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## INTERSECTIONS BETWEEN LAW AND LANGUAGE: DISCIPLINARY CONCEPTS IN SECOND LANGUAGE LEGAL LITERACY<sup>1</sup>

**Abstract.** International mobility among graduate students of law presents unique challenges for the teaching and learning of Legal English. Master of Laws (LL.M.) students, for example, often bring both prior legal training and professional experience from their home jurisdiction to their graduate studies abroad. Taking a closer look at the experience of these students as they engage with genres associated with another legal system provides insight into broader issues of intersections between language and content in English for Legal Purposes. This article draws on case studies of four LL.M students from China and Saudi Arabia, a civil law jurisdiction and an Islamic law jurisdiction, respectively, as they learn to read and write common law genres in the United States. Considering students' experiences with these texts, the article outlines a potential framework for understanding the role of disciplinary concepts in second language legal literacy development. Specifically, the article elaborates a tentative taxonomy for disciplinary concepts that distinguishes between discourse-relevant concepts and discourse-structuring concepts in considering the interaction between language and content in ESP and CLIL for law.

*Keywords:* Disciplinary concepts, English for Legal Purposes, threshold concepts, transnational legal education

In scholarship on legal language, it is recognized that law and language are deeply connected (see e.g. Bhatia, 1989; Northcott, 2013; Solan & Tiersma, 2012; Tiersma, 1999). Moreover, as Sierocka (2014) and Hoffman (2011) point out, legal language must also be understood in its cultural context. For teachers of English for Legal Purposes (ELP), this presents a dilemma of how to ensure that instruction is both informed by an awareness of these connections and cautious of the potential for overstepping disciplinary boundaries. In considering the role of specialist disciplinary knowledge in ELP, White (1979) demonstrates the dangers of focusing on the linguistic comprehension of the text without taking into account the assumptions that expert legal practitioners bring to it. Noting important differences

between the types of questions prepared by a solicitor and an EFL teacher with respect to the comprehension of two legal texts, White argues that if we ignore the methods of study used in the discipline, we risk confusing students. Further highlighting this concern, Northcott (2013: 222) advocates “more research to link the advice given in the books on legal method and guides to the law produced by legal academics and professionals [...] with sound linguistic evidence.”

While efforts have been made to link language and content in ELP (see e.g. Bruce, 2002; Hoffman & Tyler, 2008; Liebenberg, 2012), some have also warned against crossing disciplinary boundaries. As Howe (1993: 152) cautions, “If we stray into the territory of legal concepts, then we are on lawyers’ land, and must beware.” Drawing on Davies (1987), Howe distinguishes between “the factual and linguistic knowledge demanded by the text” and “the knowledge of legal concepts, which enables readers to fit their new reading into their framework of law” (1993: 152), recommending that teachers of ELP focus on the former.

This separation between linguistic form and legal concepts mirrors a broader tendency in traditional SLA in which the teaching of forms is privileged before meaning (van Compernelle, 2014). As Hoffman (2011: 4) points out, one potential danger with this approach is that “students try to produce formally authentic documents, but they are missing much of the background knowledge that would let them seem substantively authentic to members of the target discourse community.” Hoffman’s concern resonates with current sociocultural perspectives on second language learning. As van Compernelle (2014: 18) argues, “when conceptual meanings are foregrounded, learners are given access to a more systematic and thoughtful orienting basis (i.e. motives) for choosing between forms.” In other words, students need not just separate understandings of legal concepts and linguistic forms, but also an understanding of the relationships between them.

### **What is a legal concept?**

In considering the relationship between legal concepts and linguistic forms, this article elaborates a tentative taxonomy for disciplinary concepts proposed in Hartig (forthcoming). Hartig (forthcoming) argues for a distinction between two categories of disciplinary concepts: discourse-structuring concepts and discourse-relevant concepts (see Table 1 below). Discourse-structuring concepts include broad principles that structure discourse and argumentation within a discipline. Although such concepts are not typically

mentioned overtly in legal texts, they shape a wide range of genres within the discipline. These concepts form the tacit assumptions held by expert practitioners as they read and write disciplinary texts. Much like Meyer and Land’s (2006) “threshold concepts,” these concepts “represent how people ‘think’ in a particular discipline, or how they perceive, apprehend, or experience particular phenomena within that discipline” (Meyer & Land, 2006: 3). Hoffman and Tyler (2008), who emphasize the “common law rubric” (often referred to elsewhere as IRAC, or “Issue-Rule-Application-Conclusion”), represents an approach that integrates discourse-structuring concepts.

