Investigating English Legal Genres
in Academic and Professional Contexts
Investigating English Legal Genres
in Academic and Professional Contexts

By

Girolamo Tessuto
In the memory of my mother and father
whose faith has brought them together again
in God’s presence.
# TABLE OF CONTENTS

Acknowledgments ............................................................................................. xi

Introduction ........................................................................................................ 1

**PART I: DIGGING THE GROUND OF CASE NOTES**

**Chapter One** ............................................................................................... 12

**Case Notes: Accounting for One Genre or Another**

Theoretical background ..................................................................................... 13

Case notes in academic and professional genre-based research .................... 13

Data and Method .............................................................................................. 15

The Corpus ........................................................................................................ 15

Methodology ...................................................................................................... 17

Results and Discussion ..................................................................................... 19

Case notes in the comparable corpora: varying discourse forms and functions .............................................................................................. 19

Group A: generic replicability ......................................................................... 20

Group A: ‘reporting’ genre with intended purpose .......................................... 22

Macro-structure ................................................................................................ 23

Economy of generic moves for intended purposes .......................................... 25

Generic move and sub-move constructing information .................................... 26

Move-order schematic mind: a glance .............................................................. 28

Narrowed / widened move boundary: self-promotion and business aspects? .......................................................... 33

Micro-level linguistic descriptions ................................................................. 34

Further linguistic features ............................................................................... 42

Group B: ‘article’-like writing with intended purpose ...................................... 43

The presentation system as the concurring criterion for (‘article’) generic content and purpose .......................................................... 44

Conventional sections: Abstract – Introduction – Body – Conclusion ............ 46

Macro-structure ............................................................................................... 51

Case-focused legal research articles? .............................................................. 54

Micro-level linguistic descriptions: metadiscourse features .......................... 54

Group B: blending discoursal structures in spite of distinct generic boundaries ............................................................................... 56
# Table of Contents

‘Case-focused research article’ in knowledge-building criteria........... 58
Conclusion........................................................................................................ 59

## Chapter Two ........................................................................................................ 61
### Writing Case Notes for the Legal Academy:
#### Anatomy of Rhetorical Sections
- Theoretical background ............................................................................. 62
- The study of rhetorical sections in the pantheon of academic genres .... 62
- Material and Method ............................................................................... 63
  - The Corpus ........................................................................................... 63
  - Methodology ....................................................................................... 64
- Results and Discussion .............................................................................. 65
  - Title ...................................................................................................... 65
  - Internal variability of the genre: combinative titles? ......................... 78
- Abstract .................................................................................................. 79
- Introduction ............................................................................................ 83
- Discussion ............................................................................................... 92
- Legal Background ................................................................................... 95
- Author’s Argument .................................................................................. 99
- Conclusion .............................................................................................. 102
Conclusion....................................................................................................... 109

## Chapter Three.................................................................................................. 111
### Metadiscourse in the Case Note Discussion Section
- Theoretical background ........................................................................... 111
- Material and Method ............................................................................... 113
  - The Corpus ........................................................................................... 113
  - Methodology ....................................................................................... 113
- Results and Discussion ............................................................................ 115
  - Transition markers ............................................................................. 117
  - The important role of if-conditionals in the genre’s argument
    and reasoning ...................................................................................... 125
  - Frame markers ................................................................................... 128
  - Endophoric markers ........................................................................... 129
  - Evidentials ......................................................................................... 130
  - Code glosses ...................................................................................... 135
  - Hedges .............................................................................................. 139
  - Boosters ............................................................................................ 141
  - Attitude markers .............................................................................. 143
  - Self mention ...................................................................................... 147
  - Engagement markers ........................................................................ 151
Conclusion....................................................................................................... 155
PART II: ABSTRACTING LEGAL RESEARCH

Chapter Four ........................................................................................ 158
Law Research Article Abstracts: Rhetorical Move-Structure
and Linguistic Realizations
Literature Review .................................................................................... 158
Research abstract in academic legal scholarship ................................ 159
Data and Method ..................................................................................... 162
Text corpus ........................................................................................ 162
Law research article abstracts: definition and purpose ...................... 164
The epistemology of published legal scholarship ................................ 165
Interdisciplinarity in published legal scholarship ................................. 167
Methodology ........................................................................................ 168
Results and Discussion .......................................................................... 169
The macrostructure of abstracts: move frequency ......................... 169
Moves: linguistic signals ................................................................. 170
Recycling and embedding moves .................................................... 175
The macrostructure of abstracts: move sequences ......................... 180
IMRD sequence .............................................................................. 182
Swalesian CARS model forming a compound in move sequences... 184
Move 1 / Move 2 compounding IMRD ....................................... 187
Other rhetorical opportunities ...................................................... 193
Questions in titles and abstracts .................................................... 202
The microstructure of abstract moves: linguistic realizations .......... 209
Personal forms ................................................................................... 209
Verb forms co-occurring with I, We, The author in different structures ......................................................... 211
I/We and verb forms realizing different rhetorical move structures .... 212
Other evidence of authorial reference ............................................. 218
Other less-explicit items of author presence ................................... 218
Impersonal forms ............................................................................... 221
Conclusion ........................................................................................... 225

