The International Journal of Legal English

Volume 3 Issue 1

2015

Chief Editor:

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Beijing

China

Chief Australian Advisor

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English for Academic Legal Purposes: Textbook Typologies that Inform Legal English Pedagogy

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BIODATA
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ABSTRACT
This paper investigates how English for Academic Legal Purposes-type (EALP) textbooks, published over the past three decades, have evolved and responded to the challenges of law school education. The purpose of such investigation is three-fold: (1) to determine the nature of the typology that configures the composition of contemporary EALP-type textbooks; (2) to (re)define EALP in light of the new typology; and (3) to determine the possible implications of such typology for legal English pedagogy. The literature review revealed that between 1980 through 2002, legal English textbooks focused primarily on writing instruction with disproportionate emphasis on grammar, legal content, and general writing skills. A qualitative content analysis of a sample of 44 EALP-type textbooks, published between 2002 through 2013, revealed a shift toward multi-skills instruction that is pragmatically scaffolded across the duration of law school. Increasingly, contemporary textbooks attempt to inculcate a comprehensive set of skills that satisfies the needs of academia and legal practice. In pedagogic scholarship these sets of skills are referred to as literacies. Accordingly, EALP is redefined and the features of contemporary EALP-type textbooks are revealed through the new typology. Across the circles of world English, the legal discourse community could utilize these findings as follows: to reevaluate the scaffolding of legal English instruction in terms of law school curriculum design, to determine the features of jurisdiction-specific and universally applicable EALP-type textbook content, and to assist teachers and learners in their decision-making process when selecting course materials.

KEYWORDS
English for Academic Legal Purposes, legal linguistic skills, academic literacies, textbook typology, clinical legal education

1. Introduction

In either digital format or traditional paper version, textbooks are pivotal instructional tools that are crucial to pedagogic processes in university classrooms around the world. Textbooks are dynamic repositories of existing ontologies and epistemologies
whilst simultaneously facilitating the creation of new ones. The textbooks used in legal English courses are no exception as they mirror the complex linguistic needs of law school and legal practice.

Law school is generally recognized as an intellectually strenuous and linguistically demanding curriculum, and law students across the three circles of world English toil to master the perplexing set of legal communication skills (Dolin 2007: 219; Edelman 2010: 112; Hess 2002: 77; Kennedy 2004: 1). This perception is legitimized and exacerbated by at least three principal factors: (1) the linguistic characteristics of legal English; (2) the insufficient communication skills and academic literacies of university entrants; (3) and the use of unfitting instructional methods and isolated curriculum design.

Firstly, legal English is relatively impenetrable because of its syntactic features. To the novice and occasionally experts alike, legal English is riddled with archaic terminology, foreign words, prolixity, run-on sentences, passive constructions, impersonal writing style, and nominalizations (Bhatia 1993: 138; Gibbons 1999: 158-161; Gibbons 2004: 286; Tiersma 2006: 30-45; Venturi 2010: 22; Williams 2004: 112-115). As such, legal English is considered a foreign or additional language to both L1 and L2 language learners across the circles of world English (see Kachru 1996: 135). Lewis (in Bhatia 1989: 233) recognized the ‘foreign’ syntactic appearance of legal English in 1972 when he observed: “[…] much of a law student’s confusion, bewilderment and frustration arises because he [she] is not being taught law only – he [she] is being taught a foreign language as well” (see Danet 1980: 470). Indeed, legal English is even “incomprehensible to well-educated users of American English” (O’Barr in Danet 1980: 470).

Secondly, law students enter university with limited academic communication skills (Alaka 2010: 344; Bruce 2002: 321-322; Larcombe & Malkin 2008: 321). Bok (2006: 82) asserts that American “freshmen have never arrived at college with impressive writing skills.” Bok’s claim is confirmed by Kim and Anderson (2011: 29) who report that 62% of twelfth graders perform below proficiency levels in reading. In the context of a first-year, legal research and writing course at the University of Texas, Laycock (1990) observes:

My conceptual mistake was to assume that students entered law school with the basic skill, which is general writing, and that we could immediately begin to improve on that skill. But that is wrong. The basic skill is legal writing, and students do not have it when they enter (Laycock 1990: 83).

Consequently, educators are faced with the challenge of imparting specialized legal communication skills when a general shortage already exists (Duncan & ButleRitchie 2003: 80).

The third reason for the intellectual and linguistic challenges of law school include the use of unsuitable instructional methods and isolated syllabus design. The “sage-on-the-stage” character of the lecture method curtails teacher-student interaction (Boyle & Dunn 1998: 217; Mertz 2007: 164). The application of the stress-inducing, dialogical question-and-answer technique of the Socratic Method, across different law school courses, has proven to be relatively unsuccessful (Grossman 2008: 23; Johnson 1978: xvii; Sheldon & Krieger 2007: 883; Sturm & Guinier 2007: 516). While students endure ineffective instruction, the nature of the syllabus could also undermine their learning. Legal English syllabi are not necessarily appropriate or successful at transferring the required academic and professional discourse abilities (Carrick & Dunn 1985; Candlin, Bhatia, Jensen, & Langton 2002). Students might be able to manage the textual features of some professional genres; however, “they are still unaware of the discursive realities of the professional world”
(Bhatia 2008: 161). In other words, the need arises for syllabi and curricula to integrate the interdiscursivity of academic and professional genres.

The legal discourse community has responded vigorously to these challenges. Since the 1960s, the linguistic difficulties of legal English have been addressed through the prolific endeavors of the plain legal English movement that promotes the syntactic clarity of legal texts (Kimble 1994: 53; Petelin 2010: 207; Williams 2005: 167-192). The insufficient communication skills and academic literacies of university entrants and the use of unfitting instructional methods and isolated syllabus design have stimulated a skills-based pedagogy that attempts to answer the needs of legal practice by teaching students to think like lawyers. The MacCrate Report (American Bar Association 1992), the Carnegie Report (Sullivan, Colby, Wegner, Bond, & Shulman 2007), and the report on Best Practices for Legal Education (Stuckey 2007) are of particular significance in this respect.

However, the legal discourse community was not alone in its endeavor. During the 1960s and 1970s, research in linguistics began to focus more on language teaching, acquisition, assessment, literacy, policy, teacher training, multilingualism, language and technology, and corpus linguistics (Grabe 2002: 4; Trask 2007: 21; Weideman 2007: 591; Widdowson 2003: 7). Contemporary awareness of legal language began with Mellinkoff’s The Language of the Law (1963), and interest has increased significantly since 1985 when the first conference on “Language in the Judicial Process” was held in the United States (Levi 1995: 772). Since then, legal scholars, applied linguists, and educators have attempted to solve language problems, especially in the field of language pedagogy (Trask 2007: 156; see Halliday 1993: 94) and in particular EALP.

Together with the development of EALP-type courses, a niche market for EALP-type textbooks emerged. Over the past three decades, two significant studies reviewed appropriate samples of legal writing textbooks. First, Carrick and Dunn (1985) reviewed a sample of 11 legal writing textbooks published between 1980 through 1985. The second review, conducted by Candlin et al., (2002), included 37 legal writing textbooks published between 1985 through 2002. The current paper reflects on the pedagogic contributions of Carrick and Dunn (1985) and Candlin et al., (2002), and it departs diachronically with a sample of EALP-type textbooks where Candlin et al., (2002) terminate. The qualitative content analysis conducted for this paper included 44 EALP-type textbooks published between 2002 thought 2013.

Carrick and Dunn (1985: 649) contribute pedagogically by identifying five categories of textbooks: (1) legal research or legal bibliography books; (2) books on legal brief writing and argumentation; (3) books that prepare students for law school examinations and case briefing; (4) grammar-based books; and (5) general legal writing texts for the law school curriculum. Carrick and Dunn (1985: 674-675) recognize legal writing as a legal skills course that should attempt to balance the rules of grammar and writing instruction with the “practical application of those rules to actual legal writing situations.” With the exception of the first category that focuses on legal research skills, the remaining categories accentuate writing skills.

Where Carrick and Dunn (1985) categorize the textbooks based on content and skills, Candlin et al., (2002) distinguish books primarily with an emphasis on instructional approaches. Table 1 accounts for their typology of four textbooks and associated pedagogic approaches. According to Candlin et al., (2002) lexi-co-grammar based books rely on scientific-modernist approaches, such as the grammar translation and direct methods, which emphasize the authoritative role of teachers and the passive role as recipients of knowledge of students. Secondly, rhetoric-based books are
associated with rhetorical pedagogies that encourage active student collaboration through teacher facilitation. Rhetorical approaches are more suitable for L1 instruction as the exploratory role of students discourages explicit grammar instruction (see Hyland 2003: 21-22). Thirdly, content-based legal English textbooks are more comprehensive than textbooks that focus on either content or language instruction because a legal framework is used to teach legal language. To achieve this goal, legal analysis, reasoning, and substantive law are used. These texts may be criticized for their bias in “favor of legal content rather than the language of the law” (Candlin et al. 2002: 302). Finally, EALP books are associated with English for Academic Purposes (EAP) approaches such as English for Specific Purposes (ESP) and the Australian genre movement. As such, students are exposed to and participate in discourses and genres in social contexts (Paltridge 2007: 931-932; Swales 1990: 58).

<table>
<thead>
<tr>
<th>Typology of legal writing textbooks</th>
<th>Associated pedagogic approaches</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lexico-grammar based books</td>
<td>Scientific-modernist approaches</td>
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<tr>
<td>Rhetoric-based books</td>
<td>Rhetorical approaches</td>
</tr>
<tr>
<td>Books that include legal content</td>
<td>Content-based approaches</td>
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<tr>
<td>EALP books</td>
<td>EAP approaches</td>
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</tbody>
</table>

In summary of the literature review, the Carrick and Dunn (1985) typology resulted in the categorization of EALP-type textbooks based on writing skills and legal content, and Candlin et al., (2002) categorized legal writing textbooks based on the pedagogic approaches that these texts subsume. Although the results are different, both reviews are related through their critical concern with the legal linguistic content of EALP-type textbooks (Carrick & Dunn 1985: 764; Candlin et al. 2002: 299). Drawing on the above-mentioned reviews, this paper provides a longitudinal perspective on the development of EALP-type textbooks and their response to the challenges of legal English education. The following research questions emanated from these challenges:

1. What is the nature of the typology that configures the composition of contemporary EALP-type textbooks?
2. How does the typology inform and reconfigure a contemporary definition of EALP?
3. What are the possible implications of the typology for legal English education?

As first step toward answering the research questions, the methodology and method are delineated. This is followed by the results delivered by the methodological framework and the qualitative content analysis of sample textbooks. The research questions are answered sequentially in the discussion section that is followed by concluding remarks on the limitations of the research and future research directions in EALP.

2. Method and materials

The method provides the techniques or tools used to gather and process data (Creswell 2014: 246-247; Carter & Little 2007: 1317). The research method
comprised two parts, viz. the data collection procedure and the qualitative content analysis of the data. The data collection procedure enabled the identification of a purposive sample of EALP-type textbooks that constituted the qualitative data.

2.1 Data collection procedure

The data collection procedure consisted of the selection of a data collection type and the literature search strategy. As data collection type, EALP-type textbooks were conceptualized as public documents, available at university libraries in the public domain.

The literature search strategy was more elaborate and required time parameters, the specificity of EALP-type textbooks, a target population, circles of world English, and initial screening. The literature search was limited to a specific time frame. Carrick and Dunn (1985) reviewed textbooks published between 1980 through 1985 and Candlin et al., (2002) textbooks published between 1985 through 2002. Consequently, this paper focused on the decade after the Candlin et al., (2002) review; therefore, the parameters were set between 2003 through 2013. The specificity of EALP-type textbooks refers to the scope of the sources. For example, textbooks limited to plain legal English and sources that focused only on legal drafting were excluded because of their exceedingly specified foci for audiences not necessarily in law schools. However, this does not mean that EALP-type textbooks do not include sections on plain legal English or drafting. The population was delineated to include textbooks targeted at university law students. Textbooks available at university libraries usually aim at a law school readership because EALP is primarily taught at the tertiary level. To ensure representation across the circles of world English, one country from each circle was selected. The United States represented the inner circle, South Africa the outer circle, and South Korea the expanding circle. The selection was based on the accessibility to university libraries in these countries. The initial screening was limited to significant parts of the textbooks. As the databases were probed with the different search terms, the textbook titles, lists of content, and prefaces were instrumental to determine inclusion.

The literature searches were conducted simultaneously by Liana Viljoen (an information specialist at the Oliver Tambo Law Library, University of Pretoria, South Africa) and myself. After a briefing about the objectives of the project and based on her professional expertise, Viljoen conducted searches using the following search phrases: legal English, legal literacy and literacies, and legal skills.

Because of an emic perspective, I conducted searches using overlapping and marginally different search phrases. This flexibility provided a broader spectrum of search results that could be screened for availability at university libraries. I used the following terms and phrases: English for academic legal purposes, academic legal language, legal English, thinking like a lawyer, legal skills, and legal literacies. These initial search phrases were indicative of the larger categories of the qualitative content analysis.

The term legal literacies did not deliver any relevant textbooks in the searches conducted by both inquirers. In legal scholarship, legal literacies frequently refer to issues related to street law; that is, legal literacies refer to programs that educate the general public on human rights and the protection of disenfranchised communities, for instance (Kumar 2012; Xu 2011). Legal literacies textbooks focus on educating communities outside the university; however, the term legal skills refers to the acquisition of legal linguistic and other dexterities by university students.
Consequently, the searches on legal literacy and literacies conducted by both inquirers were discarded.

The searches were then triangulated to achieve the following: (1) to validate the inclusion of texts identified by both inquirers; (2) to contribute to data saturation when additional EALP-type textbooks failed to deliver new clusters or categories (Lichtman 2013: 261); and (3) to facilitate thick descriptions to increase the credibility of the qualitative interpretations (Creswell 2014: 189-201).

2.2 Qualitative content analysis

With the EALP-type textbooks selected (see Appendix), the data analysis commenced. Qualitative content analysis is “a multipurpose research method developed specifically for investigating a broad spectrum of problems in which the content of communication serves as a basis for inference” (Cohen, Manion, & Morrison 2005: 164). The primary aim of the qualitative content analysis was to create a typology of textbooks through a description of the trends in the communicative content of the sample of EALP-type textbooks (see Cohen et al. 2005: 165).

2.2.1 Phases of qualitative content analysis

The content analysis was conceptualized as three sequential phases (Creswell 2014: 197-200; Dörnyei 2007: 246; Lichtman 2013: 259): (1) a generative phase that consisted of the coding for content broad clusters, narrow categories, and specific keywords; (2) an interpretive phase during which coded clusters, categories, and keywords were interpreted; and (3) a theorizing phase, which culminated in the research results and outcome of the paper.

Phase 1: Coding procedure

Phase one consisted of three steps that fulfill the quantitative dimension of the project: (1) coding for search terms and phrases to isolate a sample of EALP-type textbooks; (2) coding for textbook groups to create a typology of textbooks; and (3) coding for content clusters, categories, and keywords within textbooks. The coding procedure is summarized in Table 2 as it accounts for the purpose and units of analyses of each step of the coding procedure.

Table 2

<table>
<thead>
<tr>
<th>Summary of steps in phase one of the coding procedure</th>
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<tbody>
<tr>
<td>Purpose</td>
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<tr>
<td>Step 1</td>
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<td>Step 2</td>
</tr>
<tr>
<td>Step 3</td>
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</tbody>
</table>

1 Textbooks included in the sample are accounted for in the Appendix. The Appendix and reference list were coordinated to avoid duplicate entries. However, not all the sample textbooks in the Appendix were referred to in the main text.
**Phase 2: Making interpretations**
The second phase of content analysis consisted of qualifying the data by making interpretations. During the second phase of content analysis, the data was “reassembled” to identify (inter)relationships. In doing so, questions were asked to identify particular structures, processes, and outcomes. This enabled the identification of cause-effect relationships among EALP-type textbook categories (Benaquisto 2008: 52; Dörnyei 2007: 260-261).

**Phase 3: Discussion**
This phase concluded the sequence of qualitative content analysis by interpreting the results of prior analyses. Naturally, this last phase developed on the provisional analyses and summaries generated throughout the other phases. Dörnyei (2007: 257) aptly characterizes phase three as follows:

In qualitative research, the main themes grow organically out of the foundations that were laid during the analytical process and therefore the process of drawing the final conclusions involves taking stock of what we have got, appraising the generated patterns and insights, and finally selecting a limited number of main themes or storylines to elaborate on.

This final stage of qualitative content analysis is characterized as a balancing act during which the holistic meets the particular, and an overarching principle (the sum) presents and preserves its constituting parts and their contextually situated meanings (Dörnyei 2007: 257). Figure 1 summarizes the main components and phases of the method.

![Figure 1 Graphic summary of the method](image-url)}
3. Results

The results are the direct consequence of the application of the method. The results section is sequenced according to the uncovering of the data. As such, the sample of EALP-type textbooks that originated from the data collection procedure is presented first. This is followed by a report on the content clusters of skills that emerged from the coding scheme. Finally, the content clusters resulted in the construction of the typology of contemporary EALP-type textbooks, the primary objective of this paper.

The literature search strategy and the criteria for the screening of textbooks resulted in a purposive sample (N=44). The search phrase legal skills contributed 17/N and legal English 13/N textbooks to the total sample (see Table 2). The phrase academic legal English provided access to a group of 9/N textbooks with a keen academic linguistic focus. However, thinking like a lawyer, the most important skill, vigorously advocated by legal scholarship (Mertz 2007; Sullivan et al. 2007; Wegner 2009), delivered only three textbooks. Does this mean that scholarship overemphasizes the skill, or are textbooks not catalogued accurately? The term may not be used for cataloging purposes because thinking like a lawyer consists of a set of skills, each of which may be catalogued individually. The term English for academic legal purposes delivered only two books, which may indicate that the term is not yet fully embraced by legal scholarship despite its proliferation in L2 pedagogy.

Table 3 provides a summary of the distribution of textbooks across the search terms. The results of the first three terms could be grouped together as texts with prominent linguistic foci and account for 54.50% (24/N) of the sample. Categories four and five include language instruction but share a bifurcated focus on legal skills and clinical skills and account for 45.50% (20/N) of the sample. Because of the refinement of search terms and the initial screening of content and prefaces, all the textbooks contain components on legal English instruction.

Table 3  
Distribution of EALP-type textbooks across the categories of search terms

<table>
<thead>
<tr>
<th>Search terms</th>
<th>Number of textbooks</th>
<th>Subtotal</th>
<th>Percentage</th>
<th>Groupings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 English for academic legal purposes</td>
<td>2</td>
<td></td>
<td></td>
<td>Linguistic foci</td>
</tr>
<tr>
<td>2 Academic legal language</td>
<td>9</td>
<td>24</td>
<td>54.50%</td>
<td>Legal skills</td>
</tr>
<tr>
<td>3 Legal English</td>
<td>13</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Legal skills</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Thinking like a lawyer</td>
<td>3</td>
<td>20</td>
<td>45.50%</td>
<td>Clinical skills</td>
</tr>
<tr>
<td>Total</td>
<td>N=44</td>
<td>N=44</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

The coding scheme proceeded a priori from the literature review, selection of the sample, and description of the typology of EALP-type textbooks. The coding scheme also developed a posteriori during the coding of the sample EALP-type textbooks. The coding scheme consisted of four imbricated layers, viz. content clusters, categories, keywords, and genres. Genre was relevant only to the first content cluster regarding communication skills (see Figure 2).
Four content clusters emerged from the preceding analyses: communication skills, thinking skills, research skills, and pedagogic skills. A content cluster is an encompassing collection of skills that is directly related to the skill describing the cluster, and it is known as *literacies* in pedagogic literature (see Johns 1997: 2-3). Not all textbooks in the sample addressed the content of all four clusters, yet some textbooks were relevant to more than one cluster. Hence, the sum total of textbooks of the four content clusters ($n_1+n_2+n_3+n_4=124$) exceeds the total sample ($N=44$) as textbooks imbricated content clusters. The constituting parts of the sample relevant to each content cluster are expressed in Figure 2. Communication skills received the highest representation with 95.45% (42/N) from the sample followed by thinking skills (90.90%, 40/N), research skills (59.09%, 26/N), and pedagogic skills that ranked the lowest with 36.36% (16/N).

Through the results of the coding scheme emerged the typology of EALP-type textbooks. The sample textbooks were classified into four groups based on their skills content. The four groups, *viz*. law school textbooks, academic legal language textbooks, legal skills textbooks, and clinical legal skills textbooks and their contribution to the sample are summarized in Figure 3.
The sample was also screened to determine the distribution of textbooks across the circles of world English (see Table 4). This distribution is based on the legal content focus of each textbook; that is, which legal systems are used as conduits for linguistic skills instruction. The inner circle is represented by 93.18% (41/N) of the textbooks, which rely on American or British law. The outer circle is represented by 4.54% (2/N) of textbooks based on South African law. Textbooks in the outer circle include the academic legal language skills book entitled *English for Law Students* (Van der Walt & Nienaber 2009) and a legal skills book entitled *Introduction to Law and Legal Skills in South Africa* (Humby, Kotze, Du Plessis, & Du Plessis 2012). The expanding circle is represented by 2.27% (1/N) of the books, viz. an academic legal language skills book entitled *Basic Legal English* (Yu & Kwon 2011). The skewed representation may be the result of the reliance of the outer and expanding circles of world English on the inner circle as norm providing L1 community. It may also be the result of the historical economic and political ascendancy of the inner circle in and the ensuing proliferation of English as a world language.