Discourse-relevant concepts, on the other hand, are much more overt. Unlike discourse-structuring concepts, which tend to stay “behind the scenes,” discourse-relevant concepts are lexical concepts (Lantolf & Thorne, 2006) that appear directly in the text. These concepts are often quite salient and are more easily identified by students as key terms. Discourse-relevant concepts include both the major principles from specific areas of law that are most often included in legal vocabulary lists and legal dictionaries (e.g. *mens rea*, consideration) as well as more local, context-specific disciplinary concepts, which will be discussed in greater detail below. Liebenberg (2012), which describes an approach to teaching concepts such as plea bargaining, represents one pedagogical intervention focused on discourse-relevant concepts.

**Table 1**  
**Discourse-structuring and discourse-relevant legal concepts**

Discourse-Structuring Concepts	Discourse-Relevant Concepts
– Broad principles of discourse structure and argumentation (e.g. precedent cases as a source of law, reasoning by analogy)	– Principles from specific areas of law (e.g. <i>mens rea</i> , consideration) – Local, context-specific disciplinary concepts (e.g. falsity, attachment)

### **Exploring the role of disciplinary concepts in ELP**

The following excerpts come from a larger study (Hartig, forthcoming) conducted over the course of a fourteen-week semester. Among other goals, the study sought to identify factors that influence students’ success or failure in learning to read and write legal texts in a second language and legal system. The study focused on four main participants, two from mainland

China and two from Saudi Arabia, enrolled in a Master of Laws (LL.M.) program in the United States. All four of these students were identified as needing additional language support in a required legal writing course for international LL.M. students.

Both of the Saudi students had previously completed 1.25 and 1.5 years, respectively, in intensive English language programs in the United States in addition to their prior study of English in their home country. Nevertheless, both students were initially admitted to the LL.M. program conditionally the term prior because their TOEFL or IELTS scores had not met the program's official minimum score for admission. Neither of the Chinese students had studied English outside of China before beginning the LL.M. program, but their TOEFL scores were high enough for them to be admitted to the program directly. One of the Chinese students had studied English in school for nine years in addition to working with a private tutor for two years, while the other had studied English for three years in high school, completed eight months of self-study for the TOEFL exam, and used English with her law professors during her undergraduate studies in China. At the time of the study, all four students had been fully admitted to the LL.M. program, which was housed in a U.S. law school in which they were successfully completing their regular law coursework in English alongside their American peers. Thus, all of them had a relatively advanced level of proficiency. None of the students mentioned having received training in legal English specifically before coming to the United States.

While these participants were initially trained in civil law and Islamic law jurisdictions, they were now learning to read and write genres associated with common law. Their legal writing course, *LL.M. Legal Analysis, Research, and Writing*, was designed for international students and counted for two credit hours. Students attended two hours of class per week across two separate one-hour sessions, but were expected to complete significant additional reading, writing, and research assignments outside of class. The amount of time spent on these assignments varied greatly, but in most cases was at least double the amount of time spent in class. In addition, the participants for this study attended weekly individual tutoring meetings lasting from thirty minutes to an hour.

Assignments for the course included one partial legal memorandum and two additional complete memoranda of eight to twelve pages in length each. The interoffice legal memorandum is one of the traditional genres taught in U.S. legal writing courses for American J.D. (Juris Doctor) students, and assignments are designed to simulate a legal practice context. Weekly assignments involved conducting legal research and drafting and re-drafting

specific sections of each memorandum. The readings that students needed to complete for these assignments included some statutes and legal treatises, but the bulk of their reading was focused on the reading of published judicial opinions, or cases. With only one exception, these cases were retrieved directly by students from professional databases and were unredacted.