PART III: ASSESSING AND KEEPING FACE IN LEGAL RESEARCH

Chapter Five .......................................................................................... 230
Evaluation and Politeness in Law Book Reviews
Literature Review .................................................................................... 231
Material and Method ............................................................................... 233
The Corpus ........................................................................................ 233
Methodological procedure .............................................................. 234
# Table of Contents

## Results and Discussion
- Positive, negative and mitigated evaluations: frequency distribution ............................................................................................................. 237
- Positive evaluations across book review sections ........................................ 239
- Opening sections ........................................................................................ 239
- Intermediate sections ............................................................................... 242
- Closing sections ....................................................................................... 244
- Negative evaluations across book review sections ..................................... 246
- Taking overt personal responsibility for the criticism ................................ 248
- Taking no personal responsibility for the criticism ..................................... 251
- Mitigating negative evaluations: opening, intermediate and closing sections ............................................................................................................. 252
- Opening sections ....................................................................................... 253
- Intermediate sections: Praise-criticism / criticism-praise and other patterns ............................................................................................................. 254
- Hedges ...................................................................................................... 257
- Other attribution ....................................................................................... 258
- OTHERS ................................................................................................. 260
- Inclusive we v. exclusive we ..................................................................... 260
- Indefinite generic subject one ................................................................. 263
- Questions .................................................................................................. 265
- Apology ................................................................................................. 267
- Suggestion .............................................................................................. 268
- Closing sections ....................................................................................... 269
- Conclusion ................................................................................................ 271

## APPENDICES
- Appendix 1: Case Note Corpus ............................................................... 276
- Appendix 2: Law Research Article Abstract Corpus............................... 280
- Appendix 3: Law Book Reviews ............................................................. 282

## BIBLIOGRAPHY ......................................................................................... 284
ACKNOWLEDGMENTS

I am indebted to my colleagues of English language studies, faculty assistants and informants for their personal help in writing this book.

First, I am grateful to Vijay Bhatia (Retired Professor - Department of English and Communication, City University of Hong Kong) and President of the Asia-Pacific LSP and Professional Communication Association, for his intellectual support and critical comments given to my chapters in this book, despite his recent health problems. I am also particularly grateful to Rita Salvi, Professor of English Linguistics (University of Rome ‘La Sapienza’) for the critical reading she gave to my chapters, and the invaluable conversations we had about how this book works.

Of course, I owe a debt to Stephen J. Spedding (Principal Law Faculty Language Assistant), who has devoted time and patience to proofreading and formatting material in this book. The Team at Cambridge Scholars Publishing has been excellent in their advice, assistance, and attention to detail.

Grateful acknowledgment is made to all authors and publishers of copyright material which appears in this book, and for permission to reprint material for my research purposes. Every effort has been made to trace and contact copyright holders prior to publication but this has not been possible in every case.

—The Author
INTRODUCTION

As I introduce the subject covered in this book, which has been both a personal and intellectual enterprise, a short literature review suffices to reveal just how the law has aroused the interest of a number of linguist scholars up to the present.

A glance at legal discourse studies

Scholars have devoted time and energy to fine-grained descriptions of legal language, which conceals the diversity of legal discourse shaped across a multitude of written and oral genres. Apart from the pioneering examples of English legal language as a complex, yet still interesting historical, social and linguistic phenomenon (Mellinkoff 1963), or as a legal language ‘register’ (Crystal and Davy 1969), much of the linguistic work done in this area of legal discourse analysis in English has naturally centred on different aspects of legal textuality (e.g. Palmer and Pearce 1983; Danet 1984; Goodrich 1987; Kurzon 1994; Maley 1994; Trosborg 1995, Tiersma 1999), or focused on the structural and lexico-grammatical features instantiated in specific genres of legal discourse (Bhatia 1993, 1994). The list of language and discourse-based studies is by no means exhaustive and I will not burrow through the ‘forest’. The list, however, shows that each of them has importance for highlighting variation in the use of English legal language and discourse manifested in different situational genres, where the intriguing interface between law and language is deeply involved.¹

¹ However, as a result of the interest in the intersections of law and language, research into semiotics (e.g. Jackson 1994; van Schooten 1999) and forensic linguistics (e.g. McMenamin 1993; Gibbons 2003) add to the interdisciplinary field of legal linguistics (Mattila 2006; Salmi-Tolonen 2008), and legal translation (Garzone 2002, 2007; Gotti and Šarčević 2006; Šarčević 2009; Cao 2007, among others). Such interdisciplinary focus is also evident in the recently published encyclopedic work, The Oxford Handbook of Language and Law (Tiersma and Solan 2012), which includes past and present research into the relationship between linguistics and law through collected papers by expert linguists and lawyers. Importantly, the firm interdisciplinary commitment to semiotics and law coincides with the publication of the International Journal for the Semiotics of
Yet, as early as 2000s, other vibrant investigations have appeared in the linguistic research landscape, whether as individual books or edited collections. Central to these stimulating works has been the use of text, discourse and genre analytical as well as corpus linguistics tools to analyse the ways academic, professional and institutional contexts of legal discourse are accounted for by community and discipline-specific practices and procedures influenced by cultural and other features.

