Using Discipline-specific Corpora Data-driven Learning in an EFL-medium University Setting: The Case of Apprehend and Apprehension in Legal Pleading

Peter Storey
Hong Kong Shue Yan University
pstorey@hksyu.edu

Nigel Bruce
Hong Kong Shue Yan University
njbruce@hku.hk

Peter Storey is Professor and Head of the Department of English Language and Literature at Hong Kong Shue Yan University. His research interests are in language programme evaluation, academic literacy and corpus stylistics.

Nigel Bruce is a Language Consultant at Hong Kong Shue Yan University. He manages the program discussed in this article and is currently developing corpus-based writing assistants for students of Psychology and Sociology.

Abstract

Undergraduate law students need to develop competence in the construction of legal arguments. Attainment of this competence is commonly assessed in their ability to construct arguments which follow the written conventions of the genre, prior to rehearsing those arguments orally in a simulation of a court case. In the law degree programme, which is the context for the pedagogical practices described in this paper, these assessments are built into each successive year of the law major in the form of mooting exercises for which students construct arguments for prosecution or defense and present them in a full-scale legal case simulation in a real courtroom in front of an invited judge.

In preparing their legal arguments, students are supported in the production of written submissions by feedback from language consultants which includes directing them to an online corpus-based writing assistant. This 26-million word, single-genre corpus of judicial case reports is accompanied by a search engine designed to present students with concordances which are transparent and intuitive in guiding them to the appropriate usage of the key patterns of legal English they are expected to use in their arguments.

The paper describes the linguistic challenges posed by legal English, how those challenges can be met with the help of the corpus-based writing assistant and how the program addresses known problems with direct DDL. A case study is presented demonstrating the scaffolding provided to first- and second-year students in learning to use the program and students’ evaluations of the corpus-based approach are summarised.

Keywords: legal English, data-based learning, corpus-based, writing assistant
Introduction

This paper describes the use of an online writing assistant in helping law students whose first language is Chinese master complex legal phraseology in English. It presents data from a single case involving three students working together to construct legal arguments for a criminal law mooting exercise, evaluates their performance in the exercise qualitatively and quantitatively and presents their evaluation of the effectiveness of the online writing assistant in helping them in the process. The paper focuses on the appropriate use of the terms “apprehend” and “apprehension” considered essential indicators of a successful legal argument in the criminal law case employed in the moot exercise.

Two research questions guide the reporting of the case:

1. What difficulties did law students experience in mastering the appropriate use of “apprehend” and “apprehension” in the moot submission they were required to write?
2. How did access to the online writing assistant guide them in the appropriate use of these expressions?

The paper begins by discussing the challenges faced by law students whose first language is not English in mastering legal English, and the challenge faced by two legal literacy tutors in devising ways of overcoming these challenges in the design of legal English writing resources. The use of textual mentors (model texts which students are encouraged to imitate) in EAP/ESP generally is discussed, as well as delivery of such textual mentors through corpus-based, data-driven learning (DDL) and the strengths and weaknesses of such approaches.

The paper goes on to present the online writing assistant, in detail, before presenting the case as an illustration of its use within the Legal Literacy courses provided by Hong Kong Shue Yan University.

Findings are evaluated in terms of the degree to which the group’s first, second and final draft moot submissions demonstrated appropriate use of the target expressions, and the extent to which reference to the online writing assistant had assisted them in such use.

After reviewing the findings in light of the research questions, the effectiveness of the online writing assistant in overcoming six known problems with DDL is discussed.

The main contribution of the paper is to demonstrate that a relatively small, discipline-specific corpus can support second language learners in improving their writing, if the corpus tools are designed with the student user in mind, introduced to them systematically, and supported by academic advising related to the language demands of their discipline.
Mastering Legal English – Challenges for the Learner

Legal discourse has been described as a conservative and, in its legislative and contractual forms, a frozen genre (Bhatia et al, 2004), in contrast to more liberal genres such as literary discourse. Whereas students of literature would be expected to demonstrate stylistic creativity in their own writing, students of the law are not granted such freedoms of expression. In applying the law, students are constrained in their own expression by the need to master the “distinctive language use found in legal texts” (Warren & Leung, 2013: 77), the conservative conventions, or what Crystal & Davy (1969) called the “formulaicity”, of legal style. Working within such constraints is one of the challenges facing the student of the law in the process of gaining mastery of legal English.

Another challenge facing the law student is the complexity of the genre. One eminent practitioner has described legal English as “a complex field with its own mind-boggling jargon, rife with bloated expressions that displace everyday words” (Garner, 2013, p.1). Williams (2011) characterised that complexity as the inclusion of archaic, rarely used, and Latinate words and expressions; extensive use of nominalisation; repetition in preference to synonymy and reference, and long, complex sentences, with intricate patterns of coordination and subordination. Polysemy poses another challenge, with apparently familiar terms acquiring distinct and specialised meanings in legal English, often embedded in inflexible structural patterns. A further challenge for the student of the law comes from the variation in legal English usage across different legal domains (Bhatia, 2004; Goźdź-Roszkowski, 2011). An excellent example is the nominal concept of “consideration”, whose meaning in contract law (a risk/benefit commitment between contracting parties–and only ever in the singular) bears no relation at all to the plural form “considerations” commonly used by the judiciary in all legal domains when taking account of competing arguments and the circumstances of the case.

Overcoming the Challenges of Studying the Law through English

Legal literacy teaching within a law curriculum

The initial inspiration for the DDL program was provided by an English for Law course initiated in 1994 by Robin Corcos at the University of Hong Kong (HKU) English Centre, newly established to provide disciplinary-specific EAP courses across the entire disciplinary spectrum of the university (Bruce, 2002). Corcos worked closely with teachers in the Law Department to develop a one-year course that supplemented the Department’s longstanding Research and Writing courses with material targeted specifically at improving students’ legal English expression. Corcos and his team targeted the specialist written legal genre of Written
Problem Answers, a genre that accounted for 60% of all law exam questions, and which has spawned a range of Q&A books from legal publishers, which offer law students models of how to answer problem questions in all the undergraduate legal subjects.