The course was taught primarily by a member of the law faculty, who presented lectures on common law analysis, legal research techniques, and the structure of the legal memorandum. About one quarter of the overall class time was devoted to language-focused lessons taught by the researcher. These lessons tied key concepts of common law analysis to the specific linguistic features used in each part of the legal memorandum genre (see Hartig (forthcoming) for more details on the pedagogical intervention). Language instruction incorporated both pedagogical diagrams based on principles of concept-based instruction (Lantolf & Thorne, 2006) and discourse analysis activities. In addition, the researcher conducted individual tutoring sessions.

Data for the study come from every draft of every written assignment submitted by students, audio recordings<sup>2</sup> of in-class pair work, video recordings of individual tutoring sessions, questionnaires, and field notes. The study draws on a sociocultural theoretical framework involving a microgenetic analysis (Lantolf & Thorne, 2006) of the changes in students' written texts as well as in their verbal explanations of their understanding in both in-class pair work and in their individual tutoring sessions with the researcher. Analysis of these primary data sources was further triangulated using the questionnaire and field note data. While the current article reports on only a small aspect of the larger study, a more complete description of each student's trajectory can be found in Hartig (forthcoming). The excerpts below demonstrate how discourse-structuring concepts and discourse-relevant concepts came into play as students learned to read and write these new genres in English.

### **Discourse-structuring concepts**

#### *Discourse-structuring concept 1: Precedent cases as a source of law*

One disciplinary concept from common law that posed difficulty to many of the civil law trained students in the course was the concept of precedent as a source of law. Although most students understood this concept in the abstract, many had trouble identifying the concrete ways in which it shaped the genres that they were expected to read and write. For

example, in writing a U.S. legal memorandum, students are expected to include a *rule explanation* paragraph that starts by stating the common law rule arising from a given precedent case (the *rule statement*). Hong<sup>3</sup>, a student who received her initial legal training in China, consistently focused on statutory law rather than case law, leading to difficulty with the genre. In her first rule explanation paragraphs, the rules that she identified appear to be a paraphrase of the relevant statute rather than the rule from case law (Table 2).

**Table 2**  
**Comparison of California grand theft person statute and Hong's rule statements**

Original statute (Cal. Penal Code § 487)	Hong's rule statements on the <i>Williams</i> case
"Grand theft is theft committed in any of the following cases: [...] c) When the property is taken from the person of another."	<ul style="list-style-type: none"><li>- "Grand theft is not committed when property is not taken directly from the victim" (Hong, <i>Williams</i> RE1, Wk. 2, 8/25).</li><li>- "Under the California Penal Code Section 487, grand theft is not committed when property is not taken directly from the victim" (Hong, <i>Williams</i> RE2, Wk. 3, 9/4).</li></ul>

Rather than introducing the court's rationale in its decision on the *Williams* case in her rule, as would be expected in the genre, Hong largely reproduces the original statute in these excerpts. From a common law perspective, this would not be an effective statement of the rule from the case.

When asked how she understood the function of the rule statement in a rule explanation paragraph in an individual tutoring session, Hong responded as follows:

AH: What's the function of the rule statement?

Hong: Give-give the statutes, or yeah. Just give the statutes, or gives, gi- what we- like, ah you know, like in the civil law, well, first we use a statute. And we, like, apply the facts into this statute and we make a conclusion. So, so this is like the same. That's what I understand.

(Hong, Week 4, Individual Meeting 1 (Hartig, forthcoming))

In her explanation, Hong transfers her understanding of what a rule is from her prior legal training. Although it later became clear that she was familiar with the notion of precedent cases as a source of law, she had difficulty applying this to her writing across the term.