For a start, analytical insights into modality enacted in English legal texts are offered in the studies of Gotti (2001) and Garzone (2001), while the question of if-conditionals in modern English legal texts is offered in the study of Facchinetti (2001). Moreover, coinciding with his – indeed innovative - notion of Specialized Discourse, Gotti (2003, 2005, 2008) examines linguistically and pragmatically the distinctive properties of English legal discourse, and addresses identity issues in legal texts (Gotti 2011). Williams (2005, 2006, 2009) focuses on legal English in terms of verbal constructions and fuzziness in prescriptive texts, alongside the changes made to such texts over the years and the possible future changes to legal textuality. The author also speculates on the simplification of legal language as advocated by the guidelines of the worldwide Plain Language Movement. Taking a dynamic view of the real and ideal written discourse in academic, professional and institutional contexts, Bhatia (2004) convincingly advocates a critical approach to the study of genre (referred to as Critical Genre Analysis - CGA), a view that the author readily assumes in his subsequent works (Bhatia 2008, 2010, 2011). In the latter elaborations, the example of colonization of arbitration practices by litigation becomes the author’s analytical focus on interdiscursivity and asymmetrical power relations. In the framework of genre theory, the process of colonization comes to describe the invasion of the integrity of arbitration by litigation with the resulting appropriation of generic resources. Colonization practices thus provide the source in which to appreciate the dynamism in accounting for legal discourse and its representation in genre analysis. Indeed, inquiries into arbitration discourse manifested in multilingual and multicultural contexts are still to be found in earlier edited papers (Bhatia, Candlin, Gotti 2003), and further extended in the legal discourse of today’s ADR practices and procedures appearing in recently edited papers (Bhatia, Candlin, Gotti 2010; Bhatia, Candlin, Gotti 2012), where textual, discourse and ethnographic analytical data provide explanation of some of the issues that lie at the heart of Law through a series of illuminating collected papers (e.g. Wagner, Werner, Cao 2007; Wagner and Broekman 2011). As again, this list is by no means exhaustive.
dispute resolution discourses across cultural and legal systems. The positive attribute of these studies adds to the quality of other edited papers (Bhatia, Garzone, Degano 2012), dealing with the multilingual arbitration award as a discursive genre. Clearly, insightful research also resonates with other edited volumes, variously dealing with specialized genres (Bhatia and Gotti 2006), legal concepts across systems and cultures (Bhatia, Candlin, Evangelisti 2008), legal discourse across languages and cultures (Gotti and Williams 2010), or legal discourse and communication behaviour which shape professional identities (Bhatia and Evangelisti 2011).

Although, as yet, such list of the studies conducted since 2000s is not exhaustive, it shows that there are important variations in the construction, interpretation and use of legal discourse manifested in the context of academic, professional or institutional activities of genre writers. In many such approaches to legal discourse, the notion of genre is one which offers a socially informed theory of legal language, and the ways rhetorical patternings of specific genres construe varying personal and institutional purposes of writers within the ‘broader social context’. The list therefore provides evidence of the vitality in advancing knowledge in the field among applied linguists, whose commitment has been to respond continuously to an agenda that the law sets in an increasingly globalized world. And while discourse and other analysts have also paid attention to how the law itself and the actors within the legal system conceive of relations between discourse, power and ideology (Wagner and Cheng 2011; Bhatia, Hafner et al. 2012, among recent ones), the analyses of today’s arbitration practices manifested through the diversity of legal discourses and genres are just a token example of the need to respond to such an important agenda.

**Scope of this study**

The centrality given to discourse and genre analytical perspectives of legal language in the review above provides the framework for this study. Prior to describing the structure of this book, I wish to define the scope of this study by providing a grounded understanding of the nature and operation of genre that creates academic and professional legal discourse in this research.
Legal genres as social phenomena

Despite the many insightful descriptions of genre grown out of genre theories over the last twenty years or so (Martin 1984, 1992, 1998; Bazerman 1988; Bhatia 1993, 2004; Eggins 1994; Orlikowski and Yates 1994; Berkenkotter and Huckin 1995; Freedman and Medway 1994; Devitt 2004; Swales 1990, 2004; Fairclough 2003, 2004; among others), different emphasis has been given to text or context and the resulting conventions in the three main traditions of genre studies (i.e. ESP, Sydney School, North American New Rhetoric). In the ESP tradition, in particular, scholars (Swales 1990, 2004; Bhatia 1993, 2004; Berkenkotter and Huckin 1995) rest on the idea that genre as a social construct not only includes form or structure, but also content, situation, context and communicative purposes, and the varying situations, contexts and purposes account for the natural evolution of the discourse communities in which social genres are realized. Correspondingly, genres are not static, but are dynamic instances which result from socially recognized ways of using language in perceived rhetorical contexts and actions.