**Table 4**

<table>
<thead>
<tr>
<th></th>
<th>Inner circle</th>
<th>Outer circle</th>
<th>Expanding circle</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of books</td>
<td>41</td>
<td>2</td>
<td>1</td>
<td>N=44</td>
</tr>
<tr>
<td>Percentage of total</td>
<td>93.18%</td>
<td>4.54%</td>
<td>2.27%</td>
<td>100%</td>
</tr>
</tbody>
</table>

### 4. Discussion

The results of the qualitative content analysis uncovered the typology of EALP-type textbooks. In order to address its consequences, it would be prudent to return to the research questions formulated in the introduction. The three initial research questions facilitate the sequence of the discussion.

**Question 1:** What is the nature of the typology that configures the composition of contemporary EALP-type textbooks? Based on the interpretation of the qualitative content analysis a scaffolded, skills-based typology emerged that consists of four types of textbooks: (1) textbooks that focus on law school skills; (2) academic legal English textbooks; (3) legal skills textbooks; (4) and clinical legal skills textbooks. To
understand the nature of the typology and its contributions to EALP pedagogy the constituting parts of the typology need to be unpacked. Therefore, each type of textbook is defined in terms of four variables: (1) the sequencing and scaffolding of skills in the diachronic progression through law school education; (2) the legal linguistic character of the skills addressed; (3) the circles of world English; and (4) the portion it occupies in the sample of EALP-type textbooks.

**Law school textbooks** focus on law school education and the introductory legal linguistic skills needed prior to and at the beginning of law school. These skills may include, for example, preparation for the Law School Admissions Test (LSAT) and academic essay writing. However, they do not address advanced genres such as the dissertation and research paper. Typically, these textbooks are written by authors from the inner circle for students from the inner circle of world English. These books are mainly for an American-based law school system, but the skills can be utilized in other jurisdictions as well. Law school textbooks account for 15.90% (7/N) of the sample of EALP-type textbooks. McClurg’s (2008) *1L of a Ride: A Well-Traveled Professor’s Roadmap to Success in the First Year of Law School* serves as a fitting example of this group.

**Academic legal language textbooks** comprise a group of textbooks that cover a broad spectrum of academic legal linguistic skills aimed typically at the first year of law school education. However, they do not cover pre-law school skills and focus primarily on communication skills for academic and practical purposes. Characteristically, these textbooks are written by authors in the inner and outer circles, and their academic foci render them useful in all three circles of world English. Specific legal content, however, could pose pedagogic hurdles in foreign jurisdictions. Academic legal language skills textbooks account for 52.27% (23/N) of the sample. *International Legal English: A Course for Classroom or Self-Study Use* (Krois-Linder & TransLegal 2006) and *Legal English: How to Understand and Master the Language of the Law* (McKay, Charlton, & Barsoum 2011) are two representative examples of this group. By virtue of the emphasis on linguistic skills, the academic legal language textbooks may share a larger skills set with the writing textbooks surveyed by Carrick and Dunn (1985) and Candlin *et al.*, (2002) than the other three groups identified in this typology. However, this does not mean that the other groups in the current typology do not address writing skills.

**Legal skills textbooks** cover the most comprehensive and diverse set of skills throughout law school and are represented prominently by all four categories of skills identified for the qualitative content analysis. Typically, these textbooks are written by authors from the inner and outer circles, and their focus on skills renders them useful in all three circles of world English. Similar to the other groups of textbooks, specific legal content could pose pedagogic challenges. Legal skills textbooks account for 15.90% (7/N) of the total sample of EALP-type textbooks. A prime example of a legal skills textbook is *Legal Skills* by Cherkassky, Cressey, Gale, Guth, Kapsis, Lister, Onzivu, and Rook (2011: v). It is the most comprehensive textbook in the legal skills textbook group and is characterized by its authors as an uneasy fit since it is difficult to determine where it belongs in the law school curriculum. In an attempt to define the encyclopedic parameters of the text, the authors ask: “Is it concerned with ‘professional’ skills, ‘academic’ skills or ‘career’ skills? Does it cover ‘personal’ skills or could it be a combination of all four?” (Cherkassky *et al*. 2011: v).

The fourth group is the **clinical legal skills textbooks**. These books employ a clinical legal pedagogy to focus on lawyering skills needed in legal practice. Lawyering skills overlap with academic legal language skills but extend beyond the
classroom and include the skills of practice, such as drafting, advocacy, and negotiation (see MacLean 2006: 510-513). As such, they focus on productive skills set within substantive and procedural law and emphasize an ethical legal epistemology. Typically, these textbooks are written by the inner circle for the inner circle of world English. However, the globalization of law school and transnational legal practice proliferates the use of clinical legal skills textbooks globally. Clinical legal skills textbooks account for 15.90% (7/N) of the total sample of EALP-type textbooks. A principal example of a clinical legal skills textbook is *Excellence in the Workplace: Legal and Life Skills in a Nutshell*. The authors, Kavanagh and Nailon (2007), explicitly assert that clinical legal skills are more concerned with legal practice than academia: “This is the book we both wish we’d had when we started working in our first law jobs. It’s intended as a safety net to help you with challenges you’ll likely face in your first days, weeks, and months on the job” (Kavanagh & Nailon 2007: iii).

The composition of a purposive sample based on a narrow selection of search terms delivered EALP-type textbooks that share a common purpose for legal English instruction. Within this relatively homogenous purposive sample, a typology of EALP-type textbooks can be identified. The typology is diachronically arranged to address the skills that law students need prior to, during, and after law school. Figure 4 illustrates the progression of skills as they are addressed by the four groups of textbooks. Although law school education may be temporally bound, the skills imparted are transferable and relatively scaffolded across law school into legal practice.

![Figure 4 Typology of EALP-type textbooks in relation to an approximate law school timeline](image)

Within the typology, four clusters of skills were identified, *viz.* communication, thinking, research, and pedagogic skills (see Figure 2 and Appendix). In the communication skills cluster, the productive skill of writing is most prolific with less attention devoted to reading, speaking, listening, and social skills. In general, microlinguistic skills, such as grammar and vocabulary acquisition, are imparted through method-based pedagogies (see Brown 2007a: 18-21; Larsen-Freeman & Anderson 2011: 13-26; Richards & Rogers 2001: 56-57), and macrolinguistic skills, such as genre instruction, are inculcated through process-based pedagogies (see Brown 2007a: 29; Richards & Rodgers 2001: 81). It seems as if microlinguistic skills are treated more within the natural scientific paradigm of traditional, theoretical linguistics, such as structuralism, semiotics, and universal grammar. However, macrolinguistic skills are considered within the contextual underpinnings of functional, contextual, interactive, and constructive linguistic approaches associated with theoretical linguistics as social practice.
In terms of the thinking skills cluster, traditional thinking skills, such as critical thinking, hermeneutical skills, and cognitive schemata are emphasized over learning skills and digital skills. Although traditional thinking skills are crucial for inculcating the fundamental skill of thinking like a lawyer, contemporary lawyers may have to participate in the digital discourse community, and such skills need to be nurtured as well.

Research skills are addressed across the typology of textbooks. The literature search and research tools provide research skills that transcend academia and may be applied in legal practice. However, methodologies and methods that may be more useful within academia are neglected. This shortcoming is not new since Carrick and Dunn identified it in 1985.

The final content cluster refers to pedagogic skills that are related to the theoretical and practical matters of legal education. One of the most authoritative texts in the group of law school textbooks is Law School Confidential: A Complete Guide to the Law School Experience: By Students, for Students (Miller 2011). The text guides students from the point of applying to law schools through three years of law school study and includes strategies for ABA examinations. In addition to its comprehensive coverage of communication, thinking, and research skills, the text also provides a thorough introduction to the philosophy and epistemology of legal education. Miller (2011) discusses in sufficient, explicit detail the recommendations of the MacCrate Report (American Bar Association, 1992), the Carnegie Report (Sullivan et al. 2007), and the report on Best Practices for Legal Education (Stuckey 2007) (Miller 2011: 77-84). Therefore, students who consult this text enter law school with an awareness of the dominant discourses in applied legal linguistics and the purposes of a legal education.

With the scaffolded, skills-based typology described, it would be prudent to contextualize it in relation to the Carrick and Dunn (1985) and Candlin et al., (2002) typologies. Because of their expressed interest in legal writing textbooks, Carrick and Dunn (1985) and Candlin et al., (2002) display a common tapered focus on textbooks related to academic legal language and legal skills used during law school. Although a tapered focus is methodologically advantageous, it neglects to consider the set of linguistic skills needed prior to and after law school. Students enter law school with limited general and academic communication skills, and they leave law school ill prepared for the communicative demands of legal practice. The scaffolded, skills-based typology summons a larger pedagogic context that accounts for continued learning.

Table 5 illustrates how a rearrangement of the Carrick and Dunn (1985) and the Candlin et al., (2002) typologies overlap with the proposed scaffolded, skills-based typology regarding categories two and three, viz. academic legal language and legal skills textbooks. However, the typologies do not overlap regarding categories one and four, viz. law school textbooks and clinical legal skills textbooks, which is indicative of the contemporary development of EALP-type textbooks. Category three, “books that include legal content”, identified by Candlin et al., (2002) does not contribute significantly to a typology of legal writing or EALP-type textbooks. By virtue of being used in ESP courses, EALP-type textbooks are by and large legal content-based textbooks. It is inconceivable that even microlinguistic skills, such as legal vocabulary, could be taught or acquired without legal content, for content provides contextualized L2 teaching and learning.
Table 5
Comparison of EALP-type typologies from 1985 through 2013

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<td>• General legal writing</td>
<td>• Rhetoric-based books (Rhetorical approaches)</td>
<td>• Academic legal language textbooks</td>
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<td>• Law school examination books</td>
<td>• EALP books (Content-based approaches)</td>
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<td>2</td>
<td>• Legal research or legal bibliography books</td>
<td>• Books that include content (EAP approaches)</td>
<td>• Legal skills textbooks</td>
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<tr>
<td>3</td>
<td>• Legal brief writing and argumentation</td>
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<td>• Clinical legal skills textbooks</td>
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Considering the inherent relationship between EALP and ESP and the integration of EALP across the law school curriculum and circles of world English, it would be prudent to define EALP within a holistic context.

Question 2: How does the scaffolded, skills-based typology inform and reconfigure a contemporary definition of EALP? A (re)definition of EALP accentuates the evolution of the field, identifies important influences, and serves as precursor for the curriculization of EALP. In order to (re)define EALP, at least two discourses need to be merged, viz. the large taxonomy of English Language Teaching (ELT) of which EALP is a subcategory and existing understandings of EALP in legal scholarship and applied linguistics.

English Language Teaching serves as a hypernym that refers to a prolific field of research about English instruction across the circles of world English. In an attempt to taxonomize ELT, the field can be subdivided into the teaching of English as L1 and L2. Both L1 and L2 teaching include ESP, EAP, and English for Professional Purposes (EPP) (see Figure 5).

Hyland and Hamp-Lyons (2002: 2) differentiate between ESP and EAP based on the functions of language. They argue that ESP focuses on teaching and learning of language for occupational (work-related) purposes. In contrast, EAP grounds language research and instruction in the “understanding of the cognitive, social and linguistic demands of specific academic disciplines” (Hyland & Hamp-Lyons 2002: 2). This distinction between the academic and occupational use of English is artificial and restrictive because the cognitive, social, and linguistic demands of a specific academic discipline are also present in the pursuit of its occupational purpose. The urgent need to merge the cognitive, social, and linguistic demands of academia and practice is evident in one of the objectives of clinical legal education as it can be described as more than just pedagogy; it is also a “philosophy about the role of lawyers in our society” (Tarr 1993: 33).

Similar to ELT, ESP is also a hypernym for a larger taxonomy illustrated in Figure 5. At different ends of the ESP spectrum, the taxonomy positions EAP and
EPP, also known as English for Occupation Purposes (EOP) (Johns & Price-Machado 2001: 44).

As a result of the ESP taxonomy and the EALP-type textbook typology, EALP can be defined as the teaching and learning of legal English as an ESP subject that subsumes the academic dimensions of EAP and professional/occupational dimensions of EPP. Generally, EALP is taught at the tertiary level across the circles of world English, at different stages of legal education, and it is known by a variety of course titles, such as Legal research and writing at Harvard University (inner circle of world English); Jurisprudence at the University of Pretoria (outer circle); and Legal communication at Yonsei University (expanding circle).

The latest developments in EALP-type textbook design contradict the assumption that EAP is substantially different from EPP based on a distinction of purpose, focus, and skills acquisition (see Hyland & Hamp-Lyons 2002: 2; Jordan 1997: 4). For example, in International Legal English: A Course for Classroom or Self-Study Use (Krois-Linder & TransLegal 2006), Legal English (Haigh 2009), and Legal Skills (Finch & Fafinski 2011) the textbooks impart a comprehensive spectrum of skills that include: academic and professional legal communication skills, thinking skills, research skills, and pedagogic skills. In contrast with dated EALP-type textbooks (Candlin et al. 2002; Carrick & Dunn 1985), recent publications between 2003 and 2013 seem to sanction an integrated pedagogic approach to the teaching of legal English skills in the EALP classroom. These contemporary examples merge the purposes and outcomes of EAP and EPP in response to clinical legal education and the demands of academia and legal practice.

The combination between the unique position that EALP occupies within academia and legal practice and the scaffolded, skills-based typology entail repercussions for the legal discourse community.

Question 3: What are the possible implications of the typology for legal English education? The first implication for legal English education that emanates from the scaffolded, skills-based typology is the emphasis on practical linguistic skills. By tracking the evolution of EALP-type textbooks over the past three decades through three textbook typologies, it became evident that legal practice requires linguistic
skills and other literacies not necessarily imparted by law schools. To borrow from Miller’s (1984) definition of genre, legal practice desires law school graduates who can indeed achieve social action through the accumulated knowledge of substance and form in genres. As law schools attempt to echo the needs of legal practice through clinical legal education, the curriculization of EALP and textbook content should respond in turn.

As a consequence of the emphasis on practical linguistic skills, EALP-type textbook authors need to consider prescriptive pedagogies with prudence. Textbook users may be more familiar with the skills they need to acquire than the underlying pedagogic currents of a textbook. The author of a textbook may endorse certain pedagogies, yet the user is not bound by such decisions. Skills, in contrast to the more temperamental nature of pedagogies, remain relatively stable or reified across the circles of world English. The same set of skills may be conceptualized, imparted, and acquired through any number or combination of pedagogic approaches not necessarily envisioned by the author or another teacher. For instance, the category of writing skills in the communication skills content cluster is represented by 86.36% (38/N) of the entire sample; however, their pedagogic underpinnings vary across the spectrum from traditional teacher centered methods (Brown 2007b; Gubby 2006; Yu & Kwon 2011) to critical, postmodern approaches (McClurg 2008; Shapo & Shapo 2009).

Resulting from a pedagogic-based typology of EALP writing textbooks, Candlin et al. (2002: 299) argue that insufficient resources are targeted at L2 learners. The scaffolded, skills-based typology reveals that although 97.72% of the sample was written by authors from the inner and outer circles of world English, it does not mean that texts are not aimed at L2 learners (see Brostoff & Sinsheimer 2003; Krois-Linder & TransLegal 2006; Gubby 2011; Van der Walt & Nienaber 2009; Yu & Kwon 2011). Moreover, in agreement with Danet (1980: 470) and Lewis and Bhatia (1989: 233) the syntactic and genre features of legal English are relatively foreign to L1 learners, as well. Different pedagogic approaches could be applied to a textbook with a skills focus. For example, L1 instruction on the writing of a legal brief could be based on an EAP and rhetorical approach with more challenging, yet appropriate, scaffolded increments. In contrast, L2 students may need smaller scaffolded increments based on a variety of appropriate pedagogic approaches. Both L1 and L2 students may acquire a similar set of skills necessary to write a legal brief, but the EALP instructor could determine the necessary pedagogic approaches depending on the needs of the learners and the law school curriculum.

The second implication of the new typology is that it conceptualizes the progression or scaffolding of legal linguistic skills diachronically throughout law school. This means that EALP should be conceptualized and operationalized across the duration of the law school curriculum. An emphasis on LSAT test taking by law school textbooks is indicative of the pre-law school writing and thinking skills of initiates. The consideration of legal epistemological concerns by clinical legal skills textbooks indicates use by a more advanced, senior student. Classifying textbooks according to the skills they endorse indicates when the textbooks may be most suitable during law school education. Students and teachers could use the scaffolded, skills-based typology to identify level-appropriate textbooks.

Finally, as reported in the results section, only 6.81% (3/N) of the sample textbooks were written by authors in the outer and expanding circles of world English. A scaffolded, skills-based typology could assist authors from the outer and expanding circles to identify the textbooks that are applicable to their contextual needs. It could also indicate to authors and publishers from these circles that they do not have to be
norm-dependent on the inner circle because legal linguistic skills are relatively universally applicable. The scaffolded, skills-based typology could serve as a first step toward identifying the skills that authors wish to address in future EALP publications.

5. Conclusion

This paper set out to determine if a purposive sample of EALP-type textbooks displays an inherent logical arrangement, how this arrangement defines contemporary EALP, and what possible repercussions such arrangement may hold for legal English instruction. The qualitative content analysis of the sample revealed that contemporary EALP-type textbooks are arranged according to a scaffolded, skills-based typology that addresses law school skills needed prior to law school, academic and legal skills needed during law school education, and clinical legal skills that are required in preparation for and during legal practice. Contemporary EALP-type textbooks provided a unique, holistic perspective on, not only the linguistic demands on law students, but also the thinking, research, and pedagogic skills needed to succeed in law school and legal practice.

Although these skills may remain relatively constant, future textbook typologies may reveal different logical arrangements. Because legal practice and law school education are dynamic enterprises that respond to the perpetual vicissitudes of political and cultural societies, EALP-type textbooks should continue to evolve beyond the typology of this paper. Although the constant change may be perceived as challenge and limitation of this investigation, it also stimulates future research. Most notably, a comprehensive corpus of law school linguistic skills and literacies that are applicable across the circles of world English needs to be systemized. In addition to the scaffolded, skills-based typology, such refined codification of skills and literacies could alter legal English instruction across the law school curriculum.

References


**Appendix**

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Total sample: N = 44
Status: It’s Complicated?!
Analyzing the Comprehensibility of a Philippine Consumer-Finance Contract

RACHELLE BALLESTEROS- LINTAO, MARILU RAÑOSA-MADRUNIO

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ABSTRACT

The flourishing movement for plain language in the international scene pushes for a pressing global ideological pursuit that legal documents directed at ordinary citizens, particularly known as consumer contracts, must be in a form that is understood by them. Several studies relate to the complexity of legal documents (Bhatia, 2010; Gibbons, 2004; Schuck, 1992, Tiersma, 1999) and call for the promotion of a clearer language that still preserves the legal meaning (Eagleson, 2004; Felsenfeld & Siegel, 1981; Gibbons, 2004; Kimble, 2000; Tiersma, 1999). Hence, this paper seeks to validate in the local setting such studies done and therefore, examine how a consumer-finance contract is understood by certain consumers. Specifically, this study attempts to determine the comprehensibility of this particular material in the Philippine setting- a credit card terms and conditions document by answering the question: how comprehensible to consumers is the existing credit card terms and conditions document?

Using two reader-based (cloze and paraphrase) tests in analyzing how respondents understand the contract, findings of the study reveal the low comprehensibility of the document validated using the Pearson product moment correlation coefficient statistical test. Moreover, the respondents’ perceived lack of understanding and familiarity of the document present
statistically significant relationship with their low paraphrase scores. Results of this endeavor will serve as basis for possible simplification or redrafting works of the said consumer-finance contract-a prospective groundbreaking project in the area of Forensic Linguistics in the Philippines.

KEYWORDS
Comprehensibility, Cloze, Paraphrase, Legal language, Consumer-finance contract

1. Introduction

Language serves as a vital means by which humanity deals with most things in life owing to a large amount of human activity that hinges on it. And so is the law. Every aspect of the modern human life relies on the law. For instance, the legal process embodies the act of renting as the transaction is finalized once a legal document is signed. In the same way, using a transport and buying items in a supermarket constitute contractual agreement between the passenger or shopper and the transport provider or business owner. While the law impacts social processes and cohesion, the prominent role of language as the heart of the law can never be underestimated. As it is, comprehending the law entails getting a grasp of the language of the law. This is emphasized by Leonard (2006) in espousing that “to understand the law, one must understand language” (p. 1).

Legal texts are regarded to have progressed into performative or dispositive writings that “create, modify or terminate the rights and obligations of individuals or institutions” (Tiersma, 2010, para. 1) after initially serving as mere records of the binding agreement that had already transpired. Considered to be distinct from the ordinary language, these authoritative legal texts come in a variety of genres such as constitutions, contracts, deeds, orders/judgments/decrees, pleadings, statues and wills that follow a certain pattern.

1.1 Consumer Contracts

Tiersma (1999) labels consumer documents as texts that are designed to be used and at the same time comprehended by non-lawyers or ordinary people. Since consumer documents or contracts are aimed at ordinary people or non-specialists or non-lawyers, Haapio (2011) maintains that the non-legal professionals’ understanding of the contract is vital for its efficacy.