This precursor to the approach described in the current paper adopted a legal writing pedagogy divorced from an authentic context of use. Hoffman (2011) criticised such approaches, casting doubt on the idea that “by simply behaving like a lawyer in this simplified context and getting written feedback on their texts, students will be able to pick up what it means to be a member of the discourse community” (p.5).

However, the English for Law course approach sought to emphasise the symbiotic rather than dichotomous curricular relationship between language and disciplinary content (Bruce, 2002). The textual material the students needed to apply to their writing was the legal genre of judicial case reports, and eventually—through the fair educational use of case materials to which access was already under licence from the publisher—it became possible to develop an online database of these reports and a concordancing program, which became the online writing assistant website later developed at Hong Kong Shue Yan University (Bruce, 2012).

Three factors distinguish the approach described in this paper from those developed initially in the HKU English for Law course and those described by Hoffman (2011):

- the authenticity of the texts students were exposed to,
- the expectation that they would use them independently as a “textual mentor” or writing assistant, and
- the authenticity of use provided by the need to present their arguments in front of a judge in the Moot exercise.

Textual Mentors

Another route to developing student competence in constructing legal arguments in a foreign language, is the notion of the generic disciplinary text as “textual mentor”. Flowerdew & Wang (2017) discuss the role of textual mentors as one method that their postgraduate students employed to help them structure their writing. A textual mentor is essentially a piece of expert writing, journal article or book chapter, serving as a model or template for the student writer to imitate. While students employing this approach run the risk of being tempted to plagiarise from their sources, the practice of imitation, “language re-use” or “patchwriting” (Howard, 1993, p 233) may have more validity in legal English than in other domains, given the comparatively frozen nature of legal discourse discussed above, and the expectations of the legal discourse community that the conventions for expressing legal ideas are strictly complied
with. Our case study illustrates the difficulty one group of students experienced in first understanding and then complying with the conventions of expressing the idea of “apprehending imminent violence” in their plea for the prosecution.

Bianchi & Pazzaglia (2007) make the point that the use of textual mentors is common among highly proficient second language writers, but that writers with less experience or lower language proficiency tend not to use them, relying entirely on their own limited competence. While reliance on a textual mentor may risk the temptation to plagiarise and produce “a patchwork of prefabricated chunks of language where creativity is compromised” (Bianchi & Pazzaglia, 2007, p. 263), Bianchi & Pazzaglia maintain that producing the patchwork is, in itself, a creative process.

**Data-driven Learning: Corpus as Textual Mentor**

Corpus-based approaches to writing support can serve the “textual mentor” role by giving student writers access to expert models. This approach draws on the view of language learning as a process of linguistic enquiry, and on the metaphor of “language detective” famously used by Tim Johns in introducing the term “data-driven learning” (DDL) (Johns, 1991, 1997).

There is persuasive evidence for the effectiveness of DDL in enhancing language skills and knowledge. Boulton & Cobb (2017) reviewed 205 papers involving DDL, focussing on 64 empirical studies in which effectiveness was measured by pre- and post-test designs involving control and experimental groups. Results indicated that DDL was effective with significant results in terms of increased knowledge or skills, and with the strongest evidence of effectiveness in studies where learners had hands-on access to the corpus data.

Boulton & Cobb listed the general advantages of DDL as exposing learners to authentic language; allowing them to identify which forms and meanings in a language are most frequent, and therefore most worth knowing; promoting learner autonomy, and employing a constructivist, inductive, exemplar-based approach to learning. They argue for the “potential theoretical advantages” of DDL “as a method of making input comprehensible” (Boulton & Cobb, 2017, p. 350), since DDL reflects current linguistic theory, learning theory, psycholinguistic theory and SLA research regarding focus on form and bottom-up processing.

**Drawbacks of DDL**

Other scholars, however, have identified disadvantages of DDL as a learning approach, especially for lower proficiency learners like those in the present study. Boulton & Cobb mention some disadvantages, including decontextualization: “chopped-off concordance lines [being] off-putting for some and … not designed for gaining meaning as traditionally-conceived via linear reading” (Boulton & Cobb, 2017 p. 351). Adel (2010) also sees context as a problem
in many DDL approaches as the data the learner sees may be concordance lines in KWIK format divorced from the textual context from which they derive their meaning. The problem of context was raised by Widdowson and encapsulated neatly in the well-known expression “the text travels but the context does not travel with it” (cited in Flowerdew (2009, p.402)).

In this paper we will show how, with every search of the writing assistant developed at our university, students are able to move from the KWIK format to viewing a more context-rich extract from the relevant case report (see Fig. 2). Pursuing our goal of dovetailing disciplinary phrasing in English to authentic source content texts that are also highly relevant to the user’s discourse needs, on our pilot programs developed for other subjects, students are hotlinked from their selected extract directly to the website of the publisher of the relevant academic journal article. Currently, we are not able to advance to this level with our legal case report corpus, as even non-profit organisations like Bailii, the British and Irish Legal Information Institute hosted in the UK and Ireland by the Institute of Advanced Legal Studies, London and the Law Faculty, University College Cork, are reluctant to sanction text mining of their database of legal documents, even those case reports that are individually accessible to the general public.

Authenticity, often presented as an advantage of DDL approaches, also has drawbacks, as Bouton & Cobb (2017, p. 351) point out: authentic native-speaker usage is not comprehensible to many learners. Bouton & Cobb note that even advocates of DDL often argue in favour of restricting its use, confining it to higher-level learners, simplifying corpora, and using “indirect” DDL for lower-level learners. However, even though the target users of the program cannot be categorised as higher-level, they are required, over a 4-year degree, to learn the discourse of their law subjects largely from studying authentic judicial reports. These reports ‘encase’ the very language of argument and explication they need to complete their legal assignments. The program helps students learn from these authentic materials by enabling them to access reliable and topic-relevant examples of how to express legal arguments.

