

TEACHING THE PRAGMATIC FUNCTIONS OF DISCOURSE MARKERS IN LEGAL ENGLISH

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Abstract: *Discourse markers are endowed with a prominent textual function as they ensure discursive coherence and cohesion as well as with an interpersonal function that guide the receptors of the legal spoken or written text towards the correct interpretation of the message. This paper illustrates, by relying on a qualitative analysis of discourse markers in Legal English, several manners of efficiently teaching the pragmatic and functional roles of discourse markers in legal English texts to Law students who study English as a foreign language in general and ESP in particular. The main aim is to develop the students' ability to detect, define, analyze and use discourse markers in written and spoken legal language.*

Key words: *discourse markers, functional roles, professional communication, Legal English.*

1. Introduction

Discourse markers (henceforth DMs) are functional elements that contribute to the coherence and cohesion of discourse and have an essential role both in the interpersonal and in the expressive use of language. Discourse markers signal the speakers' observance of the institutional patterns of discourse when the discourse particles are appropriately chosen in such a way as to be adapted to the institutional context in which they are used.

The lack of a distinct semantic meaning that characterizes most discourse particles is compensated by prominent pragmatic meanings and functional roles which, due to their being utterly context-embedded, are constantly changing in full accordance with the dynamics of language use.

2. Objectives

Legal English is a very formal and precise type of discourse which is used in a highly strict, rule-governed institutional setting which requires compliance with not only linguistic but also behavioural and professional patterns of behaviour. Dennis Kurzon

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defined legal language as the one that is used in textbooks or the one that legal professionals use to talk about legal issues in a professional context. Its characteristics are a high degree of formality, fragmentary sentences, typical expressions and terms of art (Kurzon 1989, p.284).

This paper analyzes the manners in which DMs that are used in or even specific to legal English can be taught to Law School students who study this variant of ESP in such a way as their pragmatic meaning be properly understood and their pragmatic function be efficiently mastered when using pragmatic markers in real professional communication.

3. Methodological Approaches

This paper relies on the postulates of Relevance Theory (Blakemore, 2002) which posit that utterances and sentences are triggers of inferential processes that guide the hearers or readers towards a correct interpretation of the text with a minimum processing effort.

Also, the semasiological method is the most appropriate as it allows the research to depart from specific DMs and discover the array of pragmatic functions that they can fulfil in a legal English spoken or written text.

As this study has a prominent teaching methodology approach to the pragmatic functions of DMs, a qualitative analysis is the best method whereby students can grasp the meaning of these particles in the context of their occurrence. From that point onward, students are thus able to replicate the meaning and function of the respective item in written and spoken contexts of their own. This would eventually lead to an improvement of their use of discourse markers in a successful manner in various academic and professional communication contexts in which legal English is used.

4. Discourse Markers in Legal English

English is predominantly the language of international legal practice and its importance to legal professionals is undeniable. Legal discourse is governed by numerous linguistic and non-linguistic constraints. From the seemingly unfriendly legal jargon to constraints regarding the power positions in verbal exchanges in court as well as the very strict patterns of document writing, legal English is governed by norms of language and behaviour. The way in which one uses legal English can therefore be crucial to professional success.

Generally, law students are or become familiar with the morphology, syntax and semantics of (Legal) English but very rarely are they aware of the pragmatic dimension of language. This article stresses the importance of proper usage of DMs in legal English and the importance of their pragmatic functions in speech and writing.

The present study also analyzes the most appropriate and efficient teaching techniques that would enable students to fully comprehend and master the pragmatic functions of discourse markers according to the context of their occurrence.

4.1. Defining Discourse Markers

Some authors refer to them as *discourse connectors* (Blakemore (2002), Fraser (2006), Redeker (2006), Bazzanella (2006)), others consider them to be *pragmatic markers* (Aijmer (2006), Downing (2006)) whereas Schiffrin (1987) calls them *discourse markers*, which is the label I have chosen to adopt for the following reasons:

1. Pragmatic functions can only be detected at discourse level;
2. DMs only *mark* already existing attitudes, thoughts or intentions of speakers or writers.
3. DMs do not possess the ability to create meaning on their own but only when they are placed and interpreted in a coherent and cohesive discursive context.