Hong's difficulty with internalizing the concept of precedent as a source of law also affected her reading comprehension. At various points across the term, it became evident that her reading was focused on the identification of statutes rather than the court's rationale. In her identification of a rule in her first case brief, on *People v. Williams* (1992), Hong listed every statute mentioned even tangentially in the case, even when these had nothing to do with the main legal issue faced by the client. Later, in addressing a tort law problem on false light invasion of privacy, Hong attempted to identify a statute even when there was none. Unlike the criminal law problem that was introduced at the beginning of the course, this problem was based exclusively on common law. As she attempted to summarize the main points of the case, Hong still looked for anything that even vaguely resembled a reference to a statute:

AH: Well, ok, so tell me about- let's-let's go through as if you were telling me-through the case chart. So what was the holding?

Hong: Holding is this. ((points to middle of main paragraph of headnotes preceding case text))

AH: Okay, so can you summarize?

Hong: Ah 'kay. Oh, I just @don't @remember.

AH: It's okay. Okay, you can take a look at it again. That's fine.

Hong: Okay ((reads)) "no private cause of action" (...) mmm (...) "and a rule of confidentiality governing (...) Review board proceeding"- uh does that mean that uh like uh invasion of privacy like um exist for #breach statute of Pennsylvania- uh like Pennsylvania has like a Pennsylvania Constitution, so that's the statute ((underlines phrase in case)), is that right?

(Hong, Week 5, Individual Meeting 2 (Hartig, forthcoming))

Later in this tutoring session, Hong admitted that she had difficulty understanding this case and that she had simply cut and pasted information from the case into her assignment for this week. Hong's focus on statutes rather than the court's rationale did not just lead her to focus on the wrong information within the case, but ultimately led her to difficulty with understanding the case as a whole.

### *Discourse-structuring concept 2: Reasoning by analogy from precedent cases*

Another common law concept that posed difficulty for many students trained in civil law was the use of reasoning by analogy. In the U.S. legal memorandum as well as other common law genres, the use of analogical rea-

soning is an important part of legal argumentation. Rules from case law are applied to a set of client facts by comparing and contrasting facts from the client's case to those of a binding precedent case. Weixin, another Chinese student, struggled with this part of the memorandum (the *rule application*) throughout the term. Rather than drawing on her prior legal training like Hong, however, Weixin instead relied heavily on the genre structures presented in the course textbook for formatting her rule application paragraphs, often without fully understanding the meanings these structures conveyed. In her rule application paragraphs, there was a sharp disconnect between genre form and meaning. Weixin drew on the examples from the textbook and used them as a template, but it soon became apparent that she did not understand the assumptions behind the original examples, particularly their role in making an argument through analogy.

The first instance of this misunderstanding appeared in her first rule application paragraph. In the legal memorandum genre, the first sentence of the rule application is expected to provide a predicted conclusion on the outcome for the client. Although Weixin begins by using a sentence frame from the textbook, this sentence frame comes instead from the section of the memo for addressing potential counterarguments: "Defendant may argue that, a rule was summarized from the Williams case that person does not commit grand theft when the property is not physically attached by the victim's person" (Wk. 3, Weixin, RA1 *Williams*, 9/4). It is unclear whether Weixin is arguing for the defense or the prosecution, but the framing of this sentence would suggest to a U.S. legal reader that she is a prosecutor anticipating her opponent's argument. As such, a reader would likely find it confusing that she uses this in the part of the rule application that is typically reserved for a prediction for the writer's own client. Further, in this sentence, Weixin reiterates the rule statement from a precedent case that she had already presented earlier in the memo. If she is arguing for the prosecution, the content of the sentence makes little sense as it essentially asserts that the defendant will argue for the same interpretation of the precedent case (*People v. Williams*, 1992) that she has. If she is arguing for the defense, this sentence reflects a misunderstanding of the meaning that is implied by the sentence frame. From the first sentence of this paragraph, it is not clear that Weixin understands the intended goal of the rule application in making an argument by analogy.

In Weixin's next rule application paragraph, there are also problems with her use of textbook examples to structure specific analogies and dis-analogies. For example, she states that "Unlike the Huggins case, the victim was put her purse on the floor and put her foot against the purse" (Wk. 4,



Weixin, RA1 *Huggins*, 9/9). While the grammatical issues with this sentence are minor, there are significant problems with content. The facts that Weixin provides in the main clause of this sentence come from the *Huggins* case. Therefore, in effect, Weixin is stating that the facts of the *Huggins* case are unlike the facts of the *Huggins* case. At this point in the semester, Weixin appeared to have significant difficulty connecting the genre models she encountered in the textbook to their intended role in arguing by analogy.