The terms “direct” and “indirect” describe the difference between hands-on approaches on the one hand, and paper-based DDL on the other. Indirect DDL does not give learners hands-on access to the corpus data, but might involve teaching materials that include concordance displays (paper-based DDL) that learners are guided to interpret. The present study focuses on a direct approach to DDL for law students.

Adel (2010) discusses seven major challenges posed to learners by direct DDL approaches. Among the most significant of these are the “corpus as a maze” and “drowning in data” problems. These refer to the potential for a learner to be overwhelmed by the mass of data generated by a corpus search and to have difficulty therefore in knowing what to look for in the
data displayed. The same tendency is noted by Götz & Mukherjee (2006), who argue for the importance of developing “corpus literacy” to enable learners to benefit more from DDL. Hafner and Candlin (2007) found students experienced similar difficulty in knowing what to look for in concordance displays. They record the wry comment from one of the advanced level learners in their study – “I’m not a surgeon in my writing” (Hafner & Candlin, 2007, p.316). For this writer, the corpus provided much more data than they actually needed as writers. Such insights can be taken as a reminder to linguists that while they may find concordance lines fascinating, learners are in the business of improving their writing. Ketterman & Marko (2011) found that enjoyment of the corpus investigation process was not a factor motivating their advanced learners. The learners were target-oriented and therefore not always “explorative” and “the pleasure factor” was not key for students whose major subject was not language or linguistics.

In a similar vein, Frankenberg-Garcia et al (2019) note that “no matter how fascinating collocations are to a lexicographer or linguist, a writer’s main goal is not to browse collocations, but to find suitable words to convey their thoughts.” (Frankenberg-Garcia et al, 2019 p. 34). These perspectives cast some doubt on Johns’ (1997) aspiration for learners engaged in DDL to willingly play the role of “language detective”.

A further problem that Adel (2010) identifies is the need for learners to learn how to interpret corpus data and to evaluate results so that they can incorporate their findings into their own writing. The point has been made many times by Stubbs, (e.g., 2005a, 2005b) that the human element is crucial in making sense of corpus search results. Adel cites Sinclair (2004, p. 7) who characterised corpus evidence as “essentially indirect, which means that it cannot be taken at face value but must go through a process of interpretation”. Adel notes that interpretation involves a great deal of linguistic and rhetorical knowledge.

To summarise, six key problems with the direct approach to DDL have been identified:

1. Decontextualization
2. Authenticity
3. “corpus as a maze”
4. “drowning in data”
5. Lack of “language detective” motivation
6. The need for interpretation and evaluation

The presentation of the direct corpus-based approach used in the present study that follows demonstrates how the study and the design of the program attempted to
address these six challenges.

**A Discipline- and Genre-specific Concordancing Model**

The present study employs a legal English corpus, and a search engine to interrogate it (henceforward referred to as ‘the program’) which is one of a suite of discipline-specific programs currently under development. The program draws on a specialized corpus of legal case reports in eight domains–Banking, Company, Constitutional, Contract, Criminal, Property and Tort Law and Equity & Trusts–supplemented by a small sample of legislative texts in the form of 20 Hong Kong Ordinances. In total, the corpus amounts to 26.3 million words.

As mentioned earlier, the program was developed as part of a legal literacy programme to help university students of law, all of whom are non-native users of English, become more independent second language writers. It offers students models of high-frequency legal expressions written by legal experts in the judiciary. Legal case reports, which make up the great bulk of the corpus data, commonly provide an initial summary of the case and crucially include records of authentic legal explication and argument used in real contexts in the form of counsel pleadings and judgements. Judgements, in particular, provide vivid examples of legal English in all its complexity and demonstrate how the “mind-boggling jargon” and “bloated expressions” that Garner (2013) referred to are used in context.

Three search options are included: Simple Search, Combination Search and Comparative Search. Using Simple Search will display variants of the search term, followed by examples of the exact search term in KWIK format in descending order of frequency, with the search term highlighted. Returning to our earlier example, searching for the key contract law term “consideration” results in frequency counts of the search term–“consideration (6318)”, but also its variants, “consider (8074)”, “considered (6390)”, “considering (2347)” and so on, which they will have discovered are not related to the “material” idea of consideration, which is one of the four core elements of contract law. The searched-for term is displayed in KWIK format, as shown in Figure 1.
FIGURE 1. Simple Search results for “consideration”

The opening display of results invites the students to select the language pattern that they would like to explore, either by refining their search, or by examining the sample collocations. Clicking on the red search term in the KWIK display takes the user to a five-sentence context: two sentences respectively before and after the sentence in which the search item is used, as shown in Figure 2.

FIGURE 2. Five-sentence context for the search term “consideration”

As noted above, the developers of the program are hoping to negotiate a further stage taking the user directly to the full case report in the university library database via a further click, thus offering students three levels of contextualisation – initial KWIK display, 5-sentence context and the original case report.

A combination search enables users, for example, to unpack related concepts to see how the terms combine. The combination search is especially useful for exploring active and passive usage, as it reveals the terms in alternate sequences. For example, the different patterns associated with the reduction of damages when contributory negligence is involved. Figure 3
below illustrates how a combined search for “reduce” and “damages” enables the learner to see active and passive patterns used with these terms by clicking alternately on the active present tense form, *reduce*, and the past participle form, *reduced*. The program automatically displays the different lexical options for the verb, allowing the user to click on these different forms to note the grammatical differences in the results. We find our students do have difficulty using the passive voice, distinguishing between ‘reduced’ in the active past form and its use in expressing the passive voice, so this is an area that does need addressing in the course materials.