With a focus on what constitutes genre in the reviewed approaches, the analysis of legal discourse that follows therefore relates to socially recognized genres as whole texts, or parts of texts, and the social motivation of genre includes the functionally-related moves and steps (Swales 1990, 2004; Bhatia 1993) or staging of the content (Martin 1984, 1992, 1998; Eggins 1994). In this framework, the connection between the recognized system of move or staging of content and lexico-grammatical patterning provides the criterion for identifying texts as similar or different. Consequently, the presence or absence of common communicative forms used to achieve a particular communicative purpose/goal (or set of communicative purposes/goals) is seen as central to the analysis of academic and professional genres in the context of disciplinary practices shaped by genre writers. This way then, investigating legal discourse proves an invaluable way of looking at regularities/irregularities of form, purpose and situated social action in the legal genres, whose dynamism also coincides with hybridity forms.

However, the nature and operation of legal genres can also be seen outside move-stage rhetorical patterning, by investigating issues of addressivity and audience in texts which establish complex, social interactions among the participants involved. Here, the (micro) analysis of legal discourse patterns proves an interesting way of looking at the interpersonal meanings expressed through a range of criticism and praise (Hyland 2004) and politeness features (Brown and Levinson 1987), or
through a range of metadiscourse features (Hyland 2005a). These analytical approaches not only contribute to rhetorical understandings of socially recognized language use in texts, but also shed light on the preferred patterns of socially situated discourse practices in the legal genres.

**Legal genres in inter/disciplinary culture-marking schemes**

In addition to the ways that methodological approaches to social legal genres influence the creation of legal discourse in this study, legal genres provide the platform from which to generate new knowledge in the context of a disciplinary and interdisciplinary culture of law.

Since the late 1980s, several authors have studied the ways knowledge is created in professional academic writing across the disciplines (e.g. Bazerman 1988, 2000; Becher 1987, 1989; Myers 1992a/b; Becher and Trowler 2001; Fahnestock 2005) by focusing on community in the social construction of disciplinary knowledge. Here, disciplines emerge as scholarly communities where the body of knowledge meets various defining criteria - i.e. assumptions, concepts, epistemologies, methods, theories – which account for disciplines to be distinguished from one another. In addition to such premise of knowledge formation in the disciplines, research into disciplinary cultures on genres has laid emphasis on “discourse community’s norms, epistemology, ideology, and social ontology” (Berkenkotter and Huckin 1995: 21), “representations of legitimate discourses which help to define and maintain particular epistemologies and academic boundaries” (Hyland 2004: 11), or “‘professional goals and objectives’, ‘generic norms and conventions’, and professional and organizational identity”” (Bhatia 2004: 126). The common features suggested in the latter approaches are the distinctive rhetorical practices constructed and negotiated by different disciplinary communities, where the social context of language use defines the different epistemological, ideological, ontological, conventional and organizational features that characterize different academic/professional communities and disciplines.

In this book, investigating legal discourse proves yet another invaluable way of looking at academic and professional genres as builders of knowledge within the law in the context of a disciplinary culture. Disciplinary culture is a key dimension of genre analysis here as it helps legal writers to capitalize on epistemology, ideology, and identity features that support shared knowledge practices in the genres. While culturally-situated practices reveal the different assumptions the writers make about their texts, ultimately they are crucial in securing rhetorical objectives in
the genres since they channel the efforts of writers into systematic pursuit of knowledge advancement, albeit at various levels of disciplinary inquiry.

Yet, the reference to such disciplinary culture of law needs to move from a single, conventionally rigid, description of law disciplinarity to one which is descriptive of collaborative research and becomes part of a pragmatically interdisciplinary engagement. Such engagement, observed particularly in the abstract genre, is both a knowledge-making goal and research strategy, in that a set of epistemological and social forces allows the law to have some area of proximity to other disciplines. The latter, then, shade and cross into each other by constituting new, multi-modal knowledge space and writer role beyond the exclusive boundaries of law disciplinarity. Specifically, the boundary work of interdisciplinary research is one which not only provides the focus on methodological borrowing from other contributing or neighbouring disciplines and its application to law, but also the focus on researchable topics in response to the external demands of society. Thus, for instance, the interdisciplinary understanding of Criminology or Transitional justice in empirical research article abstracts requires identifying bits of knowledge and modes of thinking from relevant disciplines in order to produce a more comprehensive view of the problem. While these collaborative results serve epistemic and ontological goals necessary to organise and construct information in the generic writing practices, they are also contingent upon the wider, emerging contexts of legal research, and as a consequence create a purposeful organizational unit of interdisciplinary law in specialized knowledge and domain.