Rather than interpreting the textbook examples as models of analogical reasoning, Weixin viewed the overall exercise of learning the rule application as an exercise in learning to insert information into a template. Toward the end of the semester, this orientation persisted in her justifications for using various expressions from the model paragraphs from the textbook:

AH: Um, so for example here ((points)) um (...) so you talk about Dr. Prince in *Mayflower*. You say ((reading)) "There is not any advertisement in Dr. Prince's website, so he had never used these domain names for commercial purposes. He also does not desire- did not desire to sell these domain names. Therefore, our client Mr. Garber does not act with a bad faith intent to profit under the ACPA." It's very difficult to see the connection between these two and why this ((points)) would mean this ((points)). If this is the reason for this 'cause you say "therefore"-

Weixin: Oh

AH: -which to me tells me that this is the reason

Weixin: Yes, uh, this word "therefore" I just uh con-conclusion again for RA, no- not for this facts

(Weixin, Week 13, Individual Meeting 11 (Hartig, forthcoming))

Rather than showing specific analogies between her client, Mr. Garber, and the defendant in the precedent case, Dr. Prince, Weixin simply presents the information from each case separately and then states a conclusion for her client. This is particularly problematic in the section quoted above because, while the defendant in the precedent did not have any advertisements on his website, the client did. Although the juxtaposition of the facts from the two cases would seem to point to an unfavorable outcome for the client, Weixin ends the paragraph by stating that the client would not be liable. When asked to justify her argument, Weixin claims that she is not using "therefore" in this conclusion sentence as a logical connector, but rather as a structural element of the rule application (RA) genre. For her, there is no clear connection between the concept of reasoning by analogy and the structure of the rule application paragraph.

## Discourse-relevant concepts

*Discourse-relevant concept 1: Attachment as a factor for establishing taking from the person under California's grand theft person statute*

While the discourse-structuring concepts above play a role in the overall organization of discourse within legal genres, the discourse-relevant concepts examined in this section play a different role. The first example of these is a set of context-specific disciplinary concepts arising in the California case law on the crime of grand theft person. One of the elements from the statute that must be proven in order to successfully convict a defendant of grand theft person in California is the element of taking from the person. In the California case law dealing with the taking from the person element, courts have emphasized that the property must be attached to the victim at the time it is taken in order for it to be considered as taken from the person. These references to attachment come exclusively from precedent cases and are not found anywhere in the statute. However, in order for a defendant to be convicted under the statute in California, a prosecutor would likely need to present a compelling case to show that there was such attachment.

Defining attachment, however, is not as simple as giving a dictionary definition. In this context, neither a general dictionary nor a legal dictionary would suffice for helping a student understand what does or does not constitute attachment under California's grand theft person statute as this factor may not be relevant to courts in other jurisdictions, even within the United States. Instead, the student would have to become familiar with the ways in which attachment (or lack thereof) has been demonstrated in the relevant case law in California. In *People v. McElroy* (1897), for example, the theft of a wallet from a pair of pants that was rolled up and used as a pillow while the victim was sleeping was not considered to be attached to the victim, nor was the theft of a purse from the passenger seat of a car in *People v. Williams* (1992). At the same time, in *In re George B* (1991), the theft of a purse from a shopping cart that was being pushed by the victim was considered to be attached, and, in *People v. Huggins* (1997), a purse that the victim had placed on the floor and against her foot was considered to be attached. Defining attachment under California law therefore requires a close reading of such cases and an understanding of the court's rationale in each. The student would then need to analogize the facts of his or her client's case to the facts of these cases in order to argue whether or not attachment had occurred. More than a question of translation, the under-

standing of this term relies on understanding how it has been defined in the context of case law in a given jurisdiction.