**FIGURE 3. Combination Search for “reduce” + “damages”**

A comparative search enables users to compare the use of similar terms which might be the cause of confusion for second language learners; Chinese students studying law in English commonly confuse “damage”, to mean harm, and “damages”, to mean a financial penalty; the most frequent examples of the use of each term make very clear the differences in how the two terms are used, as shown in Figure 4 below.
FIGURE 4. Comparative Search for “damage” and “damages”

Method

This paper describes the experience of a group of law students when responding to a Moot problem in Criminal Law. In observing students’ experiences, one complex legal expression is chosen to illustrate the potential benefits of the online writing assistant. The expression involves a specialised meaning of the verb *apprehend* and its nominalised form *apprehension*. The rationale for this choice is explained below.

Research Questions

Two research questions guide the reporting of the use of the online writing assistant with second year students engaged in writing a Moot submission in the Criminal Law domain:

1. What difficulties did law students experience in mastering the appropriate use of *apprehend* and *apprehension* in the Moot submission they were required to write?
2. How did access to the online writing assistant guide them in the appropriate use of these expressions?

An exploratory case study method is employed to address the research questions.

Subjects

The subjects of the present study are the September 2018 cohort of students enrolled in a four-year bachelor’s degree with a joint major in Law and Business. The 2018 cohort initially comprised 27 students, 14 from Hong Kong and 13 from the Mainland, but was reduced to 24 students by the time of the current study by normal attrition. The first language of all students was a variant of Chinese: Cantonese for the Hong Kong students and 4 of the Mainlanders,
Putonghua for the remaining 9 Mainland students. With the exception of 2 Hong Kong students who had already completed a Higher Diploma in a subject unrelated to Law or Business, all the students had completed their secondary school education in the summer of 2018.

One group of three students was selected as the case to illustrate the value of the online writing assistant in supporting their writing. The group comprised two local Hong Kong students and one student from Mainland China. There were of average ability overall. Table 1 below shows the average scores of the whole class of 24 students, and those of the case study group (CS Group) on Legal Literacy Assessment Tasks (ATs) and Final Scores across four Legal Literacy courses. The scores of the CS group in the four courses appear comparable with those of the class as a whole. However, the small numbers involved make it difficult to estimate the relationship between them statistically. The correlation between the two sets of score was calculated using SPSS version 26 (IBM, 2019). The results are shown in Table 2 below. The correlation coefficient r. is 0.541 and the significance is 0.03, suggesting that the relationship between these two sets of data is positive, moderate in strength and significant. From these results we can infer that there is a relationship between the sets of scores, such that when the CS group scores increase, those of the class as a whole also increase. This provides evidence to suggest that there was a stable relationship between the class and the CS group, and that they are broadly similar in terms of their performance on the assessment tasks.

Despite this apparent similarity, Table 1 suggests that differences between them became more marked in Legal Literacy IV which involved the written moot submission and performance in the moot court in front of a judge. Selecting this group for the case study enables us to determine the extent to which use of the online writing assistant contributed to their improved performance on the moot exercises.

TABLE 1. Case Study Group and Whole Class Scores on Assessment Tasks and Final scores in 4 Legal Literacy courses

<table>
<thead>
<tr>
<th>Assessment Tasks</th>
<th>Case Study Group Average scores</th>
<th>Class Average Scores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Argument I</td>
<td>69.2%</td>
<td>55.5%</td>
</tr>
<tr>
<td>Legal Argument I</td>
<td>55.3%</td>
<td>59.9%</td>
</tr>
<tr>
<td>Reflection</td>
<td>65.7%</td>
<td>58.4%</td>
</tr>
<tr>
<td>Final Score</td>
<td>59.8%</td>
<td>58.3%</td>
</tr>
<tr>
<td>-------------</td>
<td>-------</td>
<td>-------</td>
</tr>
<tr>
<td><strong>Legal Literacy II Jan-May 2019</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oral Moot</td>
<td>65.55%</td>
<td>63.55%</td>
</tr>
<tr>
<td>Written Moot</td>
<td>69.16%</td>
<td>64.76%</td>
</tr>
<tr>
<td>Test</td>
<td>67.83%</td>
<td>62.81%</td>
</tr>
<tr>
<td>Final Score</td>
<td>67.76%</td>
<td>63.55%</td>
</tr>
<tr>
<td><strong>Legal Literacy III Sept-Dec 2019</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Problem Question 2</td>
<td>60.43%</td>
<td>64.16%</td>
</tr>
<tr>
<td>Problem Question 3</td>
<td>66.6%</td>
<td>61.5%</td>
</tr>
<tr>
<td>Portfolio</td>
<td>64.0%</td>
<td>70.66%</td>
</tr>
<tr>
<td>Final Score</td>
<td>62.82%</td>
<td>63.31%</td>
</tr>
<tr>
<td><strong>Legal Literacy IV Jan-May 2020</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Written Moot</td>
<td>77.5%</td>
<td>71.4%</td>
</tr>
<tr>
<td>Oral Moot</td>
<td>70.8%</td>
<td>67.4%</td>
</tr>
<tr>
<td>Test</td>
<td>72.16%</td>
<td>67.5%</td>
</tr>
<tr>
<td>Final Score</td>
<td>73.66%</td>
<td>68.76%</td>
</tr>
</tbody>
</table>

**TABLE 2. Correlation between Case Study Group and Whole Class on Assessment Task and Final Scores**

<table>
<thead>
<tr>
<th>Group</th>
<th>Pearson Correlation</th>
<th>Sig. (2-tailed)</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>.541*</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Sig. (2-tailed)</td>
<td>.030</td>
<td></td>
</tr>
<tr>
<td></td>
<td>N</td>
<td>16</td>
<td>16</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Class</th>
<th>Pearson Correlation</th>
<th>Sig. (2-tailed)</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>.541*</td>
<td>.030</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Sig. (2-tailed)</td>
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</tr>
<tr>
<td></td>
<td>N</td>
<td>16</td>
<td>16</td>
</tr>
</tbody>
</table>

* Correlation is significant at the 0.05 level (2-tailed).