Clearly, such collaborative understanding of interdisciplinarity poses problems to “the homogeneity of disciplinary groups and practices” in knowledge-generating activity (Hyland 2004: 8), or similarly to the nature of academic disciplines (Becher and Trowler 2001, among others). Despite these important theoretical premises, there is evidence that interdisciplinarity efforts are far more common in contemporary socio-

\[ In this context, the value of interdisciplinary understandings extends to what are commonly known as Law and Economics, Law and Sociology, Law and Religion, Law and Medicine, etc. No doubt, such dual approaches emphasise the various forms taken by law in a variety of social formations, and equip the analyst with the perspective that is relevant to pose questions. But where law is placed at the meeting ground with language, as I am concerned with here, the dual approach equips as yet with the perspective necessary to pose questions that are socially relevant to the fields, and provides a dialectical understanding of the complex interaction between language functions and their expressions in the social reality of law. \]
legal studies and legal education (Osborn 2001; Cownie 2004, among others) as well as law journal policies, and the nature of interdisciplinary law is often described as a disciplinary continuum (Harwell 2002; Coffin et al. 2003).

To the extent that interdisciplinary writers allow for their research project to conform to a collaborative rather than obsequious, fawning knowledge engagement (as a dog does by wagging its tail), they must recreate the practices, processes, and values from other disciplines, insofar as the latter are consistent and compatible with locally organized conditions and purposes of the writers’ own culture framework. Culturally-driven consistency thus provides the key to institutionalizing and legitimizing interdisciplinarity beyond the disciplinarity limits of the law, and becomes the essence for an account of academic law as an evolving intellectual construct in knowledge structures and societal values.

The structure of this book

These ways of looking at the legal genres now bring me to outline the structure of this book. *Investigating English Legal Genres in Academic and Professional Contexts* situates English legal language research in the linguistics (discourse and genre) analytical framework. As such, it is inspired by the recent research across the disciplines, showing that discourses and genres are different and have important implications for genre writers in their academic, professional and institutional roles. The central goal pursued in this book is to provide a corpus-based, comprehensive linguistic description and interpretation of selected English legal genres (i.e. Case Notes, Research Article Abstracts, Book Reviews), by surveying the distinctive argument, content, structure, and interactions revealed in the construction and use of the academic and professional written genres. The series of detailed analyses offered in this volume provides the platform on which the genres are examined for their features of variability or standardization created by lexico-grammatical and discursive patterns, and for other micro-function linguistic patterns which relate the genres to their interpersonal or other contexts and meanings. The findings of this ‘article-styled’ research are discussed in functional terms from (meta)discourse, genre and other methodological perspectives in order to understand how legal genre writers position themselves in the academic and professional community and discipline. The varied (macro/micro)representations of genre approaches taken in this book therefore seek to expand knowledge
of the chosen genres that remain largely under-investigated in discourse and genre studies within and across academic disciplines.

This book comprises three Parts. Part I consists of three Chapters where the most elaborate material is researched into Case Notes produced in academic and professional contexts. As a result, these Chapters form the backbone of the volume. The reason for devoting a wider research space to Case Notes is because they are one of the most prominent legal genres and hence most used by all, academics as well as professionals, in addition to Research Articles. The elaborate treatment in the three Chapters, instead of one as in other analyses here (however important and insightful they may be), therefore demonstrates the importance of the Case Note genre.

In Part I, Chapter 1 begins by exploring how the global patterns of rhetorical features of the Case Note genre contemporaneously construe similar and different contexts, and therefore recognizable generic identities in academic and professional writing activities. Drawing upon this research into global rhetorical structure, Chapter 2 then provides a more detailed examination of the genre in academic writing contexts, by revealing how the various rhetorical sections are constructed and used together with features of content and structure. Chapter 3 moves away from descriptions of generic content and structure to address the interpersonal dimension of academic discourse constructed in the distinguishable Discussion section of the Case Note through the metadiscourse typology. This Chapter therefore looks at the ways the social context of language use articulates and constructs interactions between writer and reader.

Part II provides a different avenue of generic analysis by surveying the ‘abstracting’ strategies in Research Article Abstracts. Chapter 4 thus examines the discursive (move-based) and lexico-grammatical patterning revealed in abstracts, and highlights the relevant features of generic variation in academic writing contexts.

Part III closes the research in this volume by focusing on the Book Review academic genre in Chapter 5. Here, I explore evaluative language as an important rhetorical site which helps legal writers organize legal discourse for the academy and express their values and those of the widest community readership. Evaluative language is investigated in combination with politeness strategies, which expand on the ideational perception of academic qualities and values in the evaluative genre by addressing positive and negative ‘face’ in socially and pragmatically-based conventions.