An informal survey conducted in 2013 among selected Filipino consumers reveals that they have difficulty understanding legal texts, particularly contracts. In another survey reported in the article Restatement of Contracts published by the American Law Institute (1981), consumers in general do not grasp the provisions in a standardized contract. During an oral argument about an insurance policy in 1969, even the justices admitted their inability to comprehend the insurance policy, remarking that such policies are deliberately obscure.

Correspondingly, in studying the power dynamics of the international companies, Frade (2007) identifies asymmetrical relationship with the powerful companies and their business counterparts, with the former having “hidden power” (p. 1) and controlling as regards terms of commercial and legal transactions as mirrored in the contracts. Fairclough’s (2011) concept of ‘technologization of discourse’- the domineering social force’s (i.e., the bank) manipulation of practices that shape social practices - relates to this disproportionate association. This occurrence ensues despite what Frade regards as “new texturing” (p. 1) or new power dynamics
wherein a more balanced and concerted relationship is expected because of the modern and globalized practices and innovations in the way legal English is used in agreements. Furthermore, Frade contends that due to the domineering power of financial institutions in developed countries, financial contracts mirror such imposing and established rules with only a small or no chance, if at all, for bargaining.

Such a claim is supported by Felsenfeld and Siegel (1981) in observing that, although the law of contracts may not necessarily provide a distinction between the way consumer and business contracts are drafted, a significant difference lies on the way consumer contracts are drafted following an unequally underlying underdog effect on the part of the consumers in the transaction.

Contracts which have been previously printed in bulk numbers do not require negotiations nor formal agreements, no clause-by-clause bargaining on both parties as one party merely adheres or concurs to the terms, thus the name, “contracts of adhesion”. These types of contracts (e.g., life insurance contracts and credit card terms and conditions) once offered and then accepted by consumers, signify a party’s (or the consumer’s) agreement to the terms of the contract and imply his/her being bound by the contract, whether or not full understanding of the terms is ensured by the consumer. As Patterson (1919, as cited in Felsenfeld & Siegel, 1981) remarks, “contracts of adhesion have achieved formal status as a mild pejorative for printed forms that may or may not represent the real agreement of the real parties” (p. 39).

One of the pressing concerns that confront the public is the use of credit cards. Metger and Ruse (2012) report that there are 7.36 million credit cards in circulation in the Philippines. With the favorable Philippine economic condition that translates into positive consumer lending and spending (based on reports released by Moody’s Analytics on April 25, 2013, Euromonitor (2013) and Bangko Sentral ng Pilipinas on February 11, 2014), this credit card issue is expected to significantly rise in the coming years.

Stygall (2010) notes that financial documents such as personal loans, insurance policies, credit card terms and conditions are considered as contracts of adhesion since they are “standardized” documents in which consumers have no right to reach a deal with the other party. A signature affixed on the application form signifies that the provisions “have been read and understood by the Cardholder as evidenced by the Cardholder’s signature either on the application, the Card, and/or the sales slip or other forms of documents evidencing charges to the Card or when the Cardholder retains or uses the Card” (Credit Card Application Form).

Setback happens as consumers are not keen in reading the contract provisions. This predicament is reinforced by UK Law Commissioner David Hertzell (2012) when he asserts, “… the majority of consumers do not read contracts thoroughly before signing. We believe that it should be made clear to consumers what they are committing themselves to before they sign” (para. 4). Many people are not aware of the terms and conditions in credit card use specially the compounding interest which is 3.5% each month or 40% annually.

In the Philippine Supreme Court Rulings regarding lawsuits on the use of credit cards, decisions would always emphasize that credit card terms and conditions as a contract is "as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely" (Equitable Banking Corporation, 2004; Polotan, 1998).
Admittedly, a Supreme Court ruling in the case of Polotan vs CA (1998) regarding the credit charges due and demandable of Polotan even cited that there are provisions in a credit card terms and conditions that are beyond the comprehension of an ordinary layman. Moreover, the highest magistrate, in one of its decisions, even gave an exhortation to “exercise caution in signing surety undertakings prepared by credit card companies, and to read carefully the terms and conditions of the agreement… before giving their consent, and pay heed to stipulations that could lead to onerous effects” (Ongkeko, 2006).

1.2 Legal Language Complexity

A number of studies have been done in relation to the language of the legal profession, several of which promote to make the legal language clearer to ordinary citizens who are directly involved in understanding it. The following are said to be characteristics of the legal language that make it difficult to comprehend as identified by Tiersma (1999):

a. Technical vocabulary- While some technical vocabulary are common, a number of vocabulary are hard to comprehend by the average lay people (e.g. testator, hedonic damages and culpable).

b. Archaic, formal and unusual words- Intended to be used by the highly literate, these words are seldom used and heard by the non-lawyers (e.g., said/aforesaid; to wit; and hereinafter).

c. Impersonal constructions- Felker (1981, in Tiersma, 1999) reports that the legal profession’s use of impersonal language abound (e.g., tendency of judges to address themselves as the court instead of I).

d. Overuse of nominalizations and passives- Nominalizations which serve to take away the power of the actor, are said to be reducing comprehension abilities of readers. The case of legal contracts’ use of “default” serves as one clear example since it is often used as a noun. On the other hand, Charrow and Charrow’s (1979) study discovered that passives hinder comprehension.

e. Modal verbs- The use of shall is considered to be archaic and legalese since it is seldom used in ordinary discourse outside the legal sphere in the same way as employing sentences that begin with “it is necessary (for you) or “it is your duty”.

f. Multiple negation- Semantic complications arise when negations come in third or fourth. Specialists note that the more negatives there are, the more difficult it is to comprehend a material.

g. Long and Complex Sentences- Legal writing is bent on using long and complex sentences to cover all loopholes against attack of the other party.

h. Poor organization- How a text is organized affects how it is understood. Melinkoff (1963) has presented samples of poorly written contracts that have the most important stipulations placed towards the end.

i. Wordiness and redundancy- These features are regarded as foremost legal language components since lawyers are said to prefer circumlocution (e.g. devise and bequeath, right, title, and interest, make, ordain, constitute, and appoint).

Schuck (1992) names four features of legal complexity: density, technicality, differentiation and indeterminacy or uncertainty. He identifies density as the main measure that makes up the legal system’s conventions, and observes that density regulations are profuse in scope cutting across multiple facets of other legal conduct. With technicality defined as a “function of the fineness of the distinctions a rule makes, the specialized terminology it employs, and the refined substantive judgments it requires” (p. 4), the technicality features of the legal language necessitate exceptional know-how on those who are working into these
kinds of rules. On the other hand, differentiation pertains to how the legal system is distinct as an institution as it covers numerous areas of legitimacy in which legal decision systems are based, varied forms of organizational expertise, and diverse organizational schemes in generating, expanding and utilizing the legal rules. Finally, indeterminacy, may serve both as an effect as well as a significant feature of complexity. Indeterminate rules are regarded as “open-textured, flexible, multi-factored and fluid” (p. 4). Schuck (1992) thinks that indeterminate rules are expensive to operate and results are often hard to determine.

In the same way, Schuck (1992) believes that since complexity is “multi-dimensional, and its dimensions cannot easily be measured, much less weighted” (p. 6), legal entities cannot be labeled as either simple or complex, only on a continuum, spanning from extreme simplicity on one end to maximum complexity at the other. In addition, Bhatia (2010) contends that clearness, accuracy, certainty and all-inclusiveness account for the creation of a legal document that is complex in nature, the most significant of which is the all-inclusiveness. This aspect has an important implication in terms of the extent of legal documents’ accessibility and transparency.

1.3 Plain English

Petitions for more readable legal documents including contracts have been advocated by law professors and practitioners (Ali & Wilkinson, 2010; Conard. 1947; Hager, 1959; Mehler, 1960-1961; Mellinkoff, 1963 in Campbell, 1999; Felsenheid & Siegel, 1981; Garner, 2001; Kimble 1994-1995, 1996-1997). Tiersma (1999) promotes such move in arguing that “people have the right to know the meaning of the contracts that they sign and for which they will be held legally responsible. When people are entitled to understand a legal document, it should be as free as possible of technical terms and jargons. If technical terms are avoidable, they should at least be explained in ordinary language” (p. 20). Likewise, Gibbons (2003) proposes changes in legal language so that the law can be more understood by lay people and in doing so, he admonishes that careful work must be done to preserve the legal meaning.

In fact, over the last four decades, the English-speaking countries particularly the United States, United Kingdom, Canada and Australia, have been in the forefront in reforming the language of the law, paving the way for the establishment of the Plain Language movement. A fresh and major breakthrough of the Plain Language movement is the signing of the Plain Writing Act of 2010 by U.S. President Barack Obama on October 13, 2010. This law obliges federal institutions to employ “clear Government communication that the public can understand and use” (Plain Writing Act of 2010: Purpose, 2010). Corollary to this law, the U.S. President issued Executive Order 13563- Improving Regulation and Regulatory Review which mandates the regulatory system to be “accessible, consistent, written in plain language and easy to understand” (Exec. Order No. 13563, s. 1 General Principles of Regulation, 2011).

Locally, Galicio (2013) notes down that major and minor initiatives, both in the current Sixteenth Congress (2013-2016) and in the Fifteenth Congress (2010-2013), have been carried out. The first among the list of principal undertakings includes the Senate Bill Number 1092 or the Plain Writing for Public Service Act of 2013 (patterned after the Plain Writing Act of 2010) filed by Senator Grace Poe-Llamanzares on July 24, 2013.
1.4 Comprehensibility

Jones (1997 in Rameezdeen & Rodrigo, 2013) underscores that comprehension is one’s ability to grasp the meaning of a document and it is different from readability which centers on textual complexity. In the Construction-Integration model designed by Kintsch (1988 as cited in Rameezdeen & Rodrigo, 2013), two levels of cognitive schemes are paramount in comprehending a text. The first stage constitutes drawing out of details from the text; the second, relating one’s schema or prior knowledge to the text read. In other words, comprehension is determined by both reader factors and at the same time textual complexity. A text that is devoid of clarity entails the reader to compensate and make the necessary adjustments.

One reader-based tool in ascertaining the comprehensibility of a document is the cloze test. Promoted by Wilson Taylor (1953), the introduction of the cloze test has led off features of texts examined with more depth and precision. This cloze test method, which concerns the structured removal of words in text, has been used by Klare (1988), Stevens, et al. (1992) and Rameezdeen and Rodrigo (2013) and found to be helpful in their studies. Comprehension of text is determined by a reader’s ability to correctly supply the missing words into the deleted portions. The cloze procedure involves deleting every nth (usually every fifth) word from a writing material to be tested. Bitgood (1996), Kirkwood, et al. (1980), Kool (1985), Newton (1990) in Klare (1988) claim that the cloze test is the more collaborative and a better way of determining text comprehensibility of adult readers. Furthermore, the education sphere, including the International Reading Association has recommended employing the cloze test to measure comprehensibility of a text (Klare, 1988). Much literature and empirical studies support the importance of prior knowledge in comprehension (Pearson, Hansin & Gordon 1977; Langer, 1984, Stevens, 1980, Robovich, 1979 in Klare, 1988) that schema is the bedrock of understanding. On such basis, cloze procedure evaluates the importance of reader’s background, vocabulary and language ability in relation to the piece of material taken into account. Moreover, the cloze test calculates the exact comprehension of readers taking into account the interface between the text and readers’ cognitive reading processes (Denner & Pehrsson, 1994; Klare, Sinaiko & Stolurow, 1972; Sawyer, 1991 in Woods, Moscardo & Greenwood, 1998).

Meanwhile, Eagleson (1990) proposes the use of paraphrasing to assess prospective users’ comprehension of the major ideas and other information presented in a document. A paraphrase test involves a subject being provided with a topic and asked what the material is all about. Charrow and Charrow’s (1979) experiment utilized paraphrasing to spot comprehension problems encountered by the jury subjects. They argued that the “validity of the paraphrase task as a measure of comprehensibility rests on the premise that a subject will not be able to paraphrase accurately a material that he or she has not understood” (p. 1310). To achieve this goal, subjects were presented oral instructions and asked to paraphrase what they had heard.

Concurrently, the five-tiered experimental study of Rose and Ogloff (2001) validated the use of paraphrase recall-test initially employed by Charrow and Charrow (1979) and application of written stimulus materials to evaluate the comprehensibility of jury instruction. Particularly, the respondents were given ten questions as application test to utilize their knowledge of and ability to apply the jury instructions through answering randomly ordered ten-item Yes-No questions. Participants in the survey were also made to paraphrase or describe legal principles “in their own words” in application to the questions given. Scores given for the paraphrase-recall test scores were 0, ½ or 1 for every correct legal rule applied to
answer the question. Furthermore, their study supported the use of application test, specifically the question-by-question analysis to determine which part of the document set off difficulties for the respondents and which parts did not.

The efficacy of the paraphrase test has been reported in other studies done by Campbell (1999), Severance and Loftus (1982) and Masson and Waldron (1994). Felsenfeld and Siegel (1981) suggest the use of paraphrase as a form of diagnostic testing in determining specific problem areas in the contract using the subjects’ own words on what was understood during the paraphrase testing.

1.5 Research Objective

The flourishing movement for plain language in the international scene pushes for a pressing global ideological pursuit that legal documents directed at ordinary citizens, particularly known as consumer contracts, must be in a form that is understood by them. Hence, this paper attempts to validate in the local setting the findings of a number of studies relating to the complexity of legal documents (Bhatia, 2010; Gibbons, 2004; Schuck, 1992, Tiersma, 1999) and therefore, examine how this particular material is understood by certain consumers. Specifically, this study seeks to determine the comprehensibility of an existing consumer-finance contract in the Philippine setting-- a credit card terms and conditions document by answering the question: how comprehensible to consumers is the existing consumer-finance contract?

Results of this endeavor will serve as basis for possible simplification or redrafting works of the said consumer-finance contract- a prospective groundbreaking project in the area of Forensic Linguistics in the Philippines.

1.6 Theoretical Framework

Gibbons (2012) offers a framework for communication evidence (his proposed term in lieu of forensic linguistics) called “decision trees” in generally identifying whether a legal document successfully communicates what intends to convey to its expected audience. Regarded as a shortened and simplified version of a Hallidayan construct, the decision trees framework consists of three major strands: the “nature of the sample”, the “type of evidence” and the “analysis” used. Among the types of objectives for communication evidence presented by Gibbons that is appropriate to the study at hand is “meaning transfer” (other types include “language crimes”, “trade names” and “author attribution”) (p. 31).

In “meaning transfer”, Gibbons (2012) posits that transfer pertains to how comprehensible a text is to particular readers while meaning refers to the substance or essence of a document itself. Transfer is affected by communication factors like psychological (e.g. attention, distractions), and register variation (i.e. the types of language used). Basically, meaning transfer targets a reader’s understanding or comprehension of a sample document.

Furthermore, Gibbons (2012) suggests that selecting the type of analysis to be used in coming up with linguistic evidence necessitates a careful examination of two components. The first part consists of method of analysis referring to three aspects: who are involved (expert or lay), type (qualitative and quantitative) and the procedure to be employed. The second element comprises the communication system which is further subcategorized into level (surface, lexico-grammar and discourse) and variation (social and register).
The following presents the procedure identified by Gibbons (2012) for ascertaining comprehension concerns of documents for the meaning transfer type:

a. Identifying what particular aspect to be communicated in relation to the communicative event;
b. Analyzing the linguistic and cognitive demands of the document;
c. Determining the intended audience’s linguistic and cognitive abilities and demands;
d. Examining the context surrounding the communication; and
e. Deciding the occurrence of communication given the circumstances.

2. Method

2.1 Participants

This work utilized purposive sampling technique in gathering the subjects; therefore, volunteers who were eligible to take part in the activity had the following qualifications: of legal age, employed or engaged in a business, and at least holders of a bachelor’s degree. Such are the set qualifications based on the profile of people who are usually interested and granted loans or credit card approvals by financial institutions according to a bank executive. To do away with prejudice, those excluded were lawyers, law students and bank officers since they are familiar with the documents and the legal writing style of the contracts.

Thirty-five Filipino consumers, employed in varied government and private offices covering sales, business and financial, computer, education and training, library and information, government and political occupations and whose ages range from 20-49 served as sample population in this study. Furthermore, 21 out of the 35 respondents hold a permanent job, 19 of them are single and 25 or 71.43 % of these respondents receive a gross monthly salary ranging from P15,000 to P40,000. All of these participants were asked to take part in taking both the cloze (written) and paraphrase (oral) tests to determine the comprehensibility of the consumer-finance contract under study.

2.2 Document

The choice of the legal document to be analyzed was based on two considerations. The first points to the results of the studies and reports made on the positive economic outlook of the Philippines in terms of consumer lending, spending and real estate prospects. These are presented in the early part of this paper. To confirm how these reports are realized directly among consumers, an informal survey was conducted among 100 Filipino consumers in terms of the top consumer contract they have considered dealing in the past or might consider transacting in the future. What emerged from the outcome of the survey and thus, underwent comprehensibility test in this project was the Terms and Conditions for Issuance and Use of Credit Cards document.

The XXXXX* Credit Card Terms and Conditions document is a one-page informational text that comprises 28 provisions and stipulations, 51 paragraphs, 125 sentences and 5497 words.

The choice of the company was premised on two reasons: as the one of the top Philippine commercial banks and the bank’s alarming number of litigation cases posted in the Supreme Court of the Philippines rulings.
2.3 Test Materials

Two reader-based comprehension tests comprised the materials— one written (cloze test method) and another, an oral cued-response protocol reading activity (paraphrase test).

2.3.1 Cloze Test

To guarantee the validity and reliability of the cloze procedure done in this project, recommendations of specialists were employed. First was Taylor’s (1953) suggestion of having at least 50 blanks for the cloze test to promote better reliability of the test. The particular cloze test developed had 127 blanks. Next, Harrison and McLaren’s (2010) second suggestion was utilized. This was to develop a single cloze test passage from the original passage with the total blanks of deleted number of nouns in proportion with the total number of nouns in the whole original document.

Coh-metrix automated computational text evaluation tool (McNamara, Louwerse, Cai, & Graesser, 2013) computes a total of 350.19 incidence score of noun occurrences for the credit card terms and conditions document. Such incidence number of nouns accounts for every 1,000 words— thus, with the total 5,497 number of words in the document, and considering an estimate of 1,750 aggregate nouns in the whole passage, the 39 number of omitted nouns covers about 2.23% of the total number nouns in the passage.

Furthermore, the single cloze test developed utilized the fixed-ratio method wherein every 5th word was indiscriminately deleted. The first and the last sentences of the chosen passage were kept intact.

2.3.2 Paraphrase Test

Patterning the paraphrase portion of the interviews conducted in the studies done by Charrow (1988), Masson and Waldron (1994) and Harrison and McLaren (2010), this study made use of a cued-response reading protocol. Each respondent was asked to read the entire terms and conditions document, requested to stop reading upon reaching the 15 pre-determined sentences spanned in the entire document and discuss or paraphrase aloud each of these 15 sentences for the audio-recorder.

2.3.3 Other Information

The participants who undertook both the cloze and paraphrase testing also supplied other sorts of information during the conduct of these two tests.

For the cloze test that was initially administered, respondents first answered a demographics questionnaire asking them of their educational accomplishments, linguistic grounding and other vital data before reading the directions for the cloze activity.

The paraphrase test, given on another day after the cloze test, likewise contained other types of information. The first was an introduction explaining the purpose of the study and overall instructions stating what were expected of the participants to do during the testing. The paraphrase testing proceeded after such instructions were read by and explained to the participants.
After answering the paraphrase test, respondents were asked to supply their answers to the succeeding closed-ended queries. Just like in the works of Campbell (1999) and Harrison and McLaren (2010), participants were requested to write their own opinions about the comprehensibility and familiarity of the document. They were asked to rate their perception of the document: firstly, with regard to their understanding of the document on a four-point scale: 1 being “did not understand” up to 4 “understood very well”; secondly, on their familiarity of the document also on a four-point scale: 1 being “very unfamiliar” to 4 “very familiar”.

The next two open-ended questions inquired about specific headings or parts of the credit card terms and conditions they both encountered difficulty and found easy to understand.

2.4 Procedure

Two pilot tests were conducted between two groups of ten and five consumers, respectively, all of whom met the criteria laid for those who could take part as respondents in this study. The first group of 10 consumers were asked to answer the cloze test and served as readers who identified certain specific headings and sentences that they found difficulty understanding in the terms and conditions contract.

This first pilot study came off unfavorably challenging as some of the respondents, after finding the test demanding and difficult, started checking the internet from their handheld devices for answers in the cloze test. This occurrence made the researchers realize to limit the conduct of testing to a maximum of five to have full control the environment and assure credibility of the cloze test results.

Accordingly, the second pilot experiment, this time confined to a group of five consumers for another cloze test and two days later, for a one-on-one cued response paraphrase test, went on smoothly; the respondents stayed focused while answering the test.

The two pilot testing activities employed enabled the researchers to have an overview on how the actual tests would materialize, the approximate time duration of the conduct of the tests, thus allowing them to prepare for any anticipated situation that might crop up during the actual conduct of the tests.

Likewise, responses received from this initial pilot study helped determine which particular contract terms, conditions or sentences would be included among the sentences to be paraphrased by the participants during the actual test. After analyzing these feedback provided by the consumers, the researchers drew certain patterns and criteria for settling upon which sentences to incorporate in the paraphrase testing. These qualities constitute clauses that include a) conditions that are crucial to the consumers’ understanding or involvement; b) high degree of necessity or obligation; c) negative or adverse effects for non-compliance. She then singled out 15 sentences from the entire terms and conditions contract, and had these undergo content and criterion validation by two language experts.