**The Law and Business programme**

The Bachelor of Commerce in Law and Business is a four-year 123-credit, joint degree programme comprising courses in Law, Business, Chinese and English language skills and General Education. In addition, students are required to take a Legal Literacy course in each of the four semesters of years one and two of their programme. The 4 Legal Literacy courses are not credit bearing, but equivalent in terms of contact hours to 3-credit courses, and their course results are published on students’ graduating transcripts. These courses introduce students to
aspects of legal English relevant to their core studies in Contract Law in year one, and Tort Law and Criminal Law in year two. The Legal Literacy courses are taught by Language Consultants (the authors of the present paper).

As part of the assessment for one of their compulsory Law courses in each year of the programme, students are required to take part in a Mooting exercise. The Spring semester Legal Literacy courses in the first (Legal Literacy II) and second years (Legal Literacy IV) of the programme are integrated with the respective Mooting exercises, with draft responses being submitted to the language consultants and discussed in small group sessions in Legal Literacy lessons.

The first year moot involves a contract law case; the second year moot involves a criminal law case. The present study focuses on students’ engagement with the criminal law moot exercise in the Spring semester of the second year of the programme and the support provided to students in responding to the moot problem by the language consultants in Legal Literacy IV.

Introducing the online writing assistant

Students in the Law and Business degree are introduced to the writing assistant in the first semester of their programme through Legal Literacy I. In this course, students are assigned homework tasks involving compiling key legal vocabulary in a Legal English Vocabulary Record sheet illustrated in Figure 5 below.

![Legal English Vocabulary Record](image)

**FIGURE 5. Legal Literacy I - Legal English Vocabulary Record**
In addition, students working in pairs or groups of three, were required to present the results of their investigations of legal terms, in all the aspects represented in the Legal English Vocabulary Record – part of speech, collocations, example phrase, pronunciation, translation and associated words – in a 15-minute presentation during the Legal Literacy I course. The instructions for the Legal English Vocabulary Record and the presentation are in Appendix A.

**The Mooting Exercise**

The context for the present case is a mooting exercise in which students, working in groups of 3, have two months to respond to a Moot Problem by submitting a written response, to be followed by oral submission of the arguments in a simulation of the hearing of the case conducted in front of an invited legal professional acting in the role of judge. Language Consultants assist groups in revising successive drafts of the written response, and in the process refer students to the online writing assistant as necessary.

In addition to the introduction to the writing assistant in the first semester Legal Literacy I course described above, subjects of the present study had completed a contract law mooting exercise in the second semester of the programme. This exercise was supported by Legal Literacy II, with draft responses to the moot problem submitted to the language consultant and discussed in small group sessions in the Legal Literacy II lessons. In drafting and finalizing their responses, students would have been expected to make use of the online writing assistant to investigate the appropriate use of key words in Contract Law.

The Moot Problem in the present case consisted of a description of an incident which resulted in a criminal prosecution for assault. A frail old lady, the victim, was so frightened by a prank initiated by her neighbour, the accused, who recklessly shouted “boo” at her back when she was walking home one dark evening, that she suffered a heart attack and died. In this assignment, students have to act as either counsel for the prosecution or counsel for the defence. Both sides are asked to address the key issue of whether the accused had committed an unlawful act by shouting “boo” at the Victim.

In tackling this issue, students are expected to make reference to the concept of “apprehension” of violence, which can be considered as an act of verbal assault, or violence committed in words. The concept is expressed by Lord Justice Steyn, in a precedent case (Regina vs Ireland, 1997), as follows (emphasis added):

A thing said is also a thing done. There is no reason why something said should be incapable of causing an apprehension of immediate personal violence, e.g., a man accosting a woman in a dark alley saying, “Come with me or I will stab you.” I would, therefore, reject the proposition that an
assault can never be committed by words.

In responding to the moot problem, following legal conventions, students are expected to employ the grammar pattern most commonly associated with “apprehend” and “apprehension” in criminal cases: the verb pattern “causing the victim to apprehend immediate and unlawful violence”; and the nominalized form “apprehension of immediate and unlawful violence”.

A search of the online writing assistant reveals the usage of these patterns, as shown in Figure 6 below; note the almost “frozen” nature of the association of the verb “apprehend” with the noun “violence”.

FIGURE 6. Simple Searches for “apprehend” and “apprehension”

Findings

The first drafts of groups’ written submissions were received in the week beginning 24 February 2020. The response of one of the moot groups is the focus of this case study.

In the first draft of the group’s response, it was clear that the patterns associated with “apprehend” and “apprehension” had not been used appropriately. Students had relied on more familiar, everyday uses of the terms, such as those easily available to them through online dictionaries. To take just one example, the online Cambridge Dictionary (n.d.) lists two
meanings of the verb:

1. to catch and arrest someone who has not obeyed the law
2. to understand something

Similar results can be found from other online dictionaries. While definition 2 here is relevant to the legal expression “an apprehension of immediate personal violence”, in the words of Lord Steyn, none of the most commonly used online dictionaries (Collins, Merriam-Webster, dictionary.com, vocabulary.com, Oxfordlearners, the freedictionary or Macmillan) exemplify this specialised usage.

An extract from the first draft of the group’s response is shown in Figure 7 below. The group has used “apprehended” inappropriately followed by a direct human object: “apprehended the victim” (underlined in Figure 7 below). This may have resulted from their familiarity with definition 1 above, which is the more everyday usage, “apprehend a suspect”. In the draft, “apprehension” is also used inappropriately (also underlined in Figure 7 below), “the victim’s death was caused by apprehension from the appellant’s unlawful act”. However, although this example seems to suggest that the underlying concept of “apprehension of violence” had begun to be understood.