The linguists' view regarding the members of the class of discourse markers does not coincide. Schiffrin, for instance, indicates a number of items namely *oh, well, and, but, or, so, because, now, then, I mean, y'know* (Schiffrin 1987, pp.31,32) but she admits that other items could fulfill a discourse marking function. Perception verbs (*see, look, listen*), adverbial *why*, interjections, the verb *say*, meta-talk *this is the point, what I mean is*, quantifier phrases *anyway, anyhow, whatever* are the elements that, in Schiffrin's view, can be used as a discourse marker.

According to Fraser (2006, pp.73-74) the main discourse markers would be *and, so* and *but* to which another subclass of *Contrastive Discourse Markers* is added. The members of the latter are: *in contrast, however, on the contrary, all the same, although, but, contrary to expectations, conversely, despite, even so, except, in spite of, in comparison (with), instead (of), nevertheless, nonetheless, only, on the other hand, rather (than), or, regardless, still, whereas, while* and *yet*.

There are three sources of DMs - conjunctions, adverbs and prepositional phrases. Coordinate conjunctions *and, but, and or* function as DMs. Subordinate conjunctions such as *so, since, because, and while* also function as DMs.

Second, there are adverbials which function uniquely as a DM: *consequently, conversely, equally, then*. And third, there are prepositional phrases which function uniquely as DMs: *as a consequence, in particular, after all, on the other hand*.

The suggestion is that DMs should be viewed as a pragmatic class, so defined because they contribute to the interpretation of an utterance rather than to its propositional content. Also, the interpretation of DMs should not be made according to strict morphological or syntactic features but only from the point of view of their use in context. As Carla Bazzanella (2006, p.451) pointed out, there is a '*transverseness*' of DMs with regard to other grammatical classes.

4.2. Functions of Discourse Markers

The functions of DMs could be either *textual* or *interactional* according to the role that they fulfill in the discourse unit; the functions that are situated at the *textual level* are described by Müller (2005, p.31) as being oriented towards discourse management. Hence, all that involves the organization of turns or of discourse units such as marking the search for words, repairs, false starts, inexactness of terms, transitions from one

discourse unit to another, prefacing direct or indirect speech are all discursive phenomena that are accomplished through DMs which operate at the textual level.

The second level that Müller (2005, p.31) refers to is the *interactional level*. These functions, Müller explains, are called *interactional functions* which address the hearer directly and are focused on the relationship between speaker and hearer. Thus, the prefacing of responses, opinions, evaluations, comments, questions, the attempts of the speakers to establish common ground with the other participants are functions that are situated at the interactional level.

In legal language there are constraints regarding the high degree of formality required in such discursive contexts. Therefore, discourse markers have to be formal and adapted to the communicational situation in which they are placed. In legal English DMs can fulfill the following functions:

- mark relations between discursive items;
- organize discourse at the textual and interactional level;
- highlight or contribute to cohesion and coherence relations in discourse;
- act as constraints on relevance (i.e. they guide the interpretation process of the hearer/reader towards the intended meaning);
- are endowed with interactive and expressive functions;
- have an indexical function at discourse level (i.e. they indicate an interpretation path towards the correct understanding of the message);

Below is a table of the specific pragmatic functions that DMs may have in legal language:

Table 1

Pragmatic functions of DMs in Legal English

Textual and Interactional Functions	Examples of DMs that fulfill the function
Marking sequential dependence	<i>finally, formerly, meanwhile, first, first of all, second/secondly, afterwards, later, then/next, lastly, etc.</i>
Discourse initiators	<i>now, but, and, so</i>
Expanding on an already made point	<i>besides, furthermore, moreover, in addition, additionally, etc.</i>
Turn-taking/ turn management	<i>now, but, and, because</i>
Face-saving acts	<i>right, all right, well, etc.</i>
Expressing contrast/opposition	<i>on the other hand, although, conversely, though, rather, however, instead, nevertheless, nonetheless, further or alternatively, etc.</i>
Reasoning	<i>also, and, as a consequence, consequently, hence, therefore, thus, for this reason, as a result, etc.</i>
Emphasis	<i>in particular, especially, it should be stressed that, in fact, as a matter of fact, indeed, etc.</i>
Expressing evaluation of message	<i>I think, I believe, honestly/frankly, apparently, obviously, of course, clearly, etc.</i>
Exemplifying	<i>for instance, for example, to illustrate, etc.</i>
Making a logical deduction/going a step forward into the argument	<i>therefore, thus, it follows that, etc.</i>
Indicating previously mentioned information	<i>but, turning to, so, with reference to, then, as I indicated, with respect to, as I said, as to, with regard to, now, as</i>