In administering the actual tests, the written cloze test was first carried out in groups of five. Then the researchers made arrangements to each respondent for his or her next oral paraphrase test schedule.

A total of 40 respondents took the cloze test but this number was trimmed down due to the unavailability of five respondents. The remaining 35, being free and obliging for the next oral cued-response paraphrase test, comprised the final list of respondents.
Testing time for each test ranged from approximately 45 minutes to 1 hour and 15 minutes depending on the reading abilities of the participants.

2.5 Data Analysis

2.5.1 Cloze Test

Scoring the cloze test was done using the semantically acceptable score method (SEMAC) in which the correctness of an item does not only consider the exact word as found in the original text but also another word that can be grammatically and lexically appropriate.

Also, this work was guided by Taylor’s (1953) comprehension levels in scoring the cloze test:

a. Independent (cloze score is more than 60%)- the passage is readable and no help is needed in understanding the text.

b. Instructional level (cloze score is between 40-60%) – the passage is understood if there is aid given to assist in understanding

c. Frustration level (cloze score is below 40%) – the passage cannot be comprehended by the reader.

2.5.2 Paraphrase Test

This study adopted the method of scoring the transcribed paraphrases done by Charrow (1988), Harrison and McLaren (2010) and Masson and Waldron (1994). Three professors teaching English who are at least Ph D. students and who have been teaching English for the last 15 years rated the transcribed paraphrased versions using the following system: correct, incorrect, ambiguous, and omitted. A coding for a particular item was considered when at least two of the coders reached the same decision. When three separate judgments were made, the three language experts discussed together before separately coding the item for another time until at east two of them arrived at a similar view. Obtaining acceptable inter-coder reliability test results assured quality among the agreements made.

Additionally, respondents were given the leeway to give their responses in a manner that they were comfortable the most whether it be in English, Filipino or mixed-code.

3. Results and Discussion

Based on Gibbons’ (2012) Communication Evidence (Decision Trees) framework, this study zeroed in on identifying whether there was “meaning transfer”. Essentially, through testing, this work aimed to detect whether communication has taken place.
The above graph shows the cloze test scores of the 35 respondents: majority or 74.29% of the participants (26 out of 35) scored below 40 per cent correct or are within the frustration level; eight or 22.86% of them got a rating between 40 to 60% (instructional level); and only one or 2.86% of the respondent got above 60% correct of the cloze test (independent level).

Of the 127 items, the word “cardholder” presented in this part of the document, “For this purpose, the (1) **Cardholder** and/or his/her supplementary do…”, topped the list of content words properly answered with 34 out of 35 respondents writing it correctly (33 respondents filled the exact word “cardholder” and 1 wrote “customer”). Next in the list is the word “companies”, found in the 19th blank “…any member of the XXXXX Group of (19) **Companies** (BGC)…”, which had 32 out of 35 or 91.43% getting it right. The third word is “securities” found in this part of the document “In the absence of such monies, (26) **securities**, properties (real or personal) or things of value…”, with 26 or 74.29% of the respondents noting it accurately.

Additionally, the two function words that got the most number of precise answers from the respondents are the prepositions “to” and “of”, both included in the following part of the document: “…may approve on a case (51) to case basis. The use (52) of the CARD…” Both these prepositions had 33 out of the 35 or 94.29% of the respondents getting them correctly.

Oppositely, all the respondents scored zero in failing to write the following words or other related words for their answers:

a. “through”- for all such amounts incurred (71) through the use of the supplementary **CARD(s)**
b. “request” - fully paid and satisfied at the time of said (79) request
c. “severally” - shall be jointly and (82) severally liable to settle the TOB incurred
d. “any” - as well as the supplementary in negative listings of (94) any credit information bureau

e. “severally” - The Cardholder’s spouse shall be jointly and (97) severally liable
f. “herein” - liable with the Cardholder (105) herein and in all renewals

As this study employed the SEMAC, some words figured out to be lexically and grammatically suitable, were considered correct. Some of these words are obligations, liabilities and debts for “availments”; used, transacted and purchased for “incurred”, must and will for “shall”; purchases, advances and fees for “obligations”; have and be for “constitute”; and, revoked, cancelled and stopped “terminated”.

![Paraphrase Test Results](image)

**FIGURE 2 Paraphrase Test Results**

Results of paraphrase testing as shown in the above figure (3) provide that out of the 15 paraphrase items, respondents answered only an average of 1.67 items or 10.67 % correct items, 9.11 items or 60.76 % incorrect paraphrases, .77 item or 5.14 % ambiguous answers and 3.51 items or 23.43 % omitted responses.

Correspondingly, paraphrase items one and four both had eight respondents who were able to recall the item appropriately.

**Original passage for item number one:**
The Cardholder agrees to hold XXXXX, its directors, officers, employees and representatives free and harmless from any and all claims for damages resulting from the failure of any accredited establishment or MasterCard/Visa to honor the CARD.

**Sample correct paraphrased version for item number one:**
In case the establishment denies the card being used all under XXXXX including the directors and its organizational chart will not be liable in the use of the card.

**Original Passage for item number four:**
Finance charge on regular purchases is computed by multiplying the applicable finance charge rate depending on the card type with the average daily balance (ADB).
Sample correct version for item number four:
Yung finance charge eto yata yung interest eh dib a tapos kinocompute siya depende dun sa mga purchases na ginagamit imumultiply siya dun sa rate na binigay ng XXXXX at the same time depende dun sa type ng card na ginamit mo. (The finance charge is the interest that is computed depending on the purchases that were used, then multiplied with the rate given by XXXXX, at the same time, the rate depends on the type of card that you use).

Notably, no one answered passage number three (underlined and italicized) correctly:

XXXXX reserves the right, at its sole and absolute discretion, to decline any such transaction(s), suspend and/or terminate the credit card privileges of the Cardholder and his/her supplementary without prior notice in case the said Credit Limit shall be exceeded. In such an event, the Cardholder agrees to pay in full the TOB, which shall immediately become due and payable, without the necessity of notice and demand, all of which are waived by the Cardholder and his/her supplementary.

Sample of an incorrect paraphrase version for item number three:
Ano pong ibig sabihin ng TOB? Yun cardholder nag-agree din po siya na magbayad in full total outstanding balance nya at kasama yung kanyang supplementary kahit walang notice at demand pwedeng iwaive parang iwaive may mga charges so iwaive.. pwede siyang magrequest na iwaive ang charge. (What’s the meaning of TOB? The cardholder also agrees that he/she, together with his/her supplementary, will pay the full outstanding balance, even if there’s no notice and demand... it is possible to request to waive the charges.)

Sample of an omitted paraphrase answer for item number 3:
It means the cardholder will agree to pay yung kabuuan ng total outstanding balance kung past due na po o kahit na ala na pong notice na nareceive. Nakasama po dito yung supplementary. (It means the cardholder will agree to pay the total outstanding balance even if it is already past due or even if there is no notice received.)

Sample of an ambiguous answer for item number 3:
(Interviewee reading from document) ...outstanding balance, total outstanding balance. Pag nag-ano, if possible ito yong outstanding balance, ah wala ng notice ang dahlilan, ito dapat may responsible kasang-over speak (?) saving, so kailangang bayaran nya kaagad yon. Although notice... (reading). Ok, yong.... oo nga pala, ingat sa pag-over sell ng limit don sa ano, siguro sa next, ilalagay na lang don. Ganon pala talaga. Ok, next, fees on charges.(This is the outstanding balance, someone should be responsible for this even if there is no notice or reason because of the savings. Someone needs to take extra care on the limit. Ohhh, it’s like that. Next, fees and charges.)

The relationship or correlation between the results of the cloze and paraphrase tests was computed using Pearson product moment correlation coefficient or the Pearson’s r. Statistically significant at .05 level of significance with p- value of 0.033, the computed Pearson’s r value yielded .362 translating into a moderate positive relationship between the two tests. The result indicates that the low or the frustration level score of 26 or 74.29% respondents in the cloze test has valid acceptable association with the average 9.11 incorrect paraphrases or 60.76% provided by each respondent. Accordingly, it can be concluded that the respondents had difficulty understanding the existing credit card terms and conditions document based on the results of the two tests.
The previous works of Adams (2008), Bhatia (2010), Broome and Hayes (1997), Campbell (2003); Damstadtter (2008), Gibbons (2004), Masson and Waldron (1994), Schuck (1992), Tiersma (1999) and Williams (2010) which underscore the inaccessibility of legal documents are consistent in the findings of this study. Additionally, Stygall (2010), in analyzing what he qualifies as a complex document crammed with legal and financial terminologies and loaded with crucial information necessary in making a sound financial resolution, justifies that “credit card documents are well known to be difficult to understand, despite attempts to make rules that require disclosure” (p. 56).

As a matter of fact, respondents came up with the following technical and financial terms when asked about the headings or parts of the credit card terms and conditions that they encountered difficulty in understanding. The following are the top answers provided by the respondents.

a. Separability clause (26)
b. Fees and Charges/Finance Charges/Other Charges/Service Fee (18)
c. Non-Waiver of Rights (14)
d. Surety (11)
e. Right of Set Off (7)
f. Disclosure (7)
g. Termination by XXXXX (7)

The respondents likewise found the following words hard to comprehend: prima facie (13), indemnifies (13), garnishment (12), reinstatement (10), litigation (8) and ADB (8).

**Perceived Understanding**

![Figure 3](image-url)

**FIGURE 3 Respondents’ Perceived Understanding of the Existing Document**

Interestingly, a greater number of the respondents totaling 23 or 65.70 % claimed that they understood a little about the document under study. When sought for the relationship between the respondents’ perceived barely understanding the text response vis-à-vis the results of their
cloze and paraphrase tests results, the researchers found a strong positive relationship between the perceived low comprehensibility of the respondents towards the material and the low score of their paraphrase test with computed \( r \) at 0.416 and a p-value of 0.013 at .05 significance level.

**Perceived Familiarity**

![Figure 4](image_url)  
**Figure 4** Perceived Familiarity of the Respondents Towards the Document

The respondents’ sensed thorough knowledge of the material was also investigated through a 4-point rating measure asked of the respondents. The result of this estimation was in some way dispersed with 15 or 42.9% of the respondents surmising that they are unfamiliar with the document, 12 or 34.30% regard they are familiar and 8 or 22.9% of them consider that they are very unfamiliar with the document. Seen on another dimension, the sum of the respondents’ ratings on “very unfamiliar” and “unfamiliar” categories totaled 65.8% which conveys the overall lack of know-how the respondents have towards the text.

As done previously, the relationship between the respondents’ perceived or recognized familiarity and results of their actual tests (both the cloze and paraphrase tests) was assessed. A strong positive relationship between the respondents’ low-scoring paraphrase versions and their perceived low familiarity was noted to be statistically significant with 0.446 computed \( r \) and p-value at 0.007 at .05 significance level. This finding is congruent with Stygall’s (2010) assertion that lay readers, when handed out a complex document like a credit card material, encounter processing or comprehension difficulties due to lack of familiarity or using his term, the domain knowledge or working memory about specialized aspects of information (e.g. technical vocabulary) needed to process information.

4. Conclusion

This paper attempted to answer the question- how comprehensible is the existing credit card terms and conditions to consumers? Employing Gibbons’ terms, this study aimed at recognizing whether there has been a meaning transfer from the text to the readers. Such inquiry was figured out by employing two reader-based tests namely cloze (written) and paraphrase (oral) tests and supplemented by two open-ended questions asking about the
headings, parts or words in the document that respondents both found difficult and easy to understand. Another two close-ended 4-point likert scale questions inquiring about their perceived understanding and familiarity of the document were also employed.

Results yielded that the existing XXXXXX credit card terms and conditions document has low comprehensibility as shown by 74.29% of the respondents’ cloze test correct accumulated score below 40% in the frustration level and each respondent in the paraphrase test scoring an average of 9.11 items or 60.76% incorrect paraphrases. This was validated by a test resulting in a statistically significant relationship through the Pearson’s r correlation test. The respondents’ perceived lack of understanding and familiarity of the document likewise have a statistically significant relationship with their low paraphrase test scores. In addition, both the open-ended and close-ended (Likert-scale) questions revealed the complex concepts, the difficult subject matter and complaints about the intricacies of the text that confronted the readers. It can be said then that the existing bank’s credit card terms and conditions document has nether or low comprehensibility among its readers.

A well-suited follow up research work to cap this work of utilizing the two reader-based tests would be a text-based analysis like an automated evaluation which would be based on cognitive indices of the actual document. The use of the third method to complete triangulation technique would prove to be effective in providing more persuasive and reliable results in determining the comprehensibility of a document. In fact, in Crossley, Greenfield & McNamara’s (2008) study on Assessing Text Readability Using Cognitively Based Indices, they strongly claim that studies would benefit from the use of triangulation that “draws on two or three criteria measures of text comprehensions” (p. 490).

*Note: The name of the bank was masked as XXXXX to protect the company.

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Constructing Corpus for Compiling Lexical Syllabus of Legal English and for other Applications

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ABSTRACT
With the development of corpus linguistics, more and more specialized corpora have been designed, constructed and applied in various aspects. This paper explores the designing, constructing and applying legal corpus for the service of establishing legal English as a discipline in China. It is explicated that the corpus-based approach can identify the most frequent, useful and relevant vocabulary for compiling legal lexical syllabus. Furthermore, it is suggested that the multiple-word terms should be a substantial part of such syllabus since legal English is so formulaic. In addition, such corpus may have potential uses in legal English teaching, translating and linguistic research.

KEYWORDS: legal English as a discipline, corpus, lexical syllabus
1. Status Quo of Constructing and Applying Specialized Corpora

With the development of corpus linguistics, various types of corpora have been increasingly applied to linguistic researching and language teaching. In the field of LSP (language for specific purpose), many researchers have been focused on three aspects – the construction of specialized corpus, linguistic features of specialized language and LSP teaching. Early in 1980s, Yang Huizhong and Huang Renjie (1982: 60-62) from Shanghai Jiaotong University built JDEST, and produced two word lists according to rank and frequency respectively and ten lists of specialized words on a statistical comparison and analysis. These word lists laid a solid quantitative foundation for identifying words to be included in the syllabus for general college English. Wang, J. et al. (2008:442-458) created a Medical Academic Word List including 650 word families from a 1-million-token medical English Corpus built by themselves. Yan Ming (2011) developed a series of word lists for the major of business English including “Reference Word List for Business English”, “Reference Word List of Technical Terms in Business English” and “Acronym Word List of Business English” on the basis of HUBEC. Additionally, there are some other ESP corpora such as “Military English Corpus” of PLAUFU, “Marine English Corpus” of DLMU, and “Parallel Corpus of Technical Terms in Computer Science” of State Language Commission. There also exist two legal language corpora in China: one is Song Beiping’s (2008) Legal Chinese Corpus constructed for the purpose of Standardizing Legal Chinese in legal practice; and the other is Sun Hongren and Yang Jianding’s (2010) PCCLD constructed for the purpose of studying linguistic feature of legal English and providing references for legal translation. In other countries, there are also studies on the construction and the application of specialized corpus including legal language ones. For example, University of Bologna in Italy has constructed a multilingual legal corpus (BoLC), and Rossini Favretti, R (1998, 2007) used this corpus to study linguistic features of legal language and the terminology equivalence between English and Italian in legal translation. JRC - Acquis Corpus is a multilingual legal corpus including 22 languages, which contains legislative texts effective for all members in EU, and it can be used in cross-language studies and linguistic computing.

Existing researches at home and abroad show that corpus is effective for researching and teaching language for specific purpose. Corpus can be used to produce glossaries for LSP teaching and to conduct specialized language research and translation. However, the existing legal Chinese-English parallel corpus and the legal Chinese corpus cannot serve the purpose of teaching legal English, for which a well-designed and balanced legal English corpus is needed. This article will first explore why and how to construct a legal English corpus and then discuss its application to the compiling of lexical syllabus of legal English and other uses.
2. Corpus for English for Specific Purpose and ESP Teaching

2.1 Why Construct Specialized Corpus

There is a practical need for building LSP corpus for teaching and learning in the first place, for LSP textbooks are rare compared with those for general language, because publishers won’t publish language textbooks for specific purpose in every field for the simple reason that they won’t sell well. McEnery & Wilson (1996) suggested corpus can be a good alternative to textbooks for learners and can provide various learning materials in a specialized field, including technical words and quantitative descriptions of their usages. In the second place, compared with dictionaries and texts in paper form, corpus has its strength. Bowker, L. & Pearson, J (2002) discussed in detail the advantages of using specialized corpus for learners and how to compile and apply specialized corpus in LSP learning. Compared with dictionaries and texts in printing form, corpus, in its electronic form, contains more extensive, up-to-date resources; with the help of corpus analysis tool, the search for words or phrases is instant; the authentic texts contained in it can be used to find out what people do and do not say and how often they say it, and thus can be used by learners to verify or reject hypothesis about LSP. By using specialized corpus, learners can identify technical words, collocations, grammar, style, concepts etc. Therefore, a specialized corpus may not solve all the problems relating to LSP, but it can be a valuable resource and useful complement to other types of resources such as dictionaries and printed texts. Meanwhile, it brings learners new, interesting and efficient learning and researching experience (Bowker & Pearson, 2002: 13-20). Therefore, the need for compilation of a specialized English corpus arises with the development of LSP, and the corpus in turn will accelerate the development of this discipline.

2.2 Why Construct Legal English Corpus

Legal language is the sole tool that lawyers or judges possess. Without this language tool, they cannot do their job at all, unlike doctors who can still use other tools to examine patients or conduct surgical operations. Legal English is sophisticated because of its high specialization and jargonization. Its lexical items include quite a lot of Latin and French ones because of its legal tradition and development; its grammar and style also deviate from general linguistic norms; its text types vary with the occasions for which they are used, ranging from legislative ones, judicial ones, and academic ones etc. Even for native speakers who want to become legal professionals, they have to go through long-term, pertinent, specialized training in legal English, which is all the more necessary for the foreigners who will handle foreign-related legal matters or do legal translations.

For legal English learners, legal dictionaries or texts in paper form can be frustrating, hard to begin and persist. A well-designed legal English corpus, in contrast, can provide them new and efficient learning and searching experience. They
can search technical terms, word chunks, concepts, and even grammatical and stylistic information according to their learning task and need. In China, legal English teaching has existed for some time, but so far important questions are not yet well answered, such as what to be taught, what lexical syllabus to follow, what to be emphasized. Partial answers can be provided especially about the goal of vocabulary teaching by the legal English corpus, which can produce word lists on basis of frequency. Useful insights can be borrowed from both Coxhead (2000) and Hyland & Tse (2007).

Coxhead (2000) described the development and evaluation of a new academic word list (AWL, containing 570 word families), which was compiled from a corpus of 3.5 million running words of written academic texts (including arts, commerce, law and science) by examining the range and frequency of words outside the first 2,000 most frequently occurring words of English, as described by West (1953). He thus suggested that teachers of EAP should teach the most relevant, useful and frequent words.

Hyland & Tse (2007) argued that although the AWL covers 10.6% of the corpus, individual lexical items on the list often occur and behave in different ways across disciplines in terms of range, frequency, collocation, and meaning. They suggested that the AWL might not be as general as it was intended to be and questioned the widely held assumption that students need a single core vocabulary for academic study. They instead proposed that the different practices and discourses of disciplinary communities undermine the usefulness of such lists and recommended that teachers help students develop a more restricted, discipline-based lexical repertoire.

Coxhead’s research demonstrates the usefulness of corpus in identifying the most frequent, useful and relevant words, while Hyland & Tse’s research suggest the necessity of building discipline-based corpus to develop lexical repertoire. With lessons from the two researches, to construct a legal English corpus is a must for teaching English for legal purpose. Therefore, to establish legal English as a discipline in China calls for the construction of a well-designed legal English corpus, which in turn will promote its development.

3. Design of Legal English Corpus

3.1 Educational aims and objectives of Legal English as a discipline

This legal English corpus is specifically tailored to compiling lexical syllabus and providing data support for legal English teaching and testing and legal translation with the overall aim of serving the establishment of legal English as a discipline in China. Therefore, it is necessary to think about the disciplinary orientation of legal English in the first place. In fact, to establish legal English as a discipline in China is the call of the time of this economic integration and globalization. It also represents the direction for the reform and development of higher education in China. China’s National plan for Medium and Long Term Education Reform and Development (2010~2020) points
out in its preface, “China runs short of innovative, practical and inter-disciplinary college talents”. In the seventh chapter of the second part of this plan, article 22 points out “more attention will be paid to the expanding the education of practical, skillful and inter-disciplinary talents”. Legal English is an inter-discipline for both the English majors and law students, for whom the specific educational objectives, how to integrate the two disciplines, and emphasis to be laid may differ and entail constant adjustment in practice. However, it is necessary to define the overall educational aim of legal English as discipline in the Chinese Context.