Indirect physical contact can cause the injury and death of a victim as a direct and immediate result of a party’s act. In Cheung Yue Wing v The Queen [1958] HKCU 60, the appellant’s unlawful act apprehended the victim, resulting in the death of the victim.

The Court held that the unlawful act includes apprehension where it injures a victim as a direct and immediate result of a party’s unlawful act. In the present case, the Accused’s actions led to the death of the victim. Reliance is placed on Cheung Yue Wing v The Queen [1958] HKCU 60 where the victim’s death was caused by apprehension from the appellant’s unlawful act.

FIGURE 7. Usage of Apprehend and Apprehension in First Draft Submission

The language consultant responded to these problems by inserting a comment in the draft directing the group to the online writing assistant, as follows: 

Important: please check the Writing Assistant for the use of this concept – the vb. apprehend AND noun apprehension - in criminal law – just tick the Criminallaw box; I have pasted the results on the end page of this document; note that the victim does the apprehending – literally being made or
becoming aware of an impending assault

One week later, the second draft was submitted. The usage of “apprehend” and “apprehension” continued to be problematic, although there is further evidence to suggest that the concept was beginning to be grasped as the group had used the pattern “apprehend an assault”, although the problematic form, “apprehend the victim” was still being used. The relevant extract from the second draft is shown in Figure 8 below.

In the present case, the Accused was intentionally assaulting the Victim by shouting loudly at the back of the Victim to apprehend the Victim with a startling event. Reliance is placed on HKSAR v Wong Yuk Man HCMA (2016), where an assault is any act by the defendant intentionally, causes the victim to apprehend. In the present case, the Accused purposely walking one meter behind the Victim, and waiting for a particular moment to shout loudly at the back of the Victim was indeed a planned action with intention to assault the Victim to pay back the Victim.

FIGURE 8. Usage of Apprehend and Apprehension in Second Draft Submission

The language consultant responded as follows:

I don’t think you understand the verb “apprehend” in the sense of anticipating or fearing assault or violence, as it should be used here. You can say “to cause apprehension in the victim”. Another meaning is for police to “apprehend” the suspect – i.e., put them under arrest. This sense seems to be the one you are using here.

Two weeks later, the final draft of the group’s written response was received. In the draft there were 13 instances of “apprehend” and “apprehension”. These instances are shown in Table 1 below.

TABLE 3. Usage of “apprehend” and “apprehension” in Final Draft (emphases added)

1. It is submitted that the Accused conducted an unlawful act, on the grounds that the Accused assaulted the Victim intentionally to cause the victim to apprehend an assault.

2. “An assault is any act by which the defendant intentionally, or recklessly, causes the victim to apprehend immediate unlawful violence.”

3. the accused was found guilty of assault ... towards the victim, resulting in no bodily harm but causing the victim to apprehend immediate unlawful violence.

4. He intentionally assaulted the Victim by shouting loudly at the back of the Victim to apprehend the Victim with a startling event.
5. ... resulting in no bodily harm but causing the victim to apprehend immediate unlawful violence.

6. ... the appellant’s unlawful act had caused an apprehension in the mind of the victim, resulting in the death of the victim.

7. The Court held that the unlawful act includes apprehension to immediate personal violence where it injures a victim as a direct and immediate result of a party’s unlawful act.

8. ... the act of shouting loudly towards the Victim in a quiet street caused the Victim to apprehend immediate physical violence.

9. “...words alone can constitute an assault if they cause the victim to apprehend a fear of immediate violence.”

10. In the present case, the “boo” sound by the Accused constituted an assault and caused the Victim to apprehend immediate personal violence.

11. We rely on R v Constanza [1997] Crim LR 576, where the defendant caused apprehension immediate to the plaintiff by words, causing the plaintiff to suffer clinical depression and anxiety.

12. ... the term “boo” has no literal meaning, but still caused actual apprehension of immediate personal violence to the Victim.

13. Any sober and reasonable person would have foreseen that shouting a loud “boo” sound at night in a quiet street would give people a sense of apprehension of immediate violence.

Of the thirteen instances of “apprehend” and “apprehension” in the group’s final draft, 7 instances were deemed appropriate – items 1, 3, 5, 8, 10, 12 & 13 in Table 3 above. One of these was a quotation from a precedent case (item 2), and therefore could not be attributed to any learning on the part of the group. What is more significant is that only one of the 13 instances (item 4) employs the inappropriate pattern “apprehend the victim”, while one other instance has problematic word order (item 11 “caused apprehension immediate to the plaintiff”). Items 6, 7 and 9 are either appropriate forms of “apprehension” but not precisely the form used in legal English (item 6 “an apprehension in the mind of the victim” and item 9 “apprehend a fear of immediate violence”), or exhibit minor grammatical problems (item 7 “apprehension to” where “of” is required).

**Discussion**

**Research Questions**

1. What difficulties did law students experience in mastering the appropriate use of *apprehend* and *apprehension* in the Moot submission they were required to write?

The early drafts of students’ responses to the moot problem suggested difficulty in making use of the complex pattern “cause the victim to apprehend immediate personal violence” or its nominalized form. The more familiar pattern of *apprehend* to refer to arresting a suspect was
used instead – apprehended the victim (first draft) was inappropriately used in place of the expected pattern. When apprehend in the sense of understanding was used, there was insufficient evidence to suggest that students were able to use the full legal expression. For example, apprehend used intransitively - causes the victim to apprehend (second draft) does not demonstrate that the full complex pattern had been understood or mastered.

2. How did access to the online writing assistant guide them in the appropriate use of these expressions?

There is clear evidence of improvement in the group’s mastery of the legal English usage of “apprehend” and “apprehension” over the three drafts of their written response to the moot problem.

The question therefore arises, to what extent can the improvement seen be attributed to the use of the online writing assistant? To answer this question, we can draw on the group leader’s evaluation of the process. Evaluations provided by other students also provide more evidence of the value and effectiveness of the program.