Textual and Interactional Functions	Examples of DMs that fulfill the function
	<i>for, accordingly, as noted, etc.</i>
Making a hypothesis	<i>in the event of/that, if, etc.</i>
Rephrasing/Clarifying information	<i>in other words, that means (that), actually, that is to say, etc.</i>
Concluding	<i>in conclusion, to conclude, as we have seen, in short, etc.</i>
Showing one's attitude towards a situation/idea	<i>honestly, frankly, no doubt, etc.</i>
Contradicting	<i>on the contrary, quite the opposite, etc.</i>
Changing the subject	<i>incidentally, by the way, now, etc.</i>
Taking a factor into consideration	<i>given that, bearing in mind that, considering that, etc.</i>
Excluding	<i>with the exception of, save for, save as to, etc.</i>
Hesitation or indication of turn construction	<i>well, I mean, let's see, let me see, etc.</i>
Indicating similarity/reciprocity/correspondence	<i>similarly, conversely, likewise, etc.</i>
Prefacing the main idea	<i>on the whole, it seems to me, in general, generally speaking, to a great extent, to some extent, etc.</i>

As practice, students may be asked to consider the pragmatic functions listed in the table above and give examples for each pragmatic function by inserting one of the markers provided into a coherent and cohesive legal context, focusing on either spoken or written legal English.

4.3. Position of Discourse Markers in Legal English

DMs are used to connect sentences and to indicate additional information. Legal English uses a number of DMs among which we can mention words such as: *'moreover'*; *'furthermore'*; *'further or alternatively'*, etc.

DMs can usually be placed in various positions namely **initial position**, **mid position** (parenthetical) or **end position** within a sentence and can be used for a variety of specific purposes, including to: focus the reader on a particular issue, contrast issues or ideas, provide emphasis or to structure information.

In both spoken and written legal English, the favoured position of DMs is at the beginning of the sentence (initial position).

Q1: Now, at the time your husband and the defendant were together, can you tell the court, where you were?

Parenthetically placed markers function differently than the initially positioned ones:

1. contrastive relationship with the preceding discourse:
e.g. **However**, in Romania the situation was different.
2. spatial shift in the progression of discourse:
e.g. In Romania, **however**, the situation was different.

End positioned discourse markers (rare in legal language) refer to the preceding discourse:

e.g. Q : You stated that you have had good working relationships with all your suppliers. Well, you sued one of your former suppliers, **though**.

5. Teaching Perspectives and Strategies

As mentioned elsewhere (Matei 2018, p.151), due to the performative role of legal language, the lecturer has to find the most adequate teaching strategy in such a way as for students to master not only the syntactic and semantic but also the pragmatic approach to the study of legal English.

Students have to be aware that the pragmatic approach to legal English is beneficial in such a power-governed and strict instance of discourse in institutional settings as legal language (Matei, 2012, p. 68). In the latter, according to Yule (1996, pp.61, 62), the ‘face’ (i.e. “the public self-image of a person”) of the participants in the discursive event may be threatened by discursive acts that target both the ‘positive face’ (i.e. need for independence) and the ‘negative face’ (i.e. need for being connected). Such discursive endeavors that threaten the ‘face’ of the participants are called *face-threatening acts*, whereas those that protect the participants’ ‘face’ are termed *face-saving acts*. (Yule, 1996, p.61)

It is important, therefore, to bear in mind that the pragmatic function of any lexical or grammatical item contributes to the civility of discourse, to mutual respect of participants in a formal verbal exchange, to discursive efficiency as well as to the adjustment of the language to the social and professional constraints of a legal setting.

5.1. The Functional Perspective on Teaching Discourse Markers

Among the authors that advocate for a functional approach to grammar is Adriana Vizental (2008, p.206) who points out that the structure is always of less importance than the meaning it is endowed with when the communication focus is on meaning and interaction.

This perspective is beneficial to the teaching of DMs which are utterly functional elements that, as Ariel (1998, p.224) states, either have a semantic meaning and their interpretation in context resonates with their form, or they can be semantically empty items which can acquire functions that are not in any way justified by their mere inner semantic meaning. This is why a discourse marker such as *and* can be highly poly-functional when placed in different textual and interactional contexts.