To define the overall educational aim of legal English, it must be analyzed who are potential user of it. These users can be tentatively classified into three types: legal professionals (foreign-matter lawyers, some types of diplomats), semi-legal professionals (out-bound law students, students of international law, China law students, students or professionals in law-related fields such as economics and finance), non-legal professionals (legal translators or professionals in language service industry). The requirement of the mastery legal English for the above talents differ substantially. The highest requirement for mastery of legal English is for foreign-matter lawyers and legal translators. They need to be strong in not only reading and listening, but also in speaking and writing and translating. They need to go deep into the styles and genres of various legal writing. The second highest requirement for legal English is for those out-bound students. They also need to be strong in both the input and output of legal English. For China law students, they only have to be competent in reading in order to borrow ideas from foreign legal literatures, or be to competent in writing if they are ambitious to get articles published in English. Anyway, for all the legal English users, they have the same common core legal knowledge and vocabulary. Namely, they need to have a basic understanding of the common law and civil law; they need to familiarize themselves with legal words in international laws ranging from economics, finance, trade, company, intellectual property rights etc. Besides, they also need to master the English expression of China law to varying degree. In accordance with such common core knowledge and vocabulary for all legal English users in Chinese context, the educational aim and objectives of legal English as a discipline shall be defined.

3.2 Principles of Constructing Legal English Corpus

This legal English corpus is specifically built to serve the purpose of compiling lexical syllabus and to serve teaching legal English in reading, writing and translating with the exception of speaking. Spoken texts are thus excluded.

The principles to be followed in constructing this corpus are relevance, representativeness and balance. Relevance is directed at the educational aims and objectives of legal English as a discipline in China. In selecting legal texts to be included in the corpus, questions need be asked about whether they are useful and frequent and relevant in the context of China. Or put it in another way, are they effective for the education of legal English talents in China? To answer this question needs extensive field researches about the needs for legal English talents in China and
reaches into legal English teaching too. For the time being, we have to make do with the relevance in terms of the branches of law.

Representativeness is the key characteristics of a corpus which differentiate it from an archive. According to Leech (1991:27), “a corpus is thought to be representative of the language variety it is supposed to represent if the findings based on contents can be generalized to the said language variety”. The acceptable representativeness is determined by the intended use. Considering the purpose of building this corpus is mainly for lexical syllabus compiling, the representativeness of lexical items is the crucial point, which can be instantiated by selection of legal texts from different legal branches. In this case, the different legal genres are not a major factor considered. The legal genres vary with the users, occasion, and region. To represent them, another type of corpus may be designed for some other practical teaching or researching purpose.

Balance is closely associated with representation and depends on the range of text categories. These text categories are typically sampled proportionally in LGP (language for general purpose) corpus as in the cases of Brown and LOB, which contain extracts of 2000 words. But for LSP like this present legal English corpus, there are problems with text extracts. First, the forms of legal texts of various categories have meanings and need to be learned especially for writing. Second, the legal concepts depend on the whole text and even the whole legal system. Third, for legal English learning, language forms are far from enough; a basic knowledge of the legal systems is a must. Bowker & Pearson (2002:49) pointed out “In LSP studies, however, the concepts, terms, patterns and contexts that interest you might appear in any section of the text. In fact, their location in a text may be highly relevant. …Therefore, it is a good idea to use full texts when compiling LSP corpora.” Therefore, instead of extracts, full length legal texts are preferred. However, the representativeness and balance of this legal English corpus can be measured by the degree of closure (McEnery and Wilson 2001: 166) or saturation (Belica 1996: 61-74). Closure/Saturation in this case means the size of tokens no longer increase dramatically with the addition of legal texts.

One more question concerning corpus construction is size. Corpus size has been a moot point for the past decades. Sinclair (1991:18-19) believed a corpus should be as large as possible and need to contain many millions of words. Kenney (1998) asserted that a big corpus does not have to represent a register or a language better than a smaller one. Pearson (1998) recommended that one million words is the size for a specialized corpus and suggested the size of the corpus shall be determined the availability of the texts that could be converted into electronic forms. Considering all these arguments, it is decided that for the present legal English corpus, the size is not predetermined and will be left open depending on the availability of electronic texts and the test of closure or saturation of lexical forms in the construction process.

By taking into consideration all the above factors, the legal English corpus eventually consists of three sub-corpora: the corpus of American statutes; the corpus of Chinese statutes, and the corpus of the common law introduction. The texts included in the first corpus are from United States Code and other sources ranging
from American constitution, procedural law, uniform commerce, contract, tort, property, arbitration, trade, criminal law etc.; the texts included in the second corpus are from the laws legislated from China’s National People’s Congress ranging from civil, criminal, procedural, administrative law, company, contract etc.; the texts in the third corpus are three books introducing common law and American legal system. In selecting texts to be included in the three sub-corpus, key branches of law are included and those which are irrelevant to the use of legal English in Chinese context are excluded, such as laws related to Indians and veteran’s benefits. All the texts come from web resources like West law, LexisNexis, National People’s congress website and others. Heading markup is made after cleaning these texts. Eventually, the size of American law corpus contains 8,357,05 tokens; the Chinese law corpus contains 639,133 tokens; the corpus of common law introduction contains 555,117 tokens. The total tokens amount close to ten million word types.

4. Application of the Legal English corpus

4.1 Technical words extraction for lexical syllabus

4.1.1 The effectiveness and method

The workability of corpus-based term extraction has already been proven by relevant researches. It is demonstrated by Chung, T. M. and Nation, P. (2004) that the frequency-based way to identify technical terms is the most effective one after comparing four approaches and can identify around 90% of technical terms if the frequently occurring collocates are included. They further argued that being able to reliably identify technical vocabulary provides an essential starting point for looking at how learners and teachers should deal with technical vocabulary. Wang & Liang & Ge (2008) also used the corpus-based approach to produce a medical academic word list.

This legal English corpus is mainly built for the purpose of compiling legal lexical syllabus. In selecting texts to be included in this corpus, the principle of most useful, relevant and frequent is applied. This same principle applies too to the legal term extraction. The term extraction method is the statistical approach based on frequency in combination with the use of a stop word list. That is because terms are generally of higher frequency in specialized texts than in general texts. The stop word list consists of those basic words that occur frequently across all range of texts. Before the use of stop word list, it is examined closely by legal English teachers to get rid of some words that also occur frequently in legal texts and have specialized meanings. For instance, the word ‘decide’ or ‘decision’ has special meanings in judicial texts and thus shall be excluded from the stop list. Term extractions are performed separately from the three sub-corpora, with the threshold of frequency set according the size of the corpus respectively. Candidates of Single-word and three-word terms are extracted respectively.
4.1.2 Possible problems with this frequency-based term extraction

Word frequency is one of the basic statistical results that could be produced by corpus analysis tools. The glossary produced according to the frequency and range of texts in which the words occur can provide an objective basis for lexical syllabus and textbook compilation. But it cannot be denied that there may exist some problems. Some technical words only occur in a specific domain, e.g. in judicial texts only, and thus its frequency may not be high in the corpus and thus may be left out. Some other technical words not only occur in a special field, but also appear frequently across a wide range of fields or subjects and mean differently. It is thus possible that the high frequency of this word may not reflect the frequency of its specialized meaning. In both cases human experience is needed to decide whether they should be included or excluded on the basis of their usefulness and relevance, since frequency does not work. Besides, those term candidates still need to be examined by experienced legal English teachers from the perspective legal sense and teaching.

4.1.3 Findings in term extraction from the legal English Corpus

In the extraction of three-word chunks from the corpus of China law, which includes 13 separate texts and around 640,000 tokens, 640 candidates are produced by setting the frequency at 50 times that occur in the range of more than three texts. By simply examining the expressions occurring more than 200 times in this corpus, many highly formulaic legal expressions are discovered, such as ‘according to law’, ‘the provision of’, “be sentenced to”, “fixed term imprisonment”, “(if the) circumstances are serious”, “criminal detention”, “rights and interests”, “have the right to”, “be subject to”. Many proper nouns in the Chinese legal system are also among the expressions of the higher frequency, such as “People’s Congress”, “People’s Procuratorate”, “Municipalities directly under (the Central Government)”, “the Standing Committee”, “the public security organs”, etc. Such words and expressions are very useful for learners and translators. The inclusion of these core words and expressions in the lexical syllabus for legal English is highly recommended.

In the extraction of three-word chunks from the corpus of America law, which includes 24 separate texts and 8,357,058 tokens, the parameter of frequency and range are set at 100 and 5 respectively. Expressions like ‘with respect to’ and ‘for the purpose of’ occur as many as 15,527 and 12,058 times respectively. From the lexical clusters that occur more than 2000 times, legislative expressions can be detected for the often conveyed senses in law-making such as intention, provisions, application, persons and things involved, conditions, consideration, date, amount, degree etc. Some other expressions are specifics in the context of America law such as ‘taxable year’ (see table 1). All these expressions, if included in the lexical syllabus for legal English, can activate effective and efficient learning of legislative language in learners.
### Table 1

Expressions of more than 2000 occurrences and senses conveyed

<table>
<thead>
<tr>
<th>senses</th>
<th>expressions</th>
</tr>
</thead>
<tbody>
<tr>
<td>legislative intention</td>
<td>for the purpose of</td>
</tr>
<tr>
<td>providing</td>
<td>the provisions of, be treated as, as defined in, as provided in, except as provided, as described in</td>
</tr>
<tr>
<td>law application</td>
<td>shall not apply, (be) subject to, the requirement of, be required to be</td>
</tr>
<tr>
<td>involvement of (persons of things)</td>
<td>with respect to, in connection with</td>
</tr>
<tr>
<td>conditions or circumstance for law application</td>
<td>in the case of, by reason of</td>
</tr>
<tr>
<td>time, amount or extent in law application</td>
<td>on the date, no later than, after the date, the amount of, to the extent, no more than</td>
</tr>
<tr>
<td>law to be followed</td>
<td>in accordance with, pursuant to, under section of, under this title</td>
</tr>
<tr>
<td>consideration in law application</td>
<td>without regard to, take into account</td>
</tr>
<tr>
<td>specifics in American legal context</td>
<td>taxable year, trial court, the attorney general</td>
</tr>
</tbody>
</table>

In observing the corpus of the introduction of common law, it is found that some legal words rather than functional words like ‘the’, ‘a’, ‘of’ occupy some positions among the first 50 words in the frequency list. For example, the word ‘court’ ranks 16th in terms of frequency. By using KWIC, in AntCon, various types of courts in the historical and contemporary context in UK or US can be located (see table 2). If students master these expressions of courts, they will have a comprehensive knowledge of the judicial system in common law. Therefore, these expressions should also be included in the lexical syllabus. From this example, it can be extended that many collocates of legal significance should be included in the lexical syllabus for legal English. Many words alone like ‘court’ are not new to learners. But when they associate with others, they form collocates that convey legal senses, which may not be familiar to most learners.
Table 2  
Types of Courts in common law system


4.2 Teaching Legal English

There have been some explorations on ESP teaching and learning integrating the use of corpus. Hou (2014) demonstrated how to integrate two in-house specialized corpora into a university-level ESP course for nonnative speakers of English and further discussed the implications of the results for ESP teaching and material development. Corpus is even used not just for ESP but also for expert knowledge. For instance, Hafner & Candlin (2007) studied the potential of corpus-based methods as an affordance for studying the practice of law in City University of Hong Kong. Corpus can also be used to teach or learn specialized words and grammar. Wei (2001) proposed that the data-driven courseware can be developed from corpus, and concordance lines, for instance, can be changed into gap-filling exercise and learners can thus learn a grammatical structure or word usages from the authentic texts and contexts. In legal English teaching context, the Chinese word ‘依据’ has at least three English equivalence, namely ‘in accordance with’, ‘pursuant to’, ‘under (section/subsection/paragraph)’. But the words that go after them differ greatly. Concordance lines extracted from corpus can thus be turned to gap filling exercise. Students can be led to read concordance lines of the three phases respectively and then do the gap-filling. In this process, they develop the collocation competence of this phrase and have it tested and enhanced.

4.3 Legal Translation

In recent decades, corpus has been extensively used in translation studies and practices. Legal English corpus can be conducive to legal translation too. Nadrag & Buzarna-Tihenea (2014) focused on issues concerning specialized vocabulary, synonymy and the cohesive devices of legal discourse, in order to reveal the best approaches that the translator can use when he/she has to choose between synonymy and polysemy in the language of law. Barlow (1996:54) pointed out that the parallel corpus can be taken as a contextualized on-line dictionary, and teachers and learners can observe how a particular word or phrase is used in another language, what has happened in translation, how the message gets across, whether there is any loss, change or misinterpretation of message, and whether the translated text is ‘natural’ etc.
Thus to facilitate legal translation or teaching, a parallel corpus can be constructed by adding the Chinese version of China law or the translated Chinese version of America law, e.g. American copyright law (its Chinese version does exist in a book form). Through the concordance of the parallel corpus, teachers and students can be presented with extensive specific translation examples, which are conducive to enhancing awareness, reflex and flexibility required for legal translation. In addition, the corpus of China law can be treated as a study corpus, the one of America law as a reference one, the keyword list thus produced by corpus analysis tool is worth studying. Some of the keywords may be specifics for China law or Chinese legal institution; some can be indicators of translation problems. For instance, words like ‘article’, ‘people’, ‘shall’, ‘according to law’, ‘where’ occur so frequently that they demand careful analysis as to whether they are China English or Chinglish.

4.4 Research on Legal Language

Corpus-based researches on legal language have also been done. Breeze (2013) investigated the lexical bundles found in four legal corpora: academic law, case law, legislation, and documents and discussed the major differences in the type of bundles and the roles they play. Gozdz-Roszkowski (2012) discussed the results of a corpus-based and corpus-driven analysis of discovery, and found this word tend to associate with a range of different word forms albeit all belonging to the meaning group of ‘limitation’ or ‘restriction’ and thus further argued that only by combining various approaches to the study of word combinations is it possible to gain important insights into the phraseological behavior of legal terms. Besides the study of lexical bundles or phrases, some other grammatical aspect like nominalization, modality can also be studied if the corpus is tagged with part of speech.

5. Conclusion
The construction of well-designed legal English corpus is essential in helping establish legal English as a discipline in China. It can not only be used to identify the most frequent, relevant and useful words or phrases for lexical syllabus compilation, but also be applied to legal English teaching, translating and researching. The inclusion of lexical bundles of high frequency in the syllabus is essential and can conduce effective learning, because legal language is so formulaic. However, it should be pointed out that the present legal English corpus is constructed mainly for the compilation of lexical syllabus, and is thus designed to represent legal English in terms of vocabulary in the Context of China. Its application can thus have certain limitations. Some other types of corpora can be built according to the criteria of legal genres or certain branch of law and thus serve for other specific purposes in legal English teaching.
ACKNOWLEDGMENTS

This research is part of the project (“To Establish Legal English as a discipline in China” the grant number of which is No. 11YJA740046 ) supported by a research fund in humanity and social sciences provided by the Ministry of Education, China.

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Study on Interpretation of Wills: From In Re Rowland

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ABSTRACT
Compared with interpretation of contracts, that of wills has not gained sufficient attention by theorists in China. Interpretation of wills characterizes its purpose, approaches and also its supplement of the loopholes in wills. The study begins by seeking the true difference between competing points of view in Re Rowland, then looks in more detail at the purpose of interpreting wills and its relation with forms and contrasts the plain meaning approach with the purposive interpretation of wills in order to evidence the latter is more feasible to realize the real purpose of interpreting wills. This paper also presents main factors that really work to determine the interpretation of wills and touches upon how to change China’s status quo on this issue.

KEYWORDS
interpretation of wills, intention, linguictic context, non-linguistic context, extrinsic evidence

1. Introduction
We speak of interpretation when the meaning of a text is not understood at first sight; then an interpretation is necessary. In other words an explicit reflection is required on the conditions that enable the text to have one or another meaning (Gadamer 1987: 90).

Concerned with ascertaining the inherent message arising out of a legal text, legal interpretation is a rational activity that occurs when meaning can not be decided simply by rules or conventions. It is well accepted that

[i]legal language is treated as a sub-type of natural language. It shares with natural language several relevant semantic and pragmatic features, such as fuzziness, contextuality of meaning and viability as an instrument of communication (Wróbleswki 1985: 240). 
Legal acts in most cases must be interpreted; wills are no exception. As an intellectual activity, legal interpretation without doubt can convey meaning to a will. Gerry W. Beyer (2003: 161) claims the interpretation of a will is the premise for the correct understanding of the testator’s meaning, the execution of the will and the decision of the court involved. The discussion about legal interpretation is somewhat dry and academic particularly about the interpretation of wills so we will start with a striking case involving a married couple who died together at sea.

In *In Re Rowland* (1963), knowing that he and his wife would be taking trips in the South Pacific from island to island, Dr. Rowland made a will on a printed form he had got from a company called the Barrister Forms Co., Ltd. and apparently he had not consulted professional legal advice. The will provided that Rowland would leave all his property to his wife, but with another provision that in the event of her death “preceding or coinciding with” his own death, the said property was to pass instead to his blood relatives. Mrs. Rowland made a similar provision that if her husband did not survive her, her property would pass to her own blood relatives. About two years after reaching the South Pacific they once went in a small vessel which disappeared without any trace. Unfortunately the ship was finally found sink with all hands. The Commission of Inquiry concluded that the ship most probably sank all of a sudden; there was no evidence to find out the order of their death.

The question at issue was whether, based on these facts, the wife’s death had “preceded or coincided with” her husband’s death and then whether the husband’s estate would go to his wife’s niece or to his own blood relations. Suppose their deaths “coincided,” his relatives would win the case; otherwise, under the Law of Property Act, 1925 providing “when the order of deaths is ‘uncertain,’ the younger person is presumed to have survived the older” (Section 184), Dr. Rowland’s property would pass to his wife, and then on to her niece. But what is the correct understanding of the word “coinciding” in Rowland’s will? Our analysis of the case may reveal many issues about the interpretation of wills. We begin by finding out the true difference between two competing points of view in *Re Rowland*, then look carefully at the purpose of interpreting wills and its relation with forms and we contrast the plain meaning approach with the purposive interpretation of wills in order to argue the latter is much more feasible to realize the real purpose of interpreting wills. We also present factors that can determine the interpretation of wills.

2. Forms, intentions and interpretation

“Because a will must of necessity be put into operation only after its author is no longer capable of explaining his intentions, and for the avoidance of fraud” (Stone 1963: 87), most countries provide by law that for validity a will must be drawn up in a specified form and particularly that a will must be a written one. In practice wills include written wills and nuncupative ones in the sense that both of them are expressed by means of language, written or orally. For the convenience of study this paper focuses on only written wills. As with other legal documents wills need construing; when courts interpret wills, their authors are not available to express what
they were trying to do in making wills. Therefore in the interpretation of wills a big problem is how to deal with the relation between forms and intentions.

### 2.1 Competing points of view in Re Rowland

According to Greenawalt (2010: 232) When we concentrate on what “coinciding” means in the will, we might take into consideration usage by the doctor himself and usage by a special class of persons, I mean, the broad community. On the one hand, if the couple chose to employ the term self-consciously, aware that they would take many trips together on small vessels after he accepted an appointment as medical officer in the South Pacific Health Service, Dr. Rowland probably took it for granted that the term covered circumstances in which he and his wife might be killed in a common wreck and died within seconds or minutes of each other (Greenawalt 2010: 232). A court in Dr. Rowland’s shoes thus should decide that he understood the word to cover deaths resulting from a common cause and within minutes of each other. On the other hand, although it is harder to determine general usage, in some contexts, as dictionaries put it, to say that two events “coincided” means that they occurred simultaneously (Greenawalt 2010: 233); a court sticking to this strict explanation would claim that deaths that were separated by minutes or even seconds do not occur simultaneously.

The majority of Chancery judges in *Re Rowland* relying on general usage reached the conclusion that the order of their deaths was uncertain, and that his wife must accordingly be deemed to have survived the testator. The effect was that his property passed not to his blood relatives, but to his wife and then to the alternative legatees, namely her blood relatives because the condition precedent of the death of his wife “coinciding” with his own had not been fulfilled. Justice Russell had as the standard whether “the ordinary man would say that the two deaths were coincident in point of time or simultaneous,” (Greenawalt 2010: 233) more particularly when it was coupled with the word “preceding.”

Conversely Lord Denning dissented on the grounds that the old rule for construing a will rests on a fallacy that it is not what the testator meant, but what the meaning of his words is. In his view the old rule favored in the nineteenth century has been the cause of many mistakes according to which judges inquired “what is the ordinary and grammatical meaning the word ‘coincide’ as used in the English language” (1963: 8)? For Denning “the whole object of construing a will is to find out the testator’s intentions,” what meaning the words bore for him (1963: 10). Viewed from this angle he concluded that the husband “would use the words ‘coinciding with,’ not in the narrow meaning of ‘simultaneous,’ (1963: 10)” but in the wider meaning, especially in this context, denoting death on the same occasion by the same cause.

The real difference between these two opposite views was as to the extent to which and the means by which it is acceptable to divert a word from its ordinary meaning. That is the real core to the decision in *Re Rowland*, and a question arousing some general interest among scholars. To put it another way, they differed in what
should be relied upon in giving interpretation to the word “coinciding”. Greenawalt (2010: 233) claims, that for those adopting the standard of general usage it mattered neither whether the Rowlands died by shipwreck in the Pacific or by rail or auto accident in England, nor what situations they foresaw when they wrote their wills. What they cared about was not what the testator meant, but what the grammatical meaning of his words is. The opposite approach held by Denning was to pin down the meaning of the testator rather than that of his words. The modern approach aims to seek the intention of the testator and of course is in line with the purpose of legal interpretation; however it is still vague about what counts as “coinciding.”