Students are asked to evaluate the support provided by language consultants in the mooting exercise in the form of a written reflection completed at the end of the semester as part of their end of year assessment. In this case, the evaluation was submitted in May, more than a month after the mooting exercise had been completed. The group leader of the case study group included the following comments in her reflection:

**TABLE 4. Extract from Written Reflection by Case Study Group Leader**

The Writing Assistant is an excellent engine for me to understand and reproduce well-framed legal assertions ... 
I made several mistakes in the terms “apprehension” and “apprehend”, I listen to the advice to do a simple and comparative search on the Writing Assistant before my oral mooting.
After searching the meaning and structure of the words, I understand better of the form of the words and how to use the words properly. Now I am confident in using these words.

Students from other groups made unsolicited mention of the program in their written reflections, as shown in the extract in Table 5 below.
TABLE 5. Extracts from written reflections by non-case study students

Although we were not good at law, we still learned a lot. For example, we learned from the website of the writing assistant that the original word of law can represent many different meanings, and where to use different words, so we can go to this website to inquire if we have any doubts about the special terms of the law in the future.

The Writing Assistant is a very practical website. It helps us to write legal documents in a more standardized way. The most important thing is that we have reference templates and examples in future writing, which is undoubtedly a better tool than Google. In this semester and last semester's English usage, I am very familiar with the writing assistant, and can master and apply it skillfully, laying a solid foundation for my legal study.

In addition to the written reflection, further evaluation of the program was conducted in the form of a questionnaire distributed by the student representatives of the group at the end of the course. This was a 20-item survey with 12 items asking students about their use of writing support tools generally, and 8 items focussed specifically on their use and evaluation of the online writing assistant. A copy of the questionnaire is provided in Appendix B. Out of 46 active students, 27 responses were received, a response rate of 58.7%. Two of the survey items are relevant here. The writing assistant is designed to be used in two complementary ways – “reactively” and “proactively”. Reactive use involves learners being directed to the program by language consultants in feedback on their drafts. Proactive use involves learners independently looking for the usage patterns of surrounding legal terms or concepts they want to use in their writing when they are not certain how these should be appropriately expressed.

In item 13 of the survey, learners were asked how useful they found the writing assistant in helping them solve writing problems identified by their teacher(s) – Reactive use. The results are shown in Figure 9 below.
FIGURE 9. How Useful Learners Found the Online Writing Assistant in Reactively Solving Problems Identified by Teacher(s)

The results suggest that respondents found the program useful in reacting to teacher suggestions, with 41% of respondents finding it very useful or extremely useful.

Item 19 of the survey asked respondents how useful they found the program in helping them solve writing problems that they identified by themselves. The results are shown in Figure 10 below.

FIGURE 10. How Useful Learners Found the Online Writing Assistant in Proactively Solving Self-identified Writing Problems

The results suggest that respondents found the program useful in proactive use, with 48% of respondents finding it very useful or extremely useful.

General Discussion

The online writing assistant has been valued by learners who used it both reactively and proactively in a mooting exercise in which they were required to construct legal arguments following the written conventions of the legal English genre.

In drawing conclusions about the success of the program, we evaluate the extent to which
our findings suggest the program can address the 6 problems associated with direct DDL – problems identified by scholars such as Adel (2010) and Boulton & Cobb (2017) and discussed earlier.

1. Decontextualization

Context is provided for the concordance displays presented to users of the program at two levels. First the KWIK display provides a minimal context of between 4 and 7 words on either side of the search item, as shown in Figures 1, 3, 4 and 6 above. Secondly, an extended context of the five sentences around which the search item occurs – two to three sentences before and after the sentence containing the search term – can be provided by clicking the search item in the KWIK display of individual examples from the selected pattern. In addition, the brief title of the source text is displayed in a pop-up box on each concordance line when the pattern of interest is selected. This means that users can select 5-sentence extracts from cases they are familiar with, and then search for the source text in the legal databases held by the university library, and thus retrieve the full context of the search term. At noted earlier, the developers of the program hope to be able to install direct links to the library database subject to the availability and agreement being reached with those organisations that provide law students with access to common law judicial case reports.

2. Authenticity

Law students around the world, starting at the most basic level, are required to work with authentic texts in the form of case reports, following the arguments in counsel pleas and the reasoning in judgements. There are many internet sources which, Wikipedia-like, provide simplified versions of case reports, but law lecturers frown upon reliance on such simplified sources and expect students to be able to deal with the authentic, original versions. In this sense, authenticity is a non-issue in any formal law curriculum. However, the online writing assistant can help to ease the challenge posed to users of English as a second language who have to process authentic legal texts, by demonstrating the usage patterns associated with complex legal expressions in a disciplinary context familiar to the student.

3 & 4. “Corpus as a maze” and “drowning in data”

The online writing assistant presents specific and relevant data in response to focussed enquiries. Learners are also introduced to the program in a gradual way, following the staging of the mooting exercises which are highly structured for year one and two students, culminating in a full-scale moot exercise for senior year students. It is possible to drown in the data and be overwhelmed by unfocussed search results, but the introduction to the program in the law program where the study takes place is highly scaffolded to avoid such problems. The
developers of the program are conscious that not all disciplines afford their students the degree of literacy scaffolding that the Law and Business students have enjoyed. With that in mind, steps are being taken to enhance the program’s effectiveness as a “textual mentor”.

At this stage, we are persuaded that the best way of reducing the maze/drowning DDL threats are to acknowledge the focused disciplinary needs of students faced with writing assignments in specific subjects, and to develop as large a related disciplinary database as possible. Producing interdisciplinary databases, as advised by Frankenberg-Garcia (2019) may work for a more generic postgraduate EAP writing program, but in the end each postgraduate student will have a highly-specific study topic and context, and we feel they will better appreciate a database that throws up examples which all relate to their subject.

