribal rules of family inheritance). Other words are still occasionally used with a legal meaning, such as the following suggested by Mellinkoff (1963: 47): *deman* (to pronounce judgement, e.g. 'deem'), *wed* (security for performance, e.g. 'wedding'), and *witan* (to know, e.g. 'witness').

As concerns syntax, Anglo-Saxon laws were more heterogeneous than modern law texts, because of the lack of fixed conventions for legal draft

writing. During the Anglo-Saxon period, written language was in the infancy of its development and according to Bethurum (2008: 163), early drafts such as Alfred's translation of Gregory's *Curia Pastoralis* demonstrate that it was quite difficult to find the right words and structures to express complex thoughts (trans. Holland 1985: 219):

(2)   *Ond for ðon ic ðe bebiode ðæt ðu do swæ ic geliefe ðæt ðu wille, ðæt ðu ðe ðissa woruldðinga to ðæm geæmetige swæ ðu oftost mæge, þæt ðu ðone wisdom ðe God sealde ðær ðu hiene befæstan mæge, befæste.*

(And therefore I command you to do, as I believe thou art willing to disengage thyself from worldly matters as often as thou canst, that thou mayest apply the wisdom which God has given thee wherever thou canst. Consider, what punishments would come upon us on account of this world, if we neither loved it ourselves nor suffered other men to obtain it: we should love the name only of Christian and very few of the virtues.)

Syntactic complexity began to develop throughout these years. At the sentence level, it can be said that Anglo-Saxon legal texts already used hypotactic structures, with a prevalence of conditional clauses followed by a main clause, already during the Kentish period. The enhancement of specificity led to a gradual increase in the complexity of Legal English, as can be exemplified with the case of Cnut's law (trans. Whitelock 1995: 358):

(3)   *Ond gyf mæssepreos æfre ahwær stande on leasre getwitnesse oððe on mænan aðe oððe þeofa gewita oe gewyrtha beo, þonne sy he aworpen of gehadodra þolige ægþer ge geferscipes ge geæfreondscipes geghwycles weorþscipes, butan he wið God wið menn þe deoplicor gebete, swa biscop him tæce, him borh finde, þæt þanon forð æfre wycles geswice*

(And, if a priest produces false evidence or swears a false oath or enters into cooperation with thieves, then he will be excluded from the community of the holy orders and (he shall) lose both their companionship and friendship, as well as all respect, except if he shows deep repentance (for what he did) towards God and men in the way (his) bishop instructs him, and if the people of the town find him such that he will from now on ever abstain from suchlike (crimes)).

The following are some examples from Æthelberht's laws, retrieved from Whitelock (1995:354). They are characterised by the ellipsis of the verb *'gebete'* (let him pay).

(4)   Ceorles mundbyrd: VI scillingas (Æthelberht 15)
(The protection of a ceorl: six shillings)

(5)   Gif man þone man ofslæhð, XX. scillingum gebete (Æthelberht 20)
(If somebody cuts off a thumb (let him pay) 20 shillings)

As concerns the reciprocal position between the main clause and subordinate clauses, the latter could be left branched, nested, or right branched. Left-branching is typical of the so-called 'if… then' strategy, in which the condition is stated first and then followed by the consequences, as explained by Crystal and Davy (1969: 181):

> Reduced to a minimal formula, the great majority of legal sentences have an underlying logical structure which says something like 'if X, then Z shall be Y' or, alternatively 'if X, then Z shall do Y'. There are of course many possible variations on this basic theme, but in nearly all of them the 'if X' component is an essential: every action or requirement, from a legal point of view, is hedged around with, and even depends upon, a set of conditions which must be satisfied before anything can happen.

Often, the conditional strategy has led to the accumulation of material in the initial position. Here a few examples from Æthelberht and Alfred's law (Hiltunen 1990: 32):

(6)   *Gif man wið cyninges mægdenman gelige, L scillinga gebete (Ethelbert 10)*
(If anyone lies with a maiden belonging to the King, he is to pay 50 schillings compensation.)

(7)   *Gif wið eorles birele man geligeð xii scill gebete (Ethelbert 14)*
(If anyone lies with a nobleman's serving woman, he is to pay 12 shillings compensation.)

(8)   *Gif hwa oðerne godborges oncunne tion wille þæt he welcne ne gelæste ðara ðe he him gesealde, agife þone foreað on feower ciricum (Alfred 33)*
(If anyone charges another about a plead sworn by God, and wishes to accuse him that he did not carry out any of those promises which he gave him, he (the plaintiff) is to pronounce the preliminary oath in four churches.

However, left-branching seems to be more a characteristic of modern Legal English than of the Anglo-Saxon period, because according to Hiltunen (1990: 33):