Cohen J. in Re Pringle (1946) held that

[a] reference in a will to “simultaneous death” did not mean death at the identical fraction of a moment in a metaphysical sense, but death so close in time that the ordinary man as a matter of ordinary speech would say that the deaths were simultaneous, as where two people were killed outright in an air-raid by the same bomb (1946:124).

It has the same meaning as the word “coinciding” in Re Rowland. Indeed, using the word “coinciding” was capable of some small theoretical extension in time, but such extension had better not exceed a few seconds.

2.2. Purpose of interpreting wills and its relation with forms

In the light of different understandings of real meaning, the purpose of legal interpretation is presented in two types: formalism and intentionalism. The former has the external and objective meaning of a legal act as the aim of legal interpretation while the latter has the internal and subjective meaning as its aim. The purpose of interpreting wills falls into the latter. In ancient Roman law, wills were listed as strict actus solemnis and a will would take effect only when it lived up to certain requirements for forms and formatted language, which accorded with the fact that the early law emphasized forms of wills instead of contents.

Legal interpretation, therefore, in ancient times did not develop smoothly due to the demanding forms. This requirement for formatted language made no contribution to the realization of the real meaning of a testator. Since the late Roman law, this standard of requiring forms of wills was slackened. With the prosperity of the research of jurisprudence it has been realized that the “bequest in Roman law” is gratuitous Donatio mortis causa and thus it seldom or never provides protection for the reliance of beneficiaries, upon which a new principle of interpretation has been established that when interpreting the voluntas of the testator and his verba, the interpreter should give priority to the former (Medicus 2000: 236, translated by Jiandong Shao).

Modern civil law has received the way Roman law did and also separated the purpose of interpreting wills from that of interpreting contracts. In accordance with modern civil law, a contract as declaration of intent requires the existence of a counterpart, and in order to take into account the possibility that the counterpart will understand this declaration and balance the benefits between the expresser and the
counterpart the interpretation of the contract shall have as its purpose the inquiry into the objective meaning of the act expressing intentions. Different from contracts a will is declaration of intent with no counterpart and its interpretation shall have as its aim the inquiry into the subjective meaning of the act expressing intentions; such interpretation does not rest with whether some recipient could comprehend the language nor with whether most readers could comprehend it but this interpretation attempts to discern the inward meaning of the testator (Larenz 2003: 471, translated by Xiaoye Wang).

External forms of a will are the carrier of its meaning and the requirement for rigid forms aims to ensure that the will might reflect the testator’s own, serious and complete intention (Nicholas 2000: 270). Nonetheless the one-sided stress on the forms of a will makes it hard to achieve the goal of interpreting it. Accordingly it can be said that there is close connection between the interpretation of wills and the requirement for rigid forms: on the one hand the will failing to be made in accordance with some legal forms is null and void; on the other hand in style-required contracts there is a flexible solution that “a void legal act can be rescued through performance,” but the successor or the legatee has no chance to acquire remedies through performance when the testator dies and the contents of a will are finally ascertained, all of which mirrors from one side the significance of interpreting wills (Wang Zejian 2001: 310).

Andeutungstheorie and the theory of distinction have been formed, with the aim to tackle the conflict between the purpose of interpreting wills and the requirement for strict forms. According to Andeutungstheorie, what can be considered in legal interpretation is only what has been suggested in declaration of intention. This theory has been regarded as a general doctrine for a long time in countries such as Germany, England and Canada. In spite of the fact that Andeutungstheorie was originally established directed at all of actus solemnis, in legislation this theory has been preferred especially in the interpretation of wills. Andeutungstheorie combines the requirement for forms and the object of interpreting wills and underlines the decisive role of the contents reflected in the forms of a will during the interpretation process. It succeeds in safeguarding the seriousness of wills, has positive significance in avoiding the possibility that every will easily calls into questions, and eventually ensures the stability of legal order in testamentary succession.

This theory, however, has led to the contradiction between the rules of interpreting wills and the purpose of pursuing the intentions of the testators in interpreting them. In order to overcome the shortcomings of Andeutungstheorie, a new theory has been invented that starts from seeking the real intention of the testator and distinguishes the interpretation of a will from its forms. This doctrine for one thing admits the demand for specific forms of a will and for another argues that the clear expressions used in the will can still be explained in a flexible way, which breaks the limitation on the interpretation of wills.

In Re Rowland, the majority stuck to Eindeutig keitsregel deriving from Andeutungstheorie. Two colleagues of Denning refused to admit that people pay attention to the purpose for which words are used. According to Eindeutig keitsregel,
the interpretation of wills must not go against their explicit meanings. According to the “Report on Interpretation of Wills (LRC58)” issued in Nov 1982 by LRC, British Columbia of Canada to the Congress, this rule for interpreting wills is also named “dictionary rule” under which so-called clear meaning is confined to the judgment by ordinary people. Before the nineteenth century, judges in most Anglo-American jurisdictions acknowledged that the purpose of interpreting wills was to hunt the real intention of the testator but in judging cases they determined the purpose by referring to the language of the will concerned, which was consistent with *Andeutungstheorie* popular at that time in most civil law countries. The majority in deciding *Rowland* still followed the old rule arguing the significance of words and expressions over the exploration of the testator’s intention. The proponents of *Eindeutig keitsregel* claim that an interpreter must seek the meaning of a word as ordinary people might understand in interpreting a will (for instance as the dictionary construes), instead of being in the position of the testator himself. But a court relying on this rule would have to decide how strictly “coincide” is generally understood, and the extent to which people using the word would take account of the circumstances in which the couple made their wills and in which they died. As a matter of fact in the current case [r] ecognizing that the context was a will and that a wife dying minutes later could make no use of her husband’s property, many people would say that two deaths “coincided” if they occurred from a common cause and within minutes of each other (Greenawalt 2010 : 233).

Obviously in this sense I believe that the majority’s decision goes against the general usage.

2.3 Approaches to standards of interpretation

Our above analysis of *Rowland* shows the importance of identifying proper standards in interpreting wills. Should courts rely upon the general meaning of a will’s language in order to seek the author’s intent? Should courts take into consideration the testator’s own understanding of the words he has used? Should courts seek the writer’s specific intentions or his broader purpose in disposing of his property? Should courts admit extrinsic evidence? What weight should be given to the context in which the words and expressions are employed and to the changed circumstances that would probably alter the specific dispositions the testator would want? The answers to those questions depend on proper approaches to standards of interpretation.

2.3.1 Plain meaning approach

Under the plain meaning approach, also called the literalist or textualist approach, a judge looks at the words of a legal text and gives effect to the ordinary meaning of those words, without trying to infer any intended meanings. The rationale behind this approach is that a judge should construe the words as written to the audience, not the unstated intent of the author of the text because it is hard to ascertain after the testator
The stalwarts of this approach insist that it has created a value-free jurisprudence and it is fair for the reason that it can bring into effect what the law says instead of what the law was intended to say, while its opponents claim that this literal rule represents a static, non-living document viewpoint. In *Re Soper’s Estate* (1935), Olson J. stayed conservative in construing the word “wife”, adhering to the definition conferred by law. Olson based his argument on legal formalism saying that that escrow agreement explicitly had Soper’s “wife” as the beneficiary so he could not understand the word as any other person except as Mrs. Soper still living. The presiding justice held differently that the issue was not its literal meaning but how it was intended to be applied to the object of that agreement in practice. He argued that the purpose of both parties thereunder would have been frustrated if the decision had been made otherwise as what the plaintiff had required, because that undoubtedly, he claimed, would have surrendered rationality and submitted to formalism looking at the agreement as a self-contained and self-operative formula.

One possible approach to standards of the interpretation of wills is to read a will word for word and interpret the will’s language according to its ordinary meaning, that is to say, make everything rest with the plain or clear meaning of the will’s language.

The traditional “clear meaning” rule of interpretation provides that the court employ the normal meaning of the testamentary language, where this can “sensibly” be applied to the minimum circumstances necessary to put the will into operation (C.L.R. 1937: 844).

A court applying the plain meaning rule in a case such as *Rowland* is to make everything depend on the apparent limpidity of the will’s language. Some scholars, however, thought of the plain meaning rule as incoherent or based on a logical error. “Plain meaning,” said Judge Frank Easterbrook, “as a way to understand language is silly. In interesting cases, meaning is not ‘plain’; it must be imputed; and the choice among meanings must have a footing more solid than a dictionary” (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1753333).

A plain meaning sometimes ignores that the speaker’s subjective meaning may differ. Hirsch (1996: 116-21) has said that “each of us has his or her own idiolect, that words can have multiple meanings, and that the plain meaning rule is “theoretically incoherent”.

We view the plain meaning rule as the jurists’ endeavor to make legal language more specific and standard. In order to avoid the uncertainty of meaning caused by de-contextualization, legislators tend to give more detailed definitions and try to make them taken in by law or generally accepted by people. That is to say, meaning in the law can count as “plain” if legal tradition or legislation has established a definite, precise meaning for particular words. There are two more points we must remember: first, at times it is community sense that determines meaning and therefore when the majority of speakers of a language agree on the meaning conveyed by certain words
in a social context, that meaning is relevantly “plain”; secondly sometimes a particular person’s usage is so well-established that the meanings of his words are plain even if others would not use words in that way in his circumstances, but such a personalized version of meaning is not considered plain meaning in the law of wills (Greenawalt 2010: 239). Based on this, this paper argues that the rigid application of this rule is impracticable because the main purpose of wills is to provide people with wide discretion in how they intend to dispose of their assets after death; when this rule is applied to the interpretation of some words or phrases used in a will the real meaning is often neglected which has been given by the testator and all that can be found is just the comprehension by perhaps the community. *Soper’s Estate* is a case in point.

Another notorious problem with the plain meaning rule is that when the words of a will are vague the rule does not apply. A remedy for courts then is to admit extrinsic evidence to resolve such vagueness. Although some evidence is helpful in discerning the author’s real meaning or his intent, historically many courts faithfully applying the rule to cases such as *Rowland* did not accept it. Today courts’ views about it have consistently improved and extrinsic evidence in many countries has been admitted in order to avoid potential ambiguities.

The last point deserving our attention is that the inference occasionally was derived from the minimum circumstance that the testator’s meaning was not the normal one, but his particular understanding. Should a court totally refuse evidence of idiosyncratic understanding? In *Re Jebb* (1966), according to the will made by a grandfather aged 86, saying after his death his property passed to “my daughter Constance Jebb’s child or children,” the judge hearing the case regarded “child” as a child born in wedlock rather than an adopted one. On appeal Denning and his followers rejected the explanation. The circumstances were that his daughter aged 47 was still single when the testator died and thus had no natural child of her own. But she had adopted a son and this adoption was legitimate. Besides there was a mass of evidence showing that the grandfather knew all about that adoption and he even saw that kid playing in the prams. Thus the testator might have not realized that in his will he should have employed precise words such as “… and my daughter’s adopted son Roderick”. Under such circumstances most people may hold it better to assume that words are meant in their natural sense because admitting evidence of a different meaning perhaps demands a much higher burden of proof. Nonetheless this argument may become the source of injustice.

### 2.3.2 Purposive approach

Sometimes referred to as “purposivism” (Posner 2002: 737-7520), purposive construction (Bourchard 2007), or purposive interpretation (Barak 2005), the purposive approach is an approach to statutory and constitutional interpretation under which common law courts interpret an enactment in accordance with the purpose for which it was enacted. (http://en.wikipedia.org/wiki/Purposive_approach).

Comparatively, the phrase “purposive interpretation” is relatively new the historical
source of which is the mischief rule. Apparently surfacing at the end of the 1960s and beginning of the 1970s this approach was well-adopted simultaneously in common law countries such as America, England, Canada and Australia. According to an English textbook (Bennion 2002: 810), a purposive construction of an enactment can effectuate the legislative purpose by: (a) applying the literal meaning of the enactment where that meaning accords with the legislative purpose, or (b) applying a strained meaning where the literal meaning does not accord with the legislative purpose. To put it another way, the purposive approach is to search for the purpose behind those words, not for a meaning of the words at all.

In accordance with purposive interpretation the judge can infer the purpose grounded on both information about the intention of the text’s author (subjective purpose) and the intent of the reasonable author and the legal system’s fundamental values (objective purpose) (Barak 2005: 88). The author of the text created the text. The purposive approach claims that legal interpretation functions to aid the interpreter in understanding a legal text and therefore is analysis of the text, not psychoanalysis of its author.

Often coming up alongside or instead of the word “intent,” the word “purpose” in the interpretation of wills is not new to common law tradition. As a form of replacement for the mischief rule, the plain meaning rule and the golden rule to determine cases (Driedger 1983: 87), apart from being used to as an approach to statutory and constitutional interpretation the “purposive interpretation” is also employed in the interpretation of other legal documents including the interpretation of wills although it developed primarily in interpreting statues. For a will, its subjective purpose is the actual intent that the testator had at the time of the making of the will itself but not his hopes about what future judges might do. Especially when the will is a result of agreement what should matter is the testator’s understanding of what his words meant, not his wishes.

The objective purpose of a legal text is the intent of the reasonable author. It is decided by objective criteria; this purpose cannot and need not be proven with evidence; it does not reflect the “real” intent of the real author, but rather a “hypothetical” intent. At a high level of abstraction, the objective purpose is to achieve the values, objectives, and policies to which the text is designed to give effect in a democratic society through the given context of the underlying legal system, history and values of the society for which the text was made. “When making a will most reasonable testators certainly do not wish to disinherit their children and they wish equality of distribution for heirs of equal degree” (Bowe & Parker 1961: 111). For instance, in the light of the policy of desirable distribution a court may interpret a vague will to do that. Thus according to the objective purpose it is not what the testator actually intended but rather what a hypothetical reasonable testator would have intended.

Notwithstanding the voice from the opponents of purposive interpretation that this rule fails to perceive the separation of powers between the legislator and the judiciary (Fahey 1998: 507, 534), we still consider the purposive approach to be more likely to achieve the end of justice in most cases because it is flexible enough to
enable the judge to ponder over the actual intent of the author or the broader policy underpinnings before ascertaining the meaning of a text, even the words employed in it. With regard to wills, purposive interpretation goes beyond the words within a will so considerable power shall be bestowed upon the judge when he looks to extrinsic evidence for help in interpreting the will. In deciding a particular case the court should balance the subjective purpose and the objective purpose of the words used by the testator so as to arrive at an appropriate interpretation.

3. Factors determining the interpretation of wills

It is widely acknowledged that courts should approach the case with the aim of securing the fulfillment of the testator’s purpose or intent as completely as possible, not to intrude his own ideas about who should receive the assets. The point therefore is what the proper approach to the identification of the purpose is. Where the construction of a will rests with the proper interpretation of a single word, we must focus on the following factors determining such interpretation.

3.1 Linguistic context of the word

Textual interpretation, and interpretation more generally, are not restricted to law; they characterize much of our lives, from ordinary conversation to our reactions to great works of art. One source of insight about interpretation in law is interpretation in other domains, and we shall explore just how much or how little commentaries about other forms of interpretation contribute to our understanding of legal interpretation (Greenawalt 2010: 2).

As a conception used in the language sciences context is particularly of importance in pragmatics because it contributes a lot to the meaning of an utterance. According to Brown and Yule (1983), “the more an utterance analyst has understood context features, the more possibility of what to be uttered he will predict.” For the convenience of research a Chinese scholar Wang Fang (2013: 49-50) has tentatively classified context into linguistic context and non-linguistic context. Linguistic context refers to the co-text (He Ziran 1997: 209) when we talk about it in linguistics. Concise Oxford Dictionary of Linguistics (1997) defines co-text as “the relevant text or discourse of which a sentence, etc. is part or whatever longer text is relevant to some specific inquiry.” According to Wang Fang (2013: 51),

[n]on-linguistic context includes situational context, which refers to the immediate context of situation consisting of the setting, the intent and effect of verbal action, features and actions of participants, and context of background, which generally includes the social and the cultural backgrounds for the verbal action.

The meaning of the language with strong contextuality is very explicit for such language has a clear reference object. However the language having no apparent contextuality or the language de-contextualized tends to possess a more abstract meaning for the lack of an indicator. The case law in most cases is more contextual
because of the fact that legal principles in the case law are formulated on the basis of some given circumstances. In contrast expressions in the statute law are often de-contextualized and abstract for their rare inclusion of specific circumstances.

Compared with the language in specific and contextualized cases, the legal language in abstract and de-contextualized cases seems more generalized and its meaning will more easily be perceived and accepted. Under such circumstances the extension of the language will be broadened and its meaning may become too general to be ascertained. In practice because of its uncertainty such legal language is more prone to be misused by law enforcement agencies and the advantaged. A popular remedy for such general but uncertain legal language is to define some legal words and reinvest them with more concrete and definite meaning through limited conditions. This way of defining legal words is important due to its function of both increasing certainty and making the language widely recognized and accepted by more individuals through making laws or contracts. It is also noticed that most civil law countries (such as Germany) have defined their own legal language in a rigorous way but China has not done that well in this respect. “Draft of Energy Law for China” is an instance which contains a great number of general and declarative words and no definitions or restrictive conditions are given to key terms, which renders this draft unfeasible.

The linguistic context of a word used in a will is that provided by its accompanying or surrounding words and any codicils. No document can be properly construed except as a whole; wills are no exception. Although few now could disagree with his dissenting opinion in Re Rowland, it has to be admitted that there is still confusion about Denning’s approach. In Re Rowland the testator used the word “coinciding” in the context of the testator’s wife’s death “preceding or coinciding with” his own death; “preceding” apparently indicated time and it is therefore hard to say that the expression “coinciding with” in the will was not employed in the sense of time as well. The majority based their judgment on this linguistic context. In my view, only in association with other words in whose linguistic context they are employed do words take on a meaning; they hardly ever have a meaning in isolation. Denning’s argument for the purpose or intent of the real author of the will is plausible in many respects but his disregard for linguistic context deserves pondering on. After all no matter whether he realizes it or not, the first thing an interpreter catches sight of must be the word itself and its accompanying words and phrases when he studies a word in a text. Suppose one provision in a will says that a son would receive House A (but not House B) when he reached the age of eighteen, but other language in the will indicates that the aim of the testator was to allow his receipt of House A and House B. In order to realize autonomy of will to the uttermost, the next step is to seek extrinsic evidence showing that a typist might have made an error. In Re Estate of Dorson (1959: 344), the court allowed correction of such an error.

3.2 Non-linguistic context of the word

When doing interpretation, interpreters act in a historical and social context, namely
in some non-linguistic context. A pre-understanding of the word or words waiting to be settled has existed. Modern theories have gradually accepted that if we admit that whoever interprets a text today cannot have the same perception of it as what someone had one hundred years ago, it must also be admitted that in interpreting legal texts we inevitably are influenced by our position within the society in which we are living now. This again comes down to the contextuality of legal language. Our following discussion is only centered on non-linguistic contextuality.

In a sense non-linguistic or surrounding circumstances are of the greatest importance to the understanding of any will in order to establish contact between the language employed by the will and the external world. The decision in *Re Soper’s Estate* (1935: 427) where there was nothing about a will but there was a legal document sharing the same nature as a will reflected a more modern and liberal attitude held by those scholars arguing for contextuality. The presiding judge in that case adopted contextualism embodying the value of respecting party autonomy. The judges hearing the case insisted that in interpreting the document involved they firstly should comprehend the extrinsic facts and situations relied upon for the fulfillment of the said document, or the intentions of parties involved were hardly understood. In deciding the case, the presiding judge pointed out that if another decision had been made on the request of the plaintiff the court would have failed to treat the agreement as closely connected to its surrounding circumstances. In construing a legal text, we must comprehend its surrounding facts and things with which the text can be executed; if not it is almost impossible to fully discern the purpose for which the text has been made.

Surrounding circumstances can be admitted through identification of the subjects and objects of a testator’s bounty. For example, “my niece” or “my bicycle” requires evidence to identify them with an actual person or thing. Such circumstances are also admissible by way of more general interpretation. In *Re Smith* (1962: 763), the Court of Appeal had regard to the fact that when the will was made the National Health Service Act had not been passed; the general interpretation was that the testator would have been likely to go to a “voluntary” hospital rather than to a private nursing home, so the Court in the end decided that a gift to hospitals did not include hospitals established for private profit.

Here comes another question of the appropriateness of contextualizing or de-contextualizing legal language. Apparently there is no need to over-contextualize legal language. In the case law a legal rule can be concluded from a number of similar cases but this principle does not mean to contain an excess of complicated facts. Theoretically there are not two cases sharing identical facts. It is no use comparing all facts when matching precedents and only some facts in a legal sense are at comparable scales. In the case law the appropriateness of contextualization is that some facts without legal meaning may be rejected, no more and no less; de-contextualization will be not proper where excessive facts are removed and the meaning of legal rules turns ambiguous and thus inoperable. Standing between concretization and abstraction, we cannot find out where we are when a matter is too abstract and far away from concretization. It is the same case with law: it will become
much harder to discuss abstract legal rules and theories if we take no account of the circumstances in which they are; such rules and theories will definitely descend to slogans of no practical value.

With specific and contextual facts, the legal language will give an index to the real intention of the party involved. When he has a definite understanding of some legal language but his understanding has narrow extension, the esteem for an individual’s liberty and the truth will be embodied if law respects his intention. In the meantime this principle is not unconditional; it might be abused. A striking instance is the disagreement between the real meaning of the testator’s mind and the extrinsic meaning conveyed by the will’s language. In this case the determination of the meaning of a will shall rely on the external meaning not his inner meaning unknown to others, the reason for which is that it is hard to find evidence to support the inner meaning and the individuals with opportunism tendency are more likely to abuse this principle if the so-called “real meaning” is accepted by law.