5. Lack of “language detective” motivation

Law students interrogate the online writing assistant in response to focussed instructions from their teachers, or because they are not sure how a legal expression should be used correctly. Before they interrogate the data, therefore, they already have a narrowly focussed problem to resolve. In this sense, they do have language detective motivation, albeit extrinsically, to resolve the problem, since success in the mooting exercise depends on their ability to find an answer to a legal problem

6. The need for Interpretation and evaluation

The degree of interpretation and evaluation that users of the program have to undertake is limited and manageable. A search of the database is instigated in response to a specific and rather narrow structural question about a language pattern, the meaning of which is already understood. Taking “apprehend” and “apprehension” as examples, as seen in the case study above, the learners understood the meaning of the expression and simply needed to learn its surface form, as used by expert writers. This is attested to by students’ written evaluations in Tables 4 and 5 above, and in particular by the following extracts:

After searching the meaning and structure of the words, I understand better of the form of the words and how to use the words properly. Now I am confident in using these words.

we can go to this website to inquire if we have any doubts about the special terms of the law in the future

It helps us to write legal documents in a more standardized way ... it can help us understand the ... word, as well as its collocation.
Conclusion

We argue that any evaluation of the effectiveness of a concordance-based online writing support (DDL) program needs to take account of the users’ level of specialised knowledge, both of the disciplinary subject matter and of the rhetorical conventions and lexical terminology of that discipline – in the case of the online writing assistant described in this paper, undergraduate students of law and a database exclusively comprising judicial case reports. Given such a context framing this study, we submit that the present study has demonstrated the potential for the program to develop into a writing assistant along lines envisaged by Frankenberg-Garcia et al (2019) in the ColloCaid project, but utilising a more mono-disciplinary database tailored to each broad subject discipline. Paraphrasing the aim of ColloCaid, the program aims to become an intuitive lexicogrammatical resource that is accessed from within digital writing environments to help learners use specialist academic English more accurately and appropriately in completing the written assignments for their curriculum.

References


Liverpool University (XJTLU), Suzhou, China. 27-30 June, 2012
https://doi.org/10.4324/9781315538419
https://doi:10.1075/ijcl.14.3.05flo
https://doi.10.1016/j.jeap.2007.09.005


Appendix A

Instructions for Legal English Vocabulary Learning Record and Writing Assistant presentations

A. Using the Online Writing Assistant to improve your legal English usage

*The Writing Assistant* database, and the search engine we have developed will provide you with everything you need to research the patterns of use of legal terms. You need to obtain your Login username and password from the General Office in order to access the *Writing Assistant* site.

B. Keeping a Vocabulary Learning Record

*The Writing Assistant* has been designed to help you develop your autonomy as a language learner and a law student. That is, you are expected to make use of the program to build up your Legal English vocabulary.

Knowing only the meaning of a word doesn’t get you very far. You need to produce legal English – to write, speak, and, ultimately practice law in English of a high standard. So, you need to pay closer attention to how judges articulate their reasoning.

To help you to do this, it is important to adopt effective ways of recording new words or expressions as you come across them, paying attention to the environment of the legal terms.

On the next page is an example of a Legal English Vocabulary Record. You can add items to your own record as you come across them in lectures and tutorials, and in the Legal Literacy 1 presentations described below.

C. Writing Assistant presentations

Starting in week 4, in your teams of 2 or 3, you need to prepare and deliver a 15-minute presentation on legal terms you have investigated using the *Writing Assistant*. The aim of the presentation is to teach your classmates the legal terms you have investigated.

1. choose terms that you have come across in your Contract Law lectures or in your Legal Literacy course.
2. design your presentation with your classmates in mind: can they learn something useful from your presentation?
3. your presentation should provide all the information your classmates need to add the items you present to their Legal English Vocabulary Record.
4. select interesting examples from well-known Contract cases; cite the cases and offer an edited extract to illustrate the usage.

5. make sure you have something interesting to say about each of the terms that you present: the presentation should not be just a list of points and examples for your classmates to read.
Appendix B

Writing support usage and Writing Assistant evaluation: survey results

The survey was administered in May 2020 to 46 students; 27 returns were received a 58.7% return rate.

A. Reporting use of writing support resources

1. If you are unsure about vocabulary or grammar, how often do you use major Internet search engines (e.g., Google or Yahoo)?

2. How often do you use online translation sites to help you write in English?

3. How often do you use online dictionaries?

4. How often do you use English-English monolingual dictionaries?

5. How often do you use English-Chinese dictionaries?

6. How often do you access smartphone apps for English grammar or style purposes?

7. How often do you use Microsoft Word’s spellchecker or grammar checker?

8. How often do you use a thesaurus [book or online] to help you with English vocabulary? (online or paper)

9. When you are unsure about grammar, do you use a grammar book / online grammar reference?

10. Do you make use of any other resources [not mentioned above] to help you write in English?

11. When you are unsure about some language points, how often do you guess, instead of checking a grammar or vocabulary resource?

12. How often do you use an online English language corpus like the Writing Assistant to check vocabulary or grammar?
B. Evaluating usefulness of the Writing Assistant

13 Reactive: how useful did you find the Writing Assistant in helping you solve writing problems pointed out by your teacher(s)

14 How useful did you find it using such a specialised legal database to solve your English grammar & legal vocabulary problems?

15 How useful did you find the simple Search option as a starting point for exploring solutions to your grammar problems?

16 How useful did you find refining & narrowing down your search, by clicking on neighbouring terms?

17 How useful did you find the Combination Search option, designed to offer you more variety of grammar patterns?

18 How useful did you find proceeding to the full case-based examples with the case titles showing at the top

19 Proactive: how useful did you find the Writing Assistant in helping you solve writing problems that you identified by yourself

20 Overall, how useful did you find the Writing Assistant in helping you improve your legal writing