In his initial explanation of the facts of his client's case for this problem, Bader, a Saudi student, struggled both with representing these facts accurately and with highlighting the facts that most clearly demonstrated whether or not there was attachment between the victim and the property:

AH: But also, so- "had placed." What would that look like? What would be the situation if he had placed it partially on his- the brake and partially on his foot?

Bader: (...) He had placed it- I mean uh partly on his foot and partly on the-on the brake.

AH: Okay. So if I say that, if this is the parking brake, this is the portfolio, that means that he had placed it- Mr. Smith went like this, he said "here's my portfolio, I'm going to put it here." But is that what happened?

Bader: No, it was on-on the brake, but it kinda leaning on his leg

AH: Okay, so that's part of it. So partially- part of it is that it's really more on his leg than his foot, but also, did he intentionally go place it there?

Bader: No. "Was placed."

AH: Well, even so, "was placed" suggests that some-

Bader: Yeah

AH: -person did it

Bader: Okay okay

AH: Maybe "placed" isn't the right word.

Bader: Yeah, I'm talking a- um thinking about alternatives for uh- for "place." "Was in"?

AH: "Was" ...?

Bader: "Was o- was on the brake, leaning to..."

AH: Yeah, I think, yeah, I think if you wanna talk about the final position, yeah, I think that would be fine. "Was on the- the- was on his- partially on his leg and partially on the parking brake." I think that would work.

Bader: Okay

AH: Uh-huh

Bader: Mm. Or (...) "in Fitzgerald, the portfolio #was on the brake and par-uh partially on his- uh on the victim's leg"

AH: Mm-hmm. That would be fine.

(Bader, Week 4, Individual Meeting 2 (Hartig, forthcoming))

In Bader's original explanation of the client's facts, he had unintentionally misrepresented the sequence of events leading up to the theft of the client's

portfolio. As Bader began to see the problem with the verb phrase and to consider revisions for this section, he also realized that the final position of the portfolio was more important for establishing attachment than describing how the portfolio arrived in that position.

After further considering whether to emphasize the motion of the portfolio using the verb “slid” or the final position of the portfolio by using the copula with a preposition (“was on”), Bader finally decided that “was on” would communicate the focus of his legal argument more effectively:

AH: So it depends on what you wanna emphasize

Bader: Okay. I will go to the final- uh final result, that the portfolio was on the brake and partly on- on the victim’s bo- uh leg

AH: Mm-hmm and I think because we’re talking about attachment, that makes a lot of sense

(Bader, Week 4, Individual Meeting 2 (Hartig, forthcoming))

The exchange with Bader above illustrates one of the roles that discourse-relevant concepts can play in the linguistic choices that students must make in legal writing. In representing the facts of their client’s case and those of precedent cases, issues of word choice, tense, aspect, and voice all play a role in highlighting or downplaying different aspects of the scene that is presented. This excerpt illustrates the need to take into account not just grammaticality or register in offering feedback to writers in an ELP context, but also a need to consider the context of the legal problem that students are analyzing. Students like Bader need to understand how the linguistic choices they make not only align with or diverge from expert usage, but also how various equally grammatical options will change the way their argument is perceived by the reader. To help foster this awareness, ELP instructors need a sense of the discourse-relevant concepts at play in the assignments that students are working on. Without this, it is difficult to provide feedback that shows students the range of linguistic choices available to them and how each one will affect the framing of their argument. An awareness of these discourse-relevant concepts can provide an ELP instructor with the means to help students better reflect their legal analysis through their use of language.

*Discourse-relevant concept 2: “Falsity” as an element of “false light invasion of privacy”*

Discourse-relevant concepts also have a role in reading comprehension. In the legal writing course in which data was collected for this study, stu-

dents were expected to conduct independent research into case law using professional databases such as LexisNexis and Westlaw. Unlike the cases that students read from casebooks in their doctrinal courses, which were often redacted to remove information related to issues that would not be discussed in class, the cases that students found on these professional databases were unedited and often addressed multiple legal issues unrelated to the main point that the students were researching for their client's case. As a result, students had to learn how to find information that was relevant to their client within the text of dense legal prose that took many students hours to read.