This research, conducted on context-specific corpora, is meant to be descriptive rather than prescriptive in character. Attention to details of the descriptive analyses is meant to represent the selected genres more
precisely in an attempt to demonstrate how the genres create legal discourse in published legal scholarship. This book seeks to show analytical insights in systematic and clear language, and can be of interest to native and non-native readers, whether involved in English applied linguistic research or disciplinary writing instruction at both undergraduate and postgraduate levels. Any imprecision or omission in this book are mine.
PART I:

DIGGING THE GROUND OF CASE NOTES
CHAPTER ONE

CASE NOTES:
ACCOUNTING FOR ONE GENRE OR ANOTHER

This book starts off with the ‘expert’-authored Case Note of the legal academy and profession, one which is the most perceptible to my eye as an analyst of the genre in the law discipline. My principal concern here is with the discursive conventions and practices that construct and display the social roles of writers in this legal genre. Grounded in the Western writing culture and law tradition, ‘expert’ case notes published in English language law journals are important on two main accounts: firstly, they provide a valuable source for the widest readership to share information about decided cases in the Common Law and other territorial jurisdictions; secondly, their varying rhetorical organization becomes an interesting tool for my role as a genre analyst. As a result of the varying rhetorical activities, case notes reflect the imperatives for writing in the discursive order of this genre, as derived from the demands of disciplinary practices outside the ‘mature’ student body. Yet, unlike Research Article Abstracts and Book Reviews examined later in this book, the genre of the legal case note has remained at a standstill in the academic and professional research landscape for some years.

In this Chapter, I therefore examine the rhetorical and linguistic strategies employed in case notes to determine how writers situate themselves in the law disciplinary community by achieving institutional purposes. I should first acquaint the reader with the theoretical context of this analysis and indicate the empirical material and research method, before I undertake the analysis and discussion of findings and draw some preliminary conclusions.

1 In the Italian law tradition, for instance, expert-written case notes are best known as note a sentenza.
Theoretical background

Case notes in academic and professional genre-based research

Since the 1980s theoretical insights have been provided into a variety of written academic and professional legal genres associated with receptive and productive conditions of use. The earlier works by Bhatia (1983, legislation; 1993, legal genres), Kurzon (1985, briefs), Tiersma (1986, contracts), Howe (1990, legal problem questions), Iedema (1993, case briefs/case notes), Beasley (1994, legal problem questions), Bowles (1995, newspaper law reports), Trosborg (1995/1997, contracts), Tiersma (1999/2010, legal language and technologies of communication), Feak et al. (2000, law review notes), and Salvi (2002, legal language in case notes) add to other insightful and stimulating works. In such works, the focus has been on extending previous knowledge of specific written legal genres, such as legal problem question writing (Bruce 2002, Jensen 2002, Tessuto 2011a), newspaper law reports (Badger 2003), legal essay writing (Tessuto 2011b), or otherwise extending research to other new genres such as the barrister’s opinion (Tessuto 2006; Hafner 2008, 2010), or the arbitral award in national and international contexts of legal procedures (Tessuto 2008a, Tessuto 2012; Hafner 2011; Bhatia, Garzone, Degano 2012).

To the best of my knowledge, the genre of the legal case note/brief has only been part of the academic research landscape formed by the three isolated but helpful works of Iedema (1993), Feak et al. (2000) and Salvi (2002), and no other linguistics research output leading to new knowledge in the field has increased since. In order to make a passing reference to this research in the disciplinary genre I am concerned with here, the focus in Iedema’s (1993) analysis has been on the identification of the generic structure and conventions (moves) of legal case studies, by comparing the instructions received from the course tutor and two student case notes. In Feak et al.’s (2000) analysis, by contrast, the focus has been on the introductory sections of published student-written legal research papers.

Interestingly, however, the dynamism of today’s professional practices outside the law discipline shows that the term case note is also used in the health care discourse study of Sarangi and Brookes-Howell (2006) to refer to “a documentation of the contractual relationship between the patient and the practitioners” (2006: 199). This reference therefore allows for the naming and function of the genre to become an essential part of interdisciplinarity approaches to the discourse procedures.
which the authors label as law review Notes, in line with the terminology used in the field (2000: 197-199). The results of their study bear similarities to, and differences from, the Introductions found in the research article genre, as described in Swales (1990). In Salvi’s (2002) analysis, the focus has been on the intertextual dimension of legal English teaching, where a recorded instance of case note is used by the author in her intertextual approach to English legal language.

Outside genre-based research studies, however, the practical profile of case notes is currently gained from university websites which provide online guidelines for students to write effective, clear and professional law case notes as part of an academic assessment item and skills learning. In this context, the American Casenote Legal Briefs publication series by AspenLaw Studydesk, for instance, provides students with practical guidelines for briefing assigned cases. It does so by showing the basic facts and decisions from the text of the actual opinions handed down by the courts in a variety of law areas. In addition, there are legal writing textbooks (e.g. Volokh 2010; Fajans and Falk 2011) which help native law students to either master the writing of notes as part of their UK, US or other curriculum, or to participate in the ‘write-on competitions’ in US law schools, with the ultimate purpose of gaining membership on a (US) law review publication. Law students can thus confidently turn to such textbooks for reliable information regarding the techniques for success in the ‘write-on’ competition, and therefore write a winning submission paper.