As Redeker (2006, p.339) postulated, DMs are not to be considered lexical items but rather ‘contextually situated uses of expressions’ whose functions could only be identified in connection with the discursive purpose of the interactional situation in which they are used (Redeker, 2006, pp.427-429).

In Table 2 below there is a sample exercise showing a possible approach to the teaching of functional roles of DMs.

Table 2

Sample exercise (1)
<p>Exercise: Identify the pragmatic functions of the underlined discourse markers: <u>In the event that</u> a trademark owner wishes to allow others to use the trademark, he or she must inform the Registrar. Where trademark infringement occurs, the owner of the trademark has the right to sue. However, a trademark may be lost if it is no longer distinctive.</p>

Sample exercise (1)
<p>Therefore, in such circumstances a confidentiality agreement covering such information will be ineffective.</p> <p>The approval by the Company's shareholders of a complete liquidation or dissolution of the Company; provided, however, that if an event that otherwise would constitute a Change of Control results from or arises out of a purchase or other acquisition of the Company, directly or indirectly, by a corporation or other entity in which the Executive has a greater than five percent (5%) direct or indirect equity interest (other than Babcock Power Inc., so long as, at the time of such purchase or other acquisition, the Executive is not an officer or director of Babcock Power Inc. or any of its affiliates), such event shall not constitute a Change of Control.</p> <p>http://agreements.realdealdocs.com/Executive-Employment-Agreement/Executive-Employment-Agreement-3025871/ (last accessed 29.11.2020)</p>

5.2. The Discursive Perspective on Teaching DMs

Jeremy Harmer draws attention to the fact that grammatical competence alone is not sufficient as native speakers also have *communicative competence* which is 'a subconscious knowledge of language use, and of language as discourse' Harmer (1991, p.14). Communicative competence entails language competence regarding grammar and vocabulary structures as well as knowledge of appropriate language use. Harmer (1991, p.15) adds that the setting and the channel of communication are the main influencing factors of language use and especially of the choice of words.

The variables that one has to take into account when operating word choices are, according to Harmer (1991, p.15) the following:

“Setting – Where are we when we use the language? What situation are we in?

Participants – Who is taking part in the language exchange?

Purpose - What is the purpose of the speaker or writer? (...)

Channel – Is the communication face to face? Does it take place over the telephone? Is it contained in a letter or a fax or a novel?

Topic – What are the words about? A wedding or particle physics?” (Harmer, 1991, p.15)

Table 3

Sample exercise (2)
<p>Identify the discourse markers in the following trial transcripts and determine their pragmatic functions within these specific discursive contexts:</p> <p>Lawyer: What was the nature of your acquaintance with the late Mrs. E.D? Witness: Well, we were, uh, very close friends. Uh, she was even sort of like a mother to me. Coates (2004: 106)</p> <p>MR. BOUTROUS: Yes, Justice Ginsburg, that's absolutely right. And because the statute focuses on the claims of the individual class members, Mr. Knowles has no power to affect those claims. He's not the master - JUSTICE KAGAN: But he doesn't have power to affect those claims before the certification has happened. MR. BOUTROUS: Exactly. https://www.supremecourt.gov/oral_arguments/argument_transcripts/2012/11-1450.pdf (last accessed 29.11.2020)</p>

Sample exercise (2)

JUSTICE SOTOMAYOR: Well, the problem is, whether you're right or wrong -- and you're absolutely right, it was a plurality opinion -- your adversary says States have passed laws relying on it, the Federal system is now structured around it, why isn't the damage as great as they claim -- potential damage, I should say.

MS. MAGUIRE: Well, first of all, I would just note that, even though McMillan was decided in 1986, there is nothing in the legislative history that indicates that Congress referred on McMillan when it passed 924(c). In addition, 924(c) is silent as to who should be the fact-finder that triggers the mandatory minimum. And, finally, in the McMillan case, that was not really a Sixth Amendment case -

https://www.supremecourt.gov/oral_arguments/argument_transcripts/2012/11-9335.pdf
(last accessed 29.11.2020)

The choice of DMs also depends on the above mentioned factors therefore speakers must take into account all the discourse coordinates when opting for one DM in favour of another, the choice being justified by the correct evaluation of what is appropriate in the context in which the text is produced.

In Table 3 above, Sample exercise (2) shows a type of exercise that would help students in determining the level of formality of the context, the setting and the functions that DMs fulfill according to all these variables. Even though they are not native speakers of English, students can learn communicative competence through extensive practice and exposure to different types of discourse in which different (discursive) rules are applicable.