Even students with a high level of general language proficiency frequently found this task daunting. One such student was Alima, a Saudi student who had completed an intensive English language program in the U.S. in addition to her prior study of English in her home country before beginning the LL.M. program. Although she was able to complete her initial written assignments for the course, it quickly became clear that she was having difficulty with understanding the main text of the cases that she needed to read:

AH: So this is *Larsen*, so do you remember where you found the holding in *Larsen*?

Alima: Actually and honestly, what I did at that- I accessed uh LexisNexis

AH: Uh-huh

Alima: And then found the case summary and then just read the case summary because I tried to read it like three times and I couldn't understand anything, like I found the words "highly offensive" and "invasion of privacy," "false light," but I don't know what- what they want from me, so I read just summary. The case summary.

(Alima, Week 5, Individual Meeting 3 (Hartig, forthcoming))

In previous weeks, it had become apparent that Alima was having difficulty separating a cause of action from the elements required to establish it. In her statement above, a similar confusion occurred. While Alima was able to list a number of keywords related to the client problem, she had difficulty understanding how these related to each other. General skimming and scanning skills that Alima may have used in her first language or in general English courses were not sufficient for helping her identify the parts of the case that she needed for her analysis.

In order for Alima to focus her reading, one key point that she needed to understand was how to relate the client issue described in the initial client problem to her reading. In order to do this, Alima first needed to be

able to distinguish between the overall cause of action, false light invasion of privacy, and the elements that needed to be proven to establish this cause of action: falsity and highly offensiveness. She then further needed to understand that the assignment only asked her to address one of these two elements: falsity. Once this was established, Alima could start to better understand the organization of the case.

We started by skimming through the text and marking every instance of the words *false* and *falsity* throughout the case together. Then, Alima began reading the first page of the case. As she read through the beginning of the case, she now started to get a better sense of how the text was organized around a series of seven separate causes of action:

AH: Well, what is this paragraph doing? Maybe look at- from the beginning of the paragraph

Alima: Ah, I think they talk about- oh, “counts” not “courts”

AH: Okay. So what are they talking about when they talk about “counts”

Alima: About the lower court maybe? No, right

AH: Mm, not about a court

Alima: Maybe the issues?

AH: Exactly, yeah.

(Alima, Week 5, Individual Meeting 3 (Hartig, forthcoming))

Once she understood that the seven counts listed in the first page of the case referred to seven separate issues, she now started to understand the connection between one of these counts, Count V, and her client’s legal issue:

AH: But do you see anything about false light? False light invasion of privacy?

Alima: No. Nothing here.

AH: Nothing in that paragraph?

Alima: @@ ((bends down closer to page and re-reads))

AH: Nothing that we marked together five minutes ago?

Alima: I know there- there’s something here. Okay. It’s um mm mm- ((turns page)) Count “V”- is “five”

AH: Exactly. Yeah. Okay. So Count V we know deals with our issue

Alima: Yeah

AH: So now we know two things. We know that we’re looking for falsity, and anywhere where you see falsity, false light, and also anywhere where you see them talk about “Count V” is also relevant for us

Alima: That’s very good

(Alima, Week 5, Individual Meeting 3 (Hartig, forthcoming))

Following this interaction, Alima was able to successfully understand the case on her own. While the twelve pages of dense prose on seven separate issues had initially seemed overwhelming, organizing her reading around the discourse-relevant concepts that she needed to address in her memo made this task more manageable.

Without an awareness of the discourse-relevant concept of falsity and how it related to the larger issue of false light invasion of privacy, it would have been very difficult to help Alima understand the text of this case. Simply telling her to skim or scan for important information was not enough. Before she was able to know what to look for, she needed to understand the hierarchical relationship between a cause of action and its elements and to understand how this related to the terminology used in the case itself.