The value of legal writing materials, covering case notes and other types of legal genres, has not escaped the attention of applied discourse and genre analysts, integrating different research epistemologies and methodologies in the analysis of academic and professional legal discourse (Candlin et al. 2002a), or developing resources for legal writing (Candlin et al. 2002b). In their invaluable review of the textbooks used in EALP teaching, Candlin et al. (2002b) discuss the systems of legal genres, and convincingly argue for the usefulness of legal writing textbooks which analyze the purpose, structure and content of this important genre. The authors (Candlin et al. 2002b: 304-305) refer to this genre as a case brief rather than case note, as used in British legal terminology.

In an attempt to expand knowledge of this manifestly neglected genre in academic and professional legal discourse research, I shall focus on the ‘expert’-authored case notes and examine how the (move) rhetorical and linguistic strategies are used to frame the writers’ membership to the law discourse community which pursue particular goals or purposes. In an attempt to reveal how the patterns of rhetorical features in the genre
construe the relevant communicative contexts, I will therefore look at the
discursal and generic-level patterns of variability/standardization in the
socially-situated writing of the genre.

Data and Method

The Corpus

For the current study, a synchronic corpus of 70 electronically retrieved
case notes (CNs) shown in Table 1 were randomly selected in a set of
samples from four British Online Journals published in the 2009-2011
*Netherlands International Law Review* (NILR), and *European
Constitutional Law Review* (ECLR). A list of case note titles and journal
source is provided in Appendices. Table 1 also shows that not many CNs
were included in ECLR in a given year of publication, and the result was
that a lower than 20 (but still sufficiently valuable set of) samples was
decided for collection in ECLR.

<table>
<thead>
<tr>
<th>Journal</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>The Modern Law Review</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Blackwell Wiley Online</td>
<td>4</td>
<td>7</td>
<td>9</td>
<td>20</td>
</tr>
<tr>
<td><em>Ecclesiastical Law Journal</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cambridge Journals Online</td>
<td>5</td>
<td>7</td>
<td>8</td>
<td>20</td>
</tr>
<tr>
<td><em>Netherlands International Law Review</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cambridge Journals Online</td>
<td>8</td>
<td>9</td>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td><em>European Constitutional Law Review</em></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cambridge Journals Online</td>
<td></td>
<td>7</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>17</td>
<td>30</td>
<td>23</td>
<td>70</td>
</tr>
</tbody>
</table>

Table 1. Number and publication year of case notes collected from
each Journal and total number of case notes.

The method for corpus selection reflects the principles of reputation
and accessibility of the journals (Nwogu 1997) committed to publishing
legal scholarship in a range of law topics, and interactively proliferating e-
knowledge resources for a variety of international focused readers. In the
case of ELJ, for instance, we read about the journal scope, which is to
focus on “all aspects of ecclesiastical law. Particular emphasis is given to
the regulation of the Church of England and worldwide Anglican
Communion, but the range of coverage includes comparative studies of the
laws of other faiths and of the interface between law and religion in a
global perspective” (ELJ – Home page). Here, interdisciplinarity aspects of the law discipline come to the fore with the coverage of the case notes in this journal including the interface between Law and Religion in a national and global perspective.

Allied with the range of coverage included in the topics, corpus journals featured the same academic genres as used in other on-line disciplinary journals – namely, Editorials, Research Articles, Book Reviews and Review Articles. In addition, there were sections devoted to other variously labelled genres – namely, Parliamentary Reports, Conference Reports, Legislation, Comments, and Case Notes. In terms of naming, different nomenclatures were sometimes used for Case Notes in the corpus journals. Unlike ELJ and ECLR adopting the consistent label of Case Note in both the Table of Contents and cover page of the published texts, MLR variously used the labels of Cases or Case Notes, while NILR went some way beyond such labels by adopting the name Hague Case Law – Latest Developments.3

Case notes were thus chosen for collection from both academic and professional strands of the law. In the academic strand of the writing source, case notes published in MLR were written by authors who were English native speakers affiliated to UK-based law institutions in junior and senior academic positions, while those published in ECLR were written by non-native speakers affiliated to European (non-English-speaking) law institutions also in junior and senior academic positions. In the professional strand of the writing source, case notes published in ELJ were written by English native professional authors and appeared under editorship, while those published in NILR made their appearance only

---

3 As a personal aside, however, a glance at the UK Supreme Court blog (http://ukscblog.com/) shows that not only are different nomenclatures used for Case Notes, labelled therefore as Case Comments, but also that networked technologies are highly valued in the law of practice since Case Comments there are automatically linked with the Supreme Court blog entries. Such ‘legal blog posts’ (used for News Articles and Case Previews as well) not only provide direct access to the content of Case Comments written by law practitioners (usually barristers), but also receive comments on those topics that most attract the interest of other legal practitioners or scholars. To the extent that such ‘legal blog posts’ provide readers with access to the content of the Case Comment without the investment of time in surfing through traditional law e-journals, the networked technology is therefore a clear example of the speedup in the amount of informal, live/on-line communication among community readers and a clear opportunity for the writers to bypass publication in such e-journals. Legal blogs form the subject of a separate investigation by this author.
under non-native professional editorship, outside author’s name. In all these instances, the criteria of ‘nativeness’ and ‘non-nativeness’ as well as affiliations were established by the authors’ details appearing at the beginning or end of the case notes, and confirmed by email personal communications with the journal boards. Clearly, as is customary of any journal practice, both native and non-native submissions underwent editing, as further confirmed by such e-mail communications. It becomes clear that, as a result of the academic/professional writing source in the native/non-native divide, the sources of evidence in the current corpus provide an understanding of representative texts as ‘national’ case notes situated in the UK context of law (ELJ, MLR), and ‘European’ case notes situated in the international context of law (NILR, ECLR).