5.3. Vocabulary Teaching Techniques for DMs

Chefneux (2001, pp. 50-51) enumerates the main vocabulary teaching techniques in EFL learning. In the author's view, there are five main techniques - with various degrees of complexity, for various learning stages - that have positive outcomes in vocabulary teaching.

1. Exercises that require **selective attention** are described by Chefneux (2001, pp. 50) as drawing the students' attention to a word by signaling the word in the text. (see Table 2 for a sample of this type of drill).
2. Exercises requesting **recognition** and 'which require partial knowledge of words' Chefneux (2001, pp. 51) are matching, multiple choice and translation exercises.
3. Exercises requesting **manipulation** involve giving derivations of words and constructing words.

This technique is not particularly suitable for the teaching of such pragmatic vocabulary items as DMs because they have a rather fixed form which remains the same irrespective of their pragmatic meaning and function being changed according to the context into which they are placed.

4. The author adds exercises requesting **interpretation** to the list: this technique involves the analysis of the meaning of the word by looking at its context of occurrence. The types of exercises that Chefneux (2001, pp. 51) includes in this class are odd word out, finding substitutes, classifying words according to their discourse functions, cloze exercises, guessing words.

This category encompasses by far the most suitable types of exercises for the internalization of the functions of DMs. In Table 4 there is a sample of a cloze exercise on DMs.

Table 4

Sample exercise (3)					
Complete the following sentences by selecting appropriate discourse markers from the panel below:					
therefore	as a result	however	on the other hand	furthermore	to begin with/firstly
1. _____ it is hereby agreed that this amount will be in full and final settlement.					
2. _____ I would like to introduce the main speaker.					
3. It will not be necessary _____ to take this matter any further.					
4. The Claimant is a wealthy man _____ of the damages awarded to him.					
5. Damages awards are usually higher in US courts, _____ it may be more convenient to issue legal proceedings in England.					
6. He is a good barrister. He is not popular _____ with colleagues in chambers.					

5. The last category that Chefneux (2001, pp. 51) lists is that of exercises requesting **production** which entail coming up with words in appropriate contexts in exercises such as open cloze and error identification.

This last category entails the highest degree of mastering vocabulary but it can rarely be used in the particular case of discourse markers. With both types of exercises, since they presuppose semantic specificity that should lead the student towards the choice of only one particular term, the poly-functional feature of discourse markers would render them inefficient. Moreover, with DMs we are mainly dealing with pragmatic functions rather than with semantic meanings.

All the vocabulary teaching techniques that have been so far illustrated, are generally suitable for legal English in both face-to-face and online teaching as they are not time-consuming and do not necessarily require group work which is very difficult to achieve in online learning.

6. Conclusions

The rule-governed pattern of legal English entails many constraints of which students not only have to be aware but also have to abide by. The acquisition of legal English is a complex endeavour which requires the acquisition of grammatical, lexical and discursive patterns that intertwine when fully mastering such an intricate type of discourse. Coherence and cohesion in discourse, the attitude of the speakers/writers towards the message and towards each other is encompassed in the contextualized use of discourse markers. Given that the latter are not lexical but pragmatic items, their function can only be deduced in the context of their occurrence.

Competent users of legal English are able to integrate grammatical and lexical structures into coherent and cohesive units of discourse that fulfill a certain communication goal. The aim of any lecturer who teaches legal English is to lead their students towards the acquisition of communicative competence that allows them to use discourse in such a way as to attain any communication goal that they envisage.

Discourse markers are, therefore, pragmatic and functional aids that, when used accurately, facilitate communication and display social civility through language. DMs show, in a very subtle and elegant manner, the attitude of a speaker towards a message. They are also valuable aids in displaying politeness, conformity and cooperation in both spoken and written texts.

Students must also learn how to distinguish between formal and informal patterns of discourse and adapt their choice of words to whatever patterns they might find themselves in. It is very important to honour the solemnity of a court hearing, to observe the constraints of contract writing, to skillfully conduct the cross-examination of a witness or to pass a sentence by using the proper discursive/lexical items for each.

Among the teaching strategies that are suitable for vocabulary learning, those that are chiefly oriented towards the study of larger units of discourse, the functional roles of words within them and which lay emphasis on contextualization are the most successful when teaching such pragmatic-functional items as discourse markers.

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