Therefore in spite of the significance of surrounding circumstances we cannot divert the language from its true meaning by claiming what the testator might be thought to have wished to say if the meaning of the language itself is clear enough. In this sense the decision in Re Rowland seems to have had its merits in law though it has been much criticized for its too rigid application of literal interpretation.

3.3 Public policy

Public policy is the guidance to action taken by the administrative executive branches of the state with regard to a class of issues in a manner consistent with law and institutional customs. The foundation of public policy is composed of national constitutional laws and regulations (http://en.wikipedia.org/wiki/Public_policy). Different from other surrounding circumstances, public policy is an attempt by a government to address public issues. Due to its particularity and significance we think of it as an exclusive factor having essential impact on the interpretation of wills.

Because of the freedom of the writers of wills, there may be less room for public policy to affect interpretation than elsewhere; nonetheless, judges properly give some more weight to appropriate standards of behavior than a pure estimate of the testator’s probable intentions might warrant (Greenawalt 2010: 247).

For instance, that caring for children is desirable is a policy and a court may construe an unclear will to do that, even if the balance of probabilities suggests that the testator wished otherwise. Just as in Re Jebb (1966: 666), the court held that a bequest to a “child” included an adopted child whom the testator knew all about. An academic lawyer Dr. John Morris dissented strongly and wrote an article with the heading “Palm Tree Justice in the Court of Appeal” in which he said,

“The Court of Appeal seems to have usurped the function of the legislature … If this new addition to the construction of wills comes to prevail, it will not be sufficient just to re-write
the chapter on gifts to children in the text books on wills. The text books themselves will have to be scrapped, and construction reduced to the level of guess work… ” (Denning 1975)

This natural reaction by a distinguished academic lawyer invited strong reflection. The next year after Re Jebb, Denning in another case (1967: 302) objected to the decision that nothing should be left to the girl Yvette just because she was not a legitimate daughter. Denning cited the plots in the Merchant of Venice and explained in an artful way the absurdity of strict interpretivism and its deviation from fairness and justice. He claimed that law is constantly changing and thus judges should make their decisions based on changed situations; he was opposed to literal interpretation but advocated flexible interpretation in accordance with the constitutional principle of fair justice and specific circumstances. The judgment in Re Soper’s Estate reflected the preference by the court to the real meaning of the legal language employed by the author himself. Taking into consideration public policy, however, we must bear it in mind that no rule or norm of value is a hard absolute and there is a boundary for any liberty when we are pleased with this result. With regard to that case, the public policy of protecting the stability of a society’s institution of marriage must be taken into account.

Denning was a stalwart believing that judges when deciding cases must stick to legal principles on the one hand and take into account of fairness and justice on the other hand. As far as he was concerned, the principle of fairness and justice is much better than legal provisions and precedents because the language used in statutes and legal documents is never absolutely definite and the ultimate aim of legal interpretation is to realize justice rather than make law come true. In the interpretation of wills what we need to do is only to make an analysis depending on concrete circumstances and weigh aforementioned criteria of value. It must be clarified that no matter what choice we make legal language in the end is merely a carrier or tool for us to achieve some value.

Last but not the least, the meaning or meanings of the word in a will as ordinarily used should still be emphasized. Farwell J. in Re Hodgson (1936: 203) stated the correct order of approach as follows,

“I think that it comes to this: the duty of the court in the first place is to read the will itself. The court is bound in the first instance to read it, giving the words used their primary and proper meaning. The court is then entitled to look at the surrounding circumstances.”

In order to identify the purpose or intent of the testator judges should give priority to the dictionary meaning or meanings and they sometimes make reference to an opposite intention collected from other linguistic parts of the will because the will must be read as a whole. According to Albery (1963: 358-360), language is a dynamic thing; very occasionally the court might recognize a modern use of a word which had not yet found its way into the dictionaries. But to do so without citation of any recognized examples of such general usage articulated in dictionaries is likely to lead to error. Therefore, dictionary or ordinary meaning or meanings of a word can help a lot in further discerning the real meaning or meanings conveyed by the word. At the
same time judges must have regard to non-linguistic contexts according to which a word may be freely diverted from its proper or dictionary meaning or meanings.

4. Implications and Conclusion

In Roman law inheritance under a will precedes inheritance by law so as to give respect to the autonomy of the testator. Historically in a long period of time there was a strict limitation on private properties and for the Chinese there were not too many subject matters to be inherited, which decided that the task of interpreting wills in China was not as heavy as that in Ancient Rome. Since the reform and opening-up policy there has been a general increase in personal assets, which makes more and more Chinese people choose to dispose of their own assets by making wills and thus the interpretation task has been growing. The status quo in China is that the majority of testators fail to employ clear and unambiguous language in making their wills due to the constraints out of their low educational level, slow understanding of things and weak legal consciousness. There are no rules in the Inheritance Law of China about the interpretation of wills. All of these have forced our emphasis on the following points in the interpretation of wills.

Firstly, interpretation of a will aims to seek the subjective intention of the testator. The author of the will is dead when interpretation is required and his real intention cannot be sought by asking him, which makes the interpretation of wills different from that of contracts and there is more room for judges to interpret wills. But the problem is how to control such interpretation power by applying some standards. The first standard should be to rescue the validity of a will for the reason that, as one of the ways of disposing of personal assets a testament shall be understood as superior to inheritance by law and gives expression to the testator’s will and his special feelings for people with whom he has a close relationship from others. Accordingly in the case of serious loopholes in the will some remedies must be sought through interpretation in order to make it take effect. The second standard is to ground such supplements to the loopholes on the language of the will itself. So-called loopholes of legal acts refer to those contents that are beyond the expectation of the parties involved and they have not specified but should have been included in normal circumstances. It is judges’ power to address loopholes in legal acts for the purpose of finding facts. Judges often wield this power in making up flaws in contracts while they seldom supplement loopholes in unilateral declaration of will. We have to admit the possibilities of loopholes in wills. It must be noted that technically the interpretation of wills as an interpretive activity differs from supplementing loopholes in wills as a constructive activity. Interpretation aims to seek the actual intent of the testator through the language of a will and the admissible extrinsic evidence; construction attempts to provide the will with the content that a new provision has had where interpretation fails to totally discern his real intent. However in practice the boundary between interpretation and construction is hard to define and the latter has a much wider extension than the former. In this paper construction is used in the sense that it means interpretation in a narrow sense. Undoubtedly there is discrepancy between the
fictional meaning and the real inner meaning of the testator and there is no reference for the determination of the loopholes in the will. For this reason judges must stick to the principles as follows in order to supplement the loopholes in a prudent way: they can make up only those elements having no relation to the execution and effectuation of the will, particularly to the requirement for forms; the supplement must be in line with conventions, the principle of honesty and credibility and legally mandatory regulations; when supplementing the loopholes in the will judges must balance the benefits among heirs at law, testamentary successors and legatees; judges must supplement the loopholes by taking into account the subjective attitude held by the testator when he made the will, objective circumstances and extrinsic evidence.

Secondly, in the interpretation of wills the point is not the dictionary meaning of a word but how it shall be intended to be applied to specific circumstances in reality. The interpretation of the word almost invariably means doing more than finding its literal meaning. In *Re Rowland*, all three members of the Court of Appeal agreed that the proper object of inquiry on interpretation of a will is not the subjective meaning of the testator uncontrolled by his words nor the objective meaning of his words uncontrolled by any context, but instead the objective meaning of the words as used by the particular testator (Albery 1963: 353-366). This argument reveals that it is not the static but the dynamic state of the word that shall be underlined. In other words only when judges take into consideration the objective meaning of his words by reference to the surrounding circumstances may there be possibility of discerning the real purpose or intent of the author of a will. What interpretation on earth should be given the word in a will is subject to its context linguistic and non-linguistic, rather than its mere literal meaning or meanings.

Thirdly, our study from one side also reveals that it seems little doubt that if the courts are to deal adequately with such cases they need a power which goes beyond implementing the intent of the testator and interpreting liberally the words he has employed, because in many cases the actual situations are such as the testator quite plainly did not envisage. For example in *Re Rowland*, the doctor and his wife were scarcely likely to have foreseen their deaths in such circumstances as actually occurred where there were no surviving witnesses to the event. Where there is ambiguity in a will the power required by the court is to exercise its discretion to make such unclear language as is fair and just by considering the dispositions made by the testator and the actual circumstances of his death. But what if the will is reasonably clear but there are some seemingly unjust provisions? Without a discretion such cases would not be litigated. Such a power in the courts would be in line with the increasing public policy to endow the judiciary with discretion.

The fourth point about interpreting wills is the combination of a discretionary power in the court and legal aid provided by a legal adviser. Whoever studies wills must have found that there is an enormous number of wills that are either hastily made by the testator or some lay adviser or drawn up on a so-called standard form obtained perhaps from a website or a tradesman. When a standard form is intended there are infinite possibilities for error and the cost of frustrated expectation is heavy. However in many countries such as China the law does not intervene to protect the
obtainer and even a lawyer is not liable for negligence as far as the drafting of wills is concerned. In England this rule was extended in Hall v. Meyrick (1957: 455) where a solicitor was exonerated from damages for breach of contract due to his failure to advise a client that marriage revokes a will. Therefore,

“A possible solution might be to couple with a discretionary power in the court a provision that, where the will had been drawn up on legal advice and failed, by reason of mistake, omissions, the use of inappropriate precedents or any other form of negligence by the solicitor, to deal adequately with the disposition of the testator’s estate, the solicitor who had drawn up the will should be responsible for the costs of the litigation and any other net loss to the estate” (Stone 1963: 87-91)

In the future when enacting the civil code of China the legislature shall be suggested to write general principles of interpretation of legal acts into the part of general provisions, and special principles into the part of inheritance. The core of making rules for the interpretation of wills is to establish rules for the subjective interpretation of wills; as for the rules for adopting extrinsic evidence where there is ambiguity or ambiguities extrinsic evidence can be admissible to prove the real intent of the testator only when there is no contrary restrictive provision by law.

ACKNOWLEDGEMENTS

This article is a project result supported by Foundation of Humanity and Social Sciences of China University of Political Science and Law (“Study on the Construction of A Harmonious Academic Community of Law and Language under Global Governance”, Grant No. 13ZFQ74001).

This article is also a project result supported by Foundation of Humanity and Social Sciences of Educational Department, PRC (“Study of the Planning of Legal English Discipline”, Grant No. 11YJA740046).

This paper is financially supported by Collaborative Innovation Centre for Global Governance and the Rule of Law of China University of Political Science and Law.

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A Comparison of the English Translation of the Constitution of the People’s Republic of China with the Constitution of the United States, Combining Corpus Linguistics and Critical Discourse Analysis

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ABSTRACT
The present study compares texts of The Constitution of The People’s Republic of China with The Constitution of The United States aiming to find out how they differentiate linguistically. The study adopts a methodology combining corpus linguistics and critical discourse analysis. Corpus linguistic tools allow researchers to acquire linguistic examples to phenomenon already noted, revise researchers’ intuition, and help them discover language patterns previously overlooked. While CDA explanation portrays the discourse as a social process and practice, interpreting the interactions between the two. By examining word frequency list and key word list, the present study analyzes the co-selections of four words, and discusses their semantic preference generated. The linguistic evidences show that the Constitution of The People’s Republic of China stresses more on government institution design, government power and its distribution, but The Constitution of The United States focuses more on system, which refers to mechanisms of rule of law.

KEYWORDS
Chinese, constitution, United States, corpus, CDA

1. Introduction
A constitution is the fundamental law and leading document of rule of law in a nation with primary concerns of civil rights and government powers (Shan, 2011). Although constitutional principles like the rule of law and democracy are indispensable content in modern constitutions, different countries have their own understanding and specific emphasis on these issues. The Constitution of The United States is the first written
constitution in the world, embracing the concept of “separation of power” and “checks and balances”, and is considered maybe the best constitution that human wisdom could worked out. On the other hand, the Chinese Constitution is comparatively a recent product of human being moving forward to civilization. China is an emerging power in the world, making progress in building the legal system and strengthening the rule of law. As these two documents were made at different times, were produced in different social political background, there must be discrepancies between them despite of their common fundamental law status.

Researchers at legal or historical field have already done numerous constitutional studies of the two texts. Considering that both of the documents are written texts per se, the writing and reading of the language of the texts shall be critical to explore what drafters of constitution had thought their country should be and would be. So this study however, is conducted from linguistic perspective, attempts to provide linguistic evidence to the existing constitutional studies. The expressions in different constitutional texts reveal rather differentiated views on constitutional issues. The choice of words in the texts predetermines at a higher level of abstraction: the text meaning and ideology imbedded in it. This study is inspired by what Sinclair (2004) advocates that we should trust the text, be open to what the text may tell us, and expect to encounter unusual phenomena so we may find a lot of surprises.

Legal discourse no matter written or spoken, is a highly verbal field that discourse analysis is capable to apply in a wide variety of setting and context. Since 1990s, the study of language and law (Gibbons, 1994; Levi and Walker, 1990; Rieber and Stewart, 1990), and the language in the courtroom (Berk-Seligson, 1990; Stygall, 2012; Liao, 2012) attract much research attention. Forensic linguistics plays a role in criminal cases to prove or to identify voice (Coulthard & Johnson, 2007; Gibbons & Turell, 2008). Legal interpretation also is (Solan, 2012; Posher, 2012) addressed in the domain.

Vagueness has recently drawn considerable attention from specialists of legal discourse. Normative texts like legislation is highly impersonal and decontextualized, however, human behavior is difficult to predict, so the reality requires the texts, on one hand, have a high degree of determinacy, which demands all the words in a statute are as clear as possible. While on the other hand, legislative texts have to be all-inclusive, which requires the text to cover every relevant situation. Explicitness and absence of vagueness may lead to determinacy, however being vague makes it easier to be inclusive and to interpret a normative text (Bhatia, 2005). The balance between the two ends arose heated discussion. Timothy Endicott (2005) holds that vague regulation supports the normative principle but underlies the rule of law; Tiersma’s (2005) study categorizes scale of exemplary, under inclusive or over inclusive in the list. Through analyzing cases from different legal contexts, it is proved that Tiersma’s list is highly relevant for interpretative questions.

To date, much of the research on legal discourse has been on language features of certain text type, few study has involved the comparison of the same type legal discourses from different jurisdictions. However, Ni & Sin (2011) conducted a
synchronic comparison between Chinese and British statutes and a diachronic comparison between the original and current versions of Chinese statutes on intellectual property rights. The research proposes a matrix of legislative speech acts in Chinese and British statutes: The legislative speech acts in Chinese statutes are made at two levels: (1) performatives carrying legislative force; and (2) legislative sentences containing modals. Modals far outnumber performatives in materialization of legislative speech acts, which is believed to be the socio-pragmatic characteristics of the legislative discourse.

In the field of legal discourse analysis, research has tended to linguistic features rather than to legal culture and legal system aspects. Bhatia (2011) analyzes the interpretation of specific sections of the Basic Law of Hong Kong Special Administrative Region, holding that cross-cultural/jurisdictional, socio-political and ideological factors play a significant role in legal interpretation.

The general limitation of the existing studies is that they are rather static, which means the discourses were examined alone, and few interaction was conducted with other discourses. Another, discourse analysis inherently deals with lexis, syntax or text, in another word, the language itself, if it associates with broader scope of study, there need to be innovative design of using the linguistic tools. In the case of present study which is comparing the Chinese Constitution and the U.S. Constitution, attempts are made in regard to the above limitations. Two initial questions necessarily arise: Given their same supremacy status in their legal systems, and different social political arena, in terms of choice of words, what are the differences between the two constitutions? If there do exist differences, what does it mean to the respective legal culture, and how does the difference reflect the framers’ value and belief.

2. Background of study

Corpus is a powerful discourse analysis tool comparing with manual examination of linguistic features, which enables researchers acquire unexpected findings. This study employs a corpus driven approach (Tognini-Bonelli, 2011) to collect the data, hoping to get an unbiased research result.

Legal discourse analysis is enlightened by the flourishing corpus method. Corpus for special purpose has some advantages by itself, that first, the specialized corpora are small and collected by the analyst, and these corpora usually include more contextual information about the communicative situation than larger ones. The specialized corpora usually includes complete texts instead of sample sections of texts. Therefore, it allows the top-down analyses that utilize insights from text linguistics and genre analysis to structure the examinations (Connor & Upton, 2004). However, in order to compare the two legal texts, a handy corpus tool kit needs to be selected.

Comparing two corpus word frequency lists helps to discover key items which differentiate one corpus from another. This is the initial step to determine whether the most frequent words of a given text are “suggestive of potentially meaningful patterns that might be ignored or missed when read manually” (Archer, 2009, 2). It has a value in the “description of particular lexical and grammatical items and is replicable as a basis of systematic comparison and of identity construction” (Kirk, 2009, 34).
In addition to word frequency, key words and phrases in a text are heavily relied on in corpus linguistic research. Keyness is a quality of being generally intuitively obvious, or the quality of words may have “in a given text or set of texts, suggesting that they are important, they reflect what the text is really about” (Scott & Tribble, 2006, 73). A key-word list includes items that are either significantly frequent or infrequent, which allows one corpus wordlist compare to a reference corpus wordlist. The result would provide hints of statistically more frequent terms, which may suggest what the text is about. Therefore, it could indicate the writer’s position and identity, as well as the values and beliefs about the subject matter (Baker, 2006; Biber, Conrad & Cortes, 2004).

Looking at words alone is not the best starting point to describe meaning, because meaning arises from words in particular combinations (Sinclair, 2004). Today linguistic study of meaning could not ignore tendencies of word co-selection (Cheng, 2006). Concordance lines provide basic tools examining word co-selection, rendering insight into the typicality of item use, especially concordance analysis generates evidence of the most frequent meanings, or the most frequent collocate in a text (Evison, 2010). Researchers uncover findings in semantic preference and semantic prosody as two out of five categories by studying co-selections (Sinclair, 2004). Different co-selection patterns may cause a shift in the ambient meaning. Semantic preference is particular type of collocation of lexical items or collocation phenomenon, which is shared among speakers of a given speech community (Partington, 2004, 152) and is context and domain dependent (Partington, 2004). Semantic prosody prescribes attitudinal connotation, and could be categorized into, for example, positive or negative semantic prosody. That is to say, different combinations of words generate a shift in meaning. Many a time the meaning is too subtle to perceive, nonetheless, it could still be detected with assistant of corpus tools, even it was neglected by numerous readers.

The above tools in corpus linguistics enable researchers to approach the text relatively free from any preconceived notions regarding the linguistic or semantic content, offering researchers a reasonably high degree of objectivity (Baker et.al, 2008). With all the evidences generated by corpus tools, the next step of the research then involves explanation and interpretation. Researchers have already combined corpus linguistics with CDA (Baker et. Al, 2008; Cheng, 2010, 2012) to integrate objectivity of corpus and strength of interpretation of CDA.

Discourse to CDA, is socially constitutive and conditioned opaque power object, and CDA aims to make it more visible and transparent. CDA is deployed in three stages: description of text, interpretation of the relationship between text and interaction, and explanation of the relationship between interaction and social context (Fairclough, 1989). The description of a text is to depict set of highly selective textual features, which tend to be most significant to critical analysis. The stage of interpretation is concerned with those who are involved in the processes of text production and text interpretation. And explanation portray the discourse as a social process and social practice, and showing how it is determined by social structures and the effect it has on the social structures (Fairclough, 1989).
Integrating corpus with CDA in language study is not a novel method, the rational of the combination provides that corpus enables more examples available to phenomenon already noted; it revises researcher’s intuition, and it reveals patterns previously overlooked (Baker et.al, 2008). The present study also adopts a methodology combining corpus linguistics and CDA. It attempts to start the examination from the text, then to the explanation of the findings with CDA.

3. Data
In Chinese legislative history, there have been 5 documents successively functioned as the constitution of the nation. They are the Common Program in 1949 when the People's Republic of China was established, the Constitution of 1954, 1975, 1978, and the current constitution promulgated in 1982. The present study adopts the 1982 Constitution as the research object for the following reasons. First of all, the 1982 Constitution is the current constitution in effect. It is the legislative product that concluded experience of both Chinese revolutionary struggle and the international practice, and is considered so far the best constitutional document in Chinese history. Secondly, the 1982 Constitution is the consensus reached by the people. Since the document involved broad participation of the people, it duly reflects the common interests shared by the people (Xue, 2012). The structural adjustment in the document put “basic right and obligation of citizens” prior to the “state institutions”, indicating the constitution is perusing the humanistic spirit and the value of protecting human rights (Yang, 2011).

The other document under the study is The Constitution of The United States. The document was drafted in 1787, ratified in 1789, which has been able to survive for two centuries with relatively little amendment. It functions to reconcile the “need for an effective national government with the desire to avoid a concentration of power that would threaten a return of the tyranny that had been overthrown” (Farnsworth, 2010, 164).

The texts in the present study are all public files available from various sources. For the purpose of research accuracy and reliability, The Constitution of the People’s Republic of China (hereafter referred to as A) English version is translated by the competent department of the People’s Congress, obtained from Chinalawinfo1. The Constitution of the United States (B) is from Westlaw2. Both sources are leading databanks of legal information service providers, catering for legal professionals’ need in doing researches and studies related to legislations, cases, and journal articles.