Based on these criteria and requirements for corpus selection, different quantitative data were obtained in each set of CNs in the journals using the software WordSmith 5.0, as reported in Table 2. The data source for this study was a 188,216 word corpus of published CNs, excluding titles, footnotes and bibliography, where applicable.

<table>
<thead>
<tr>
<th></th>
<th>TOTAL</th>
<th>ELJ</th>
<th>ECLR</th>
<th>NILR</th>
<th>MLR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tokens</td>
<td>188,216</td>
<td>5,870</td>
<td>58,243</td>
<td>4,776</td>
<td>119,327</td>
</tr>
<tr>
<td>Types</td>
<td>9,871</td>
<td>1,403</td>
<td>4,862</td>
<td>1,036</td>
<td>7,673</td>
</tr>
<tr>
<td>Type/Token ratio (TTR)</td>
<td>5.37</td>
<td>24.32</td>
<td>8.57</td>
<td>22.63</td>
<td>6.57</td>
</tr>
<tr>
<td>Standardised TTR</td>
<td>37.31</td>
<td>39.82</td>
<td>36.38</td>
<td>35.95</td>
<td>37.70</td>
</tr>
<tr>
<td>Mean word length (in characters)</td>
<td>4.97</td>
<td>5.00</td>
<td>5.03</td>
<td>5.18</td>
<td>4.93</td>
</tr>
<tr>
<td>Sentences</td>
<td>4,919</td>
<td>213</td>
<td>1,596</td>
<td>170</td>
<td>2,940</td>
</tr>
<tr>
<td>Mean (in words)</td>
<td>37.38</td>
<td>27.08</td>
<td>35.53</td>
<td>26.94</td>
<td>39.74</td>
</tr>
</tbody>
</table>

Table 2. Different quantitative data in each set of the case notes and totals as retrieved from Scott WordSmith Tool 5.0.

Footnotes were absent in two journals (ELJ, NILR), but were used extensively in the other pair of journals (MLR, ECLR).

Methodology

The analysis reported in this study offers explanatory linguistic descriptions of the writers’ communicative practices investigated along macro and micro-level analytical lines.
In keeping to the relevance of genre theory for macro-level descriptions, I sought to determine the organizational macro-structure realized in journal case notes in order to provide an understanding of their rhetorical similarities and differences. For this, I looked at the case note genre in the analytical perspectives of typified rhetorical action resulting from recurrent social situations (Miller 1984; Bazerman 1994), regularities of staged, goal-oriented social processes known as schematic structure or generic structure (Martin 1984, 1992, 1998; Eggins 1994), or as consistency of communicative purposes (Swales 1990; Bhatia 1993), the latter description however incorporating the systemic notion of genre as a schematic or generic structure. While the most important feature of these approaches is the emphasis on conventions, reliance on genre theories meant other theoretical perspectives which involve the dynamic rhetorical patterning of the genre “that can be manipulated according to conditions of use” (Berkenkotter and Huckin 1995: 6), or similarly involve the notions of flexibility and innovation of genre (Bhatia 1997a). Where flexibility and innovation are the main issues in genre theory, the result is that they “create a tension between generic integrity, on the one hand, and the possibility of appropriation of generic resources to create new forms” (Bhatia 2004: 112), and therefore become part of a more comprehensive exploration of what Bhatia (2004) calls the social space of genre.

As a result of this wider (social) perspective of genre analysis, I sought to theoretically frame my study in the multidimensional three-space model for the analysis of legal discourse as genre, by integrating textual space, social space, and social professional space. This framework implied the evolutionary perspective of a Critical Genre Analysis (Bhatia 2004, 2008, 2010) accomplished in three stages (textualization, organization and contextualization), in Bhatia’s terms. Yet, awareness of such evolutionary perspective in the social dimension of genre brought with it an appreciation of the relationships with other texts and discourses (Bakhtin 1981; Fairclough 1992; Candlin and Maley 1997; Maley 1994) in the analysis of case note writing. In this framework, the rhetorical move-structure was analyzed through a manual textual reading of corpus case notes. Rhetorical macro-structure analysis was complemented with micro-level linguistic descriptions of journal case notes in the two comparable

---

4 Yet, as a result of the way the use of one genre may have or depend on the use of other interrelated genres, genre theorists have described genres as repertoires, colonies, chains, sets or systems, and ecologies (Bazerman 1994, 2004; Bhatia 2004; Devitt 1991, 2004; Fairclough 2004; Orlikowski and Yates 1994; Spinuzzi 2004).