## Discussion

The excerpts above illustrate two categories of disciplinary concepts: discourse-structuring concepts and discourse-relevant concepts. As the examples from the first two students, Hong and Weixin, show, discourse-structuring concepts play a role in shaping how students understand disciplinary texts and tasks (Swales, 1985). When students are unable to connect these concepts to their reading and writing, they may fall back on prior understandings of similar tasks or a focus on form. Building not just an understanding of these discourse-structuring concepts themselves, but also helping students understand how these concepts play out in the use of language in disciplinary texts, is an important step for enabling students to more effectively connect linguistic form to legal meaning.

In order for ELP teachers to help students engage effectively with legal texts and tasks, they also need to be aware of discourse-relevant concepts. Not all discourse-relevant concepts are equally suited to an ELP setting, however. For this reason, it is again important to separate discourse-relevant concepts into the two categories mentioned earlier: broad legal principles and local, context-specific concepts. While it may not be appropriate for ELP instructors without legal training to address major legal principles like *mens rea* or consideration, an awareness of the more local, context-specific discourse-relevant concepts like falsity or attachment in the last two student examples above is an important tool for guiding students. While the meanings of the former category of discourse-relevant concepts constitute the fundamental knowledge of any competent legal practitioner within a given legal system, the meanings of the latter, at least in U.S. common

law, depend on a small subset of case law in a specific legal area and jurisdiction. The meanings of these local concepts may change over time as new cases are decided, and these meanings may also be more easily contested than those of the former. While the meanings of the second category of discourse-relevant concepts often resemble their everyday counterparts, their meaning is inflected by their interpretation in case law and cannot be understood apart from it. While few U.S. lawyers would be expected to know how falsity in the tort of false light invasion of privacy has been defined by courts in the Eastern District of Pennsylvania, every U.S. lawyer would be expected to be able to engage in the research and reading necessary to understand this if needed. Strengthening the reading skills necessary to do this in a second language is an area where ELP instructors can make a significant contribution.

As the examples from Bader and Alima demonstrate, this second category of discourse-relevant concepts has an important role to play in ELP instruction as well. Students need to understand how to contextually define these concepts, not just in the sense of the immediate lexical or syntactic context but also in the context of the relevant case law. In their reading, students need to be able to focus in on the court's explanation of its rationale in these cases. As the data from Alima show, this also involves developing an awareness of how synonymous legal terms related to a specific concept can facilitate their reading of legal texts. Likewise, in students' writing, they need to be able to highlight facts from the cases that most clearly relate to these concepts. While the first category of discourse-relevant concepts (e.g. *mens rea*, consideration) may be better taught by law faculty, ELP instructors can help students recognize the lexicogrammatical and discursive cues that indicate the context-specific discourse-relevant concepts represented by the second category. ELP instructors also have an important role to play in helping students develop the linguistic tools to effectively highlight key information that relates to these concepts in their writing.

Developing greater familiarity with both types of concepts is not an easy task. Understanding the discourse-relevant concepts involved in a given assignment will likely require the support of law faculty who are willing to collaborate with language teachers. Gaining a better understanding of the discourse-structuring concepts that underlie legal genres in a given jurisdiction may necessitate the reading of legal practice manuals or other similar materials. This understanding is an invaluable asset, however, for any language teacher who hopes to guide students through "lawyers' land."



## **Appendix A: Transcription Conventions**

(...)	Ellipses in parentheses indicate longer pauses; (.) and (..) indicate shorter pauses
[ ]	Brackets indicate overlapped speech
(( ))	Double parentheses indicate actions performed by the speaker
#word	Hash mark before a word indicates a guess at unclear or unintelligible talk
#	Hash mark alone indicates that talk occurs but is unintelligible; one mark per syllable
@	At sign indicates laughter
@word	At sign attached to a word indicates that the word is expressed with laughter
wor-	Dash indicates a word that has been cut off
wo:rd	Colons indicate elongation of a sound
=	Equal signs indicate latching between utterances of two separate speakers

## N O T E S

<sup>1</sup> This research was supported in part by a Gil Watz Dissertation Fellowship awarded by the Center for Language Acquisition at the Pennsylvania State University.

<sup>2</sup> Transcription conventions used for the audio and video recordings are included in Appendix A.

<sup>3</sup> All participant names have been replaced with pseudonyms throughout the manuscript.

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