Both Chinese and U. S. Constitutions were amended, and the amendments were made in different time period. Since this study attempts to explore the founding fathers’ original intent as well as their values embedded in the constitutional language, the amendments of both constitutions are all excluded.

The Constitution of the People’s Republic of China consists of one preamble and one hundred thirty eight articles in four chapters: 1. general principle; 2. the fundamental rights and duties of citizens; 3. the structure of the state; 4. the national

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1 http://vip.chinalawinfo.com/
2 http://international.westlaw.com.ezproxy.lb.polyu.edu.hk
flag, the national emblem and the capital; the total word count is 10,879. The
Constitution of the United States consists of a short preamble, seven articles, and each
article contains several sections, the total word count is 4,609.

This study uses Concgram© (Greaves, 2005) to generate word frequency list,
and Wordsmith (Scott, 1999) for keyword list. Base on the results of word frequency
and keyword lists, significant words showing uniqueness of each text are chosen for
further study. ConcGram© in next step is employed to study selected words in
concordance lines so as to identify the canonical form (Cheng, 2008) and pattern of
coselection among all the concgrams configurations of selected words.

4. Data Analysis

4.1. Word frequency list

Using ConcGram©, single word frequency list of both texts are generated. The
following are the most frequent words in the two texts.

<table>
<thead>
<tr>
<th>Word</th>
<th>Freq.</th>
<th>%</th>
<th>Word</th>
<th>Freq.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>THE</td>
<td>1,234</td>
<td>11.25</td>
<td>THE</td>
<td>425</td>
<td>9.2</td>
</tr>
<tr>
<td>OF</td>
<td>753</td>
<td>6.87</td>
<td>OF</td>
<td>290</td>
<td>6.28</td>
</tr>
<tr>
<td>AND</td>
<td>626</td>
<td>5.71</td>
<td>AND</td>
<td>193</td>
<td>4.18</td>
</tr>
<tr>
<td>PEOPLE' S</td>
<td>299</td>
<td>2.73</td>
<td>SHALL</td>
<td>191</td>
<td>4.13</td>
</tr>
<tr>
<td>TO</td>
<td>273</td>
<td>2.49</td>
<td>BE</td>
<td>125</td>
<td>2.71</td>
</tr>
<tr>
<td>#</td>
<td>225</td>
<td>2.05</td>
<td>TO</td>
<td>114</td>
<td>2.47</td>
</tr>
<tr>
<td>IN</td>
<td>185</td>
<td>1.69</td>
<td>IN</td>
<td>89</td>
<td>1.93</td>
</tr>
<tr>
<td>STATE</td>
<td>176</td>
<td>1.6</td>
<td>STATES</td>
<td>81</td>
<td>1.75</td>
</tr>
<tr>
<td>ARTICLE</td>
<td>138</td>
<td>1.26</td>
<td>OR</td>
<td>79</td>
<td>1.71</td>
</tr>
<tr>
<td>NATIONAL</td>
<td>127</td>
<td>1.16</td>
<td>UNITED</td>
<td>55</td>
<td>1.19</td>
</tr>
<tr>
<td>BY</td>
<td>123</td>
<td>1.12</td>
<td>A</td>
<td>53</td>
<td>1.15</td>
</tr>
<tr>
<td>OR</td>
<td>116</td>
<td>1.06</td>
<td>STATE</td>
<td>49</td>
<td>1.06</td>
</tr>
<tr>
<td>CONGRESS</td>
<td>103</td>
<td>0.94</td>
<td>BY</td>
<td>47</td>
<td>1.02</td>
</tr>
<tr>
<td>IS</td>
<td>97</td>
<td>0.88</td>
<td>FOR</td>
<td>44</td>
<td>0.95</td>
</tr>
<tr>
<td>CHINA</td>
<td>89</td>
<td>0.81</td>
<td>ANY</td>
<td>42</td>
<td>0.91</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AT</td>
<td>73</td>
<td>0.67</td>
<td>AT</td>
<td>15</td>
<td>0.32</td>
</tr>
<tr>
<td>SHALL</td>
<td>25</td>
<td>0.23</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ANY</td>
<td>21</td>
<td>0.19</td>
<td>WORD FREQUENCY</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The top 10 grammatical words like the, of, and, to, in in both lists rank almost
the same; there is no marked difference in their percentages either; since they do not
bare marked difference, they are not selected for further study. The lexical word
article in A is more frequent than that in B, because A has 138 articles while B has
only 7, the cause is so obvious that it is excluded as well.
Discrepancies in word frequency list provide clues to find out words for further study. For example, lexical words people’s, national do not occur in B at all, but are among most frequent words in A. At is up to two times frequently used in A than in B. Examining B, shall, be, states, a, united are much more frequent than in A, especially Shall, its frequency in B is almost 18 times higher than in A. Although state is a lexical word with identical ranking and similar frequency in A and B, common sense warns that co-selection and semantic preference in the two texts can’t be same, since U. S. is a federal country united by different states, state must refer to every “united state”, while China is a republic country not united by states, so it is worth examining.

4.2. Keyword list
Using Wordsmith, keywords are calculated with reference to another corpora: the keywords in A are calculated with reference to B, and vice versa.

<table>
<thead>
<tr>
<th>Ranking</th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PEOPLE’S</td>
<td>SHALL</td>
</tr>
<tr>
<td>2</td>
<td>NATIONAL</td>
<td>BE</td>
</tr>
<tr>
<td>3</td>
<td>#</td>
<td>STATES</td>
</tr>
<tr>
<td>4</td>
<td>CHINA</td>
<td>UNITED</td>
</tr>
<tr>
<td>5</td>
<td>ARTICLE</td>
<td>HE</td>
</tr>
<tr>
<td>6</td>
<td>REPUBLIC</td>
<td>HOUSE</td>
</tr>
<tr>
<td>7</td>
<td>IS</td>
<td>SENATE</td>
</tr>
<tr>
<td>8</td>
<td>ARE</td>
<td>BUT</td>
</tr>
<tr>
<td>9</td>
<td>COMMITTEE</td>
<td>ANY</td>
</tr>
<tr>
<td>10</td>
<td>AUTONOMOUS</td>
<td>SUCH</td>
</tr>
</tbody>
</table>

From observation of word frequency list and keyword list, words significant both in frequency and keyness will be chosen for further study. Words are chosen based on the following principles: the word is either frequent or key in one text, but significantly less frequent or key in the other text, these discrepancies in word keyness and frequency in these two texts illustrate their distance of what they are about; the other situation is that the word is similar in frequency and key in both texts, but their co-selection in two texts are different, which may indicate in what way the two texts differ.

In A, although People’s, national, China, republic rank high either in frequency list or in keyword list, when examined in concordance lines, they are always a part of proper names: National People’s Congress, Supreme People’s Court, national people’s congress, or national autonomous areas, People’s republic of China. These four words are self-evident that text A is about People’s Republic of China and its government, since it contributes less to other co-selection to build aboutness of the
text, it will not be studied in the next section. The same case occurs in text B: States, United, House, Senate are the most frequent lexical words, but they are words from co-selections of proper nouns: United States, House of Representatives or the senate. The most frequent words and key words provide sound evidence that constitution is about government. This is the focal point of both text A and B, which indicate both texts bare primarily same theme. Other words are selected for further study as show in table 3, may indicate distance of the theme:

TABLE 3
Words selected to be examined in concordance lines

<table>
<thead>
<tr>
<th>Word</th>
<th>Key ranking</th>
<th>Frequency A</th>
<th>Frequency B</th>
<th>Frequency % A</th>
<th>Frequency % B</th>
</tr>
</thead>
<tbody>
<tr>
<td>shall</td>
<td>30</td>
<td>25</td>
<td>191</td>
<td>0.23</td>
<td>4.13</td>
</tr>
<tr>
<td>state</td>
<td>×</td>
<td>×</td>
<td>176</td>
<td>1.6</td>
<td>1.06</td>
</tr>
<tr>
<td>at</td>
<td>×</td>
<td>×</td>
<td>73</td>
<td>0.67</td>
<td>0.32</td>
</tr>
<tr>
<td>any</td>
<td>26</td>
<td>21</td>
<td>42</td>
<td>0.19</td>
<td>0.91</td>
</tr>
</tbody>
</table>

4.3. Co-selection

4.3.1. Shall

Modal verbs used mainly for directive purpose (Biber, 2006). On the left hand side of shall, the sentence subject is going to be examined in order to show who are the one being regulated in their action or imposed with obligation. At right side of shall, the verb is going to be examined to find out common semantic preference in which it is used.

The subjects of shall are categorized into three types according to their nature:

a) Natural person, like president or chief justice
b) Institution, like Supreme Court
c) System, which is a combination of laws, regulations or systems

The detailed subject configuration of shall in both texts is illustrated in the following table:

TABLE 4
Subjects of shall

<table>
<thead>
<tr>
<th>Text</th>
<th>Total number of instance</th>
<th>Natural person</th>
<th>Institution</th>
<th>System</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Freq.</td>
<td>%</td>
<td>Freq.</td>
<td>%</td>
</tr>
<tr>
<td>A</td>
<td>25</td>
<td>10; 40%</td>
<td>12; 48%</td>
<td>3; 12%</td>
</tr>
<tr>
<td>B</td>
<td>191</td>
<td>68; 35.6%</td>
<td>44; 23%</td>
<td>79; 41.4%</td>
</tr>
</tbody>
</table>

Subjects of shall in A are as follows:
a) Natural persons are procurators, the head, chairman, or the president;
b) Institutions refers to autonomous county, congress, organs;
c) Systems are simply laws.
Subjects of *Shall* in B are categorized as follows:

a) Natural person category basically consists of officer, senator, president, or citizens;

b) Institution consist of different component parts of government agencies like congress, states, the two Houses, the supreme court;

c) System basically refers to trial, tax and duty, judicial power, crimes, votes, executive power.

B uses *shall* more frequently comparing with A, which imposes more restrictions, duties, regulations to especially various forms of systems. Subjects like trial, tax, vote as in the category of system in B is more than three times higher in percentage than that in A, indicating system plays primary functioning role to run the county. While system in A assuming the lowest percentage among three categories implies in some degree that laws and regulations function the least in running a country comparing to persons and government in China. In A, institutions, persons in institutions are the ones more important thus to be regulated the most.

Co-selections at right side of *shall* in B mainly are be composed, be convicted, be elected, be made, be given, be removed, be delivered, be determined, be vested, be the same, be subject to, to sufficient for; be vested; chuse[sic], consist of; have been created/ elected/ encreased[sic], have power to declare/dispose/fill up/grant; hold office, in manner/case. In A, the verbs follow *shall* are: be prescribed/ submitted/ reported/managed; coordinate, elect, examine, exercise; and serve no more than two consecutive terms is repeated 5 times.

Comparing the above mentioned verbs, the semantic preference *shall* entailed in B is varied. There are verbs showing hierarchical relations like be determined, be vested, be subject to; and verbs describing structures like be composed, consist of; and verbs demonstrating conditions and manners like in manner/case. The expected action under B is to be performed in diverse social, economic and political scenarios, and B as a constitution inhabited in more areas than A. However in A, semantic preference generated by co-selection of *shall* and action verbs is rather homogeneous: be prescribed/ submitted/ reported/managed; coordinate, elect, and examine, all suggest superior and inferior power distribution.

The overall usage of *shall* in A portrays a semantic preference that government and public officials of different layers are the main concerns of the text. Government and public officials’ power, the limit of their power, the distribution of their powers, and the organization of such power constitutes great length in A, suggesting that administrative government power plays a major role in the constitution. B’s concern however, is evenly distributed among aspects of official, government and systems. The semantic preference of *shall* in B entails that rules, regulation, or system are the portrait of major functions of the constitution.

4.3.2. *At*  
*At* is not a key word in either A or B. However, the word frequency and percentage in A and B indicate significant difference of two texts: frequency of *At* is more than doubled in A than in B (0.67% v. 0.32%). Examining *At* co-selections in A, both left
and right side co-selections turned out to be a group of highly concentrated terms. To be specific, among 75 concordance lines, 66 on left side are government sectors: people’s congress, people’s government, people’s procuratorate, organizations of self-management, state administrative organs, people’s court; whereas right side is unanimously level, either higher level, various levels, or above the county level. However in B, there is no unified co-selected pattern. Being a preposition, At co-selections convey information in terms of manner or condition like time or place, for example, at stated time, at the expiration of the second year or at such place. The semantic preference in B entailed that time and location as conditions are set by the constitution. The Chinese constitution, however, demonstrates a particular semantic preference that government operates at various levels.

4.3.3. Any

Any is almost five times more frequently used in B than in A (0.91% v. 0.19%). The co-selection of Any at N+1 in B is comparatively varied. Except 8 out of 42 are State, the rest co-selections include agreement, bill, claims, duty, law, manner, office, things, and title which are hard to categorize. Again, in A, N+1 of any is associated mainly with government sectors: among 21 concordance lines, 11 of them are co-selected with organ/organization.

A sentence or clause beginning with Any is a typical linguistic feature in legislative texts to include all related people, organization, and situations so as to avoid loophole in lawmaking. This is one of key aspects of interpretation of legislation which is called all-inclusiveness (Bhatia, 2011). Intensive co-selection of Any with organ/organization stresses that A to the greatest extent outline the image of government, trying to include every aspect of governmental organization/activity/sector/people in the text. While in B, co-selections of Any mostly set conditions to various circumstances instead of showing a single focus.

4.3.4. State

Although State in both texts has similar word frequency ranking (A-8 v. B-12) and word frequency percentage (A-1.6% v. B-1.06%), when looking at its co-selection in both texts, it gives different semantic preference. In A, State is co-selected with concepts which are related to “country”. The patterns at left side are the state(129 out of 176 concordance lines), organ of state, of state; while on the right side are nouns like state administrative/organ/budget/council/councilor/metal & titles of honor economy/enterprise/power; and verbs like develops/encouragers/practices/promotes/protects/provides/secret state and society. It gives semantic preference that state is always associated with society, people and wellbeing of the country, which signifies the character of centralized bureaucracy.

Observing B, State refers to each individual component states of the country instead of the country itself. Co-selection on the left are between/every other/any/one/other/each/same/another/no/shall. On the right, co-selections are varied patterns: shall (model verb), with/out, of, (preposition), legislatures (noun), having (verb-noun), where (antecedent). Contrary to A, State in B has the semantic preference that associated with idea of relationship and interaction, and State is rather
individual and independent part to the country and to other states as well.

There are two main findings from the evidence generated via co-selection and semantic preference of these four words (shall, at, any, state). First, as government or government sectors are the main co-selections with these four studied words in A, the focal point or the purpose of the document is shifted along with it. Of course law and system is a subject issue in A, but in contrast to the role of the government, in addition to being less frequently referred to, its significance is substantially set off. Second, B imposes more duties and responsibilities; it deals with more federal-state and state-state relationship. B barely has fix co-selections pattern within the scope of studied words, therefore points and meaning are quite evenly distributed. So law, system, government, governor are all important factors to it.

5. CDA interpretation
The description of the co-selections of the above 4 words with the help of corpus lays a foundation to examine the texts critically. The cumulatively contributing items, including the terms, phrases or grammatical phenomenon frequently occur in the texts, reproducing a coherent macro structure of the text meaning, constitute the heart of interpretation and explanation in the study.

The distance between the two texts could be evaluated by a general definition of constitution:

A constitution consists of the laws, rules and other practices which identify and explain:

(a) the institutions of government;
(b) the nature, extent and distribution of powers within those institutions;
(c) the forms and procedures through which such powers should be exercised;
(d) the relationship between the institutions of government and the individual citizens. (Carroll, 2002, 3)

Matching with this frame, based on the findings obtained in data analysis, A makes its point more on (a) and (b); while (c) is comparatively prominent in B. The different emphasis of these two constitutions does not mean that they are totally different, it only suggests in what way that the two constitutions design their national blueprint. These discrepancies at primary level grow and expand like a seed sprouts, buds and blossoms, shaping countries into much more different status at present.

Constitutional questions cannot be separated from ideology (Sellers, 1994). It is the conscious or unconscious ideas, expectations, and motivations about people and government that determines the language and content of the constitution. Also, a constitution cannot be divorced from the social, economic and historical context in which it operates (Xing, 2002). The 1982 Constitution of The People’s Republic of China has been alleged to be a change in Chinese constitutional history. The turning point is reflected in showing respect to human rights and the restriction of government power (Yang, 2011). For Chinese people, the advancement of modern concept of rule of law is highly praised, yet from western point of view, the Chinese Constitution provides just lip service, or it is only the summary of government policy (Jones, 1985).
The conflicting views pointing to a constitution are constituted by a bundle of compromises subjected to strains and clashes (Ganz, 1987; Potter, 2005). The liberal notion of restraining state power conflicts strongly with traditional thoughts in earlier Chinese history. The design of the congress structure symbolizes that it is people actually run the county; the court structures indicates the wish of due process in judicial proceedings. However, Chinese legal culture draws on a reservoir of Confucianism, in which the extended authority and hierarchy idea in social political organizations is apparently stood out when comparing with the U.S. Constitution (Han, 2013). Confucianism does not emphasize rights against the state, however, harmony and cooperation were preferred over disagreement and competition. The maintenance of order and respect for hierarchy were central values in Chinese society, that the conflicts of ideas, groups, and parties were viewed as dangerous and illegitimate (Huntington, 1991).

It is the pushes and pulls from the traditional and modern ideas that mould the present Chinese Constitution. The above mentioned confrontation is absorbed and retained in the discourse of the Constitution. Issues related to power of government is highlighted in the text. The co-selection evidences corroborate that administrative governing takes priority over other constitutional concerns in The Constitution of The People’s Republic of China. Compromising between local traditional legal culture and modern legal thought, the Constitution does the utmost to establish a new government different from the previous, and tries to deploy government image under corresponding social and political circumstance to the public.

The Constitution of The United States was drafted in a completely different social context. After the declaration of independence was recognized by the British government, in order to form a perfect union, to ensure homeland security, and to avoid internal friction between states, the first 13 states needed a general superintending power over commerce, a correlative power of taxation, and a stronger central administration to ensure nation survival (Peltason, 2004). So the text is not only a document of designating power and rights for the country, but also a symbol of establishment of a country.

The lesson the American people learned from English history warned them the danger of concentration of power. The ideological origin of The Constitution of the United States could be traced back to John Lock’s social contract theory and Montesquieu’s separation of power and checks and balances. The constitution therefore is regarded as a product of compromise between states, a balance between federal government and states in terms of power and interest (Doernberg, 1985). The co-selections of the above four words focusing on systems like laws, rules, and regulations indicate practical a constitution is needed. Institutions and systems therefore are the main concerns instead of abstract principles, which are consistent with the belief of logical reasoning and argument (Han, 2013). Three branches of the government, a bicameral legislature, the methods of raising revenue, and other political devices earned the trust from those who opposed the ratification of the constitution before 1879 (Jaffa, 1987).

The rationalism rests in the thought that human being is inherently competent
of making sound judgement and telling the truth form the false, besides, the position one holds could best represent his interest (Ostrom, 2008). System preference in The Constitution of The United States is imbedded in scientific spirit of western culture expressed in rationalism, objectiveness and seeking for truth. Among which, rationalism has a great impact on legal thought, which entails implication of being rational and being reasonable. The former is being proportionate and logical in quantitative relation, the latter refers to the acknowledgement that the objective natural world is cognitive, the compliance of formal logic, and the preference of establishing abstract concept (Han, 2013). Instead of being moral education or policy summary, the U. S. constitution provides a feasible set of blueprint to deal with concrete problems. No matter “federalism”, “separation of power” or “checks and balances”, the decisions were all choices the framers made through reasonable thinking and rational evaluation.

Last but not the least, religious belief of western surreal culture generates the idea of supremacy of law. It is the Papal Revolution that gave birth to the first western legal system, the Canon law. And the separation of church and state elicited great power in the worship of law (Berman, 2009). Since law is believed to reflect the will of God, law is regarded as God-given, believing in law is to believe in God. The moral integrity is far from perfect for the majority of people, hence the purpose of law is to make use of the fear of punishment to motivate moral improvement. It is the law and the way how the law is operated that people trust, rather than any individual person or government organization.

6. Conclusion

This study starts with corpus driven method to find linguistic evidence on whether there is difference between the two constitutions. The corpus tools provide word frequency and key word lists as the basic research data. Synthesizing the status of every words in the two lists, the present study, among many other linguistic differences, focuses on how these four words “shall”, “at”, “any”, “state” depict the difference of the two texts. By examining concordance lines and comparing the co-selections of theses words, a consistent trend is identified. All the four words in The Constitution of The People’s Republic of China co-select mainly with words related to government, for example, various government institutions like people’s procuratorate, people’s congress, and administrative organs. The highly centralized way of co-selection entails the feature of The Constitution of The People’s Republic of China that government power, government design and government power balance is the prominent topic. While the co-selections in The Constitution of The United States show a diversified pattern, revealing a belief of system priority and mechanism concern.

However, different as they are, these two constitutions are all legacies to human civilization. They include necessary content to be understood as standard constitution. Their different focal points and meaning are result of social and cultural background which could evolve to endless topics. This study is merely an attempt from linguistic perspective to find out truth behind words, more studies could be done
from legal, historical and political perspectives on comparison of these two constitutions.

ACKNOWLEDGEMENTS
The work described in this paper was substantially supported by a grant from the Beijing Planning Office of Philosophy and Social Sciences (Project No. 12WYC043), and a research grant of Contract Law Language Norms and Teaching Application from China University of Political Science and Law in 2012.

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