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TRANSLATING ONLINE CONTRACTS:  
Focus on Verbal Constructions

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## Abstract

Modal verbs are a key device in English legal language: as a matter of fact, they are often used by drafters to express and convey specific semantic and pragmatic functions. Given the prescriptive and directive nature of legal documents, modal verbs can be considered as the vehicle to impose rules and influence people's behaviour: they can dictate a higher or lower degree of imposition (mandatory function); they can forbid certain actions (prohibitive function) or allow the addressee to perform a certain act (permissive function).

The aim of this thesis is to describe the use of modal verbs in a specific type of legal documents, i.e. online contracts, and then analyse their translation into Italian. This study is based on a comparative research involving two parallel corpora, one for the original contracts drafted in English and one for the corresponding Italian translations. The bilingual corpus includes 36 contracts drawn up between 2013 and 2016 and covers a diversified range of e-commerce areas; the English sub-corpus contains 72,384 words and the Italian sub-corpus contains 75,245 words.

As for methodology, the parallel corpus was created and then analysed by means of *ParaConc*. This software allows the researcher to identify, select and analyse significant collocations, and then perform a comparable and bilingual analysis of the results. This phase was followed by a further manual analysis in order to identify and count the main semantic and pragmatic functions covered by the selected modal verbs.

The quantitative and qualitative analysis of the two corpora was therefore possible, thus obtaining the frequency and usage contexts of modal verbs in English prescriptive documents and in their translation and

drawing conclusions by making reference to the linguistic and legal aspects involved. Moreover, this study also takes into account the interactional tenor of contracts, since it has been observed that it can influence and determine the use of specific verbal constructions and of specific and unusual forms of address: in online contracts the relationship between the two parties involved in the transaction may produce a shift in tenor and this aspect can lead to some linguistic and pragmatic modifications which can represent an interesting challenge both for drafters and translators.

**Keywords:** modal verbs, legal language, translation, corpora, corpus linguistics, specialized translation, legal translation

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## Introduction

In recent years a growing interest in the fields of Legal Language and Legal Translation has been registered. Numerous publications on these topics, written both by academics and practitioners, came out (Biel, 2014; Bondi & Diani, 2010; Cao, 2007; Albi & Ramos (eds.), 2013; Cheng, Kui Sin & Wagner (eds.), 2014; Garzone, 1996, 2000, 2001, 2008, 2013; Sarčević, 1994, 1997, and 2006; Trosborg, 1997; Williams, 2007); and a great amount of courses and seminars for legal translators and students are regularly organized by universities, translation agencies and professionals.<sup>1</sup>

But what are the reasons that brought this type of specialized language and its translation to the fore? Several historical, economic and social factors can be listed to explain this phenomenon.

First of all, the birth and presence of international institutions, such as the United Nations or the European Union, which require highly skilled linguists and translators. They all display big language departments that cover a wide range of responsibilities: they actively participate in the legislative process drafting legal

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<sup>1</sup> For instance, since 2003 the Department of Foreign Languages of the University of Genoa has been running an online master in Juridical Translation, called MasterFarum (<http://www.farum.unige.it/masterfarum/>); in London, City University offers a MA in Legal Translation and many other European university activated Masters on Legal Translation (here, you can find a rich list: <https://wordstodeeds.com/2012/04/20/compendium-of-legal-translation-degrees-offered-by-universities/>). Proz.com, one of the most famous online platforms for professional translators, regularly organises webinars and training on legal issues. And various translation agencies and school of translation all over Europe offer numerous courses: for instance, the Swiss translation agency Archomai or the Italian school STL in Pisa.

documents, such as laws and policy papers, that will have equivalent legal value in all the official languages of their institutions; they facilitate the interaction and the communication process with citizens and common people; and they provide terminological and linguistic support to assure uniformity and consistency.

Secondly, internationalization and globalization force an increasing number of people to move around the world; “[t]his creates more and more new language combinations in all professional contexts, including legal matters” (Cheng, Kui Sin & Wagner, 2016, xx); therefore the intervention of language professionals is required once again. For instance, an Italian student who intends to study abroad will be asked to present a transcript, i.e. a sworn translation, of his high-school diploma; an American woman who wishes to marry a French man will be required to collect and provide the transcript of a series of documents certifying her criminal and marital background. Moreover, language specialists have recently been welcomed in courtrooms “as experts on such diverse issues as trademark law, speaker and author identification, and the meaning of statutes and contracts” (Solan & Tiersma, 2012, 2); and a recent article published on the Italian newspaper *La Stampa* highlighted that in 2015 the municipality of New York was seeking courtroom interpreters since 40% of the population was made up of immigrants<sup>2</sup> who could barely speak English. Another consequence of globalization is the growth of foreign or international trade. Thousands of contracts<sup>3</sup> are drafted

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<sup>2</sup> Being <http://www.lastampa.it/2015/02/25/esteri/interpreti-cercansi-a-new-york-globale-non-parla-pi-inglese-cQE087Bt9tGhqWvgqqHnZP/pagina.html> a competent Legal translator requires a deep knowledge

<sup>3</sup> The terms *agreement* and *contract* are both used to describe an arrangement between two or parties, with respect to the effect upon their relative rights and duties, to perform or not to perform a particular action or task. However, legally speaking, an important difference lies between these two terms: the former is usually considered an informal type of consent; whereas, the latter is a formal arrangement between two or more party that, by its terms and elements, is enforceable by law. Therefore, in this study I will use exclusively the term *contract* to describe any type of formal covenant with a lawful consideration or cause (<https://thelawdictionary.org/letter/a/page/75/> and

and signed every day; as a consequence, a large amount of contractual documents, such as memoranda of understanding, letters of intents, confidentiality agreements, etc. or a great variety of contracts need to be translated.

Finally, the technological revolution represented by the advent of the World Wide Web has “contributed to creating a flattened world, in which completely new social, political and business models have emerged” (Poppi & Cheng, 2013) and new hybrid textual *genres* were born because of the customization and fragmentation process. The section concerning the “general conditions of use” of international e-commerce platforms can be a clear example of such a trend.

As far as Italy is concerned, a recent survey conducted by AITI (the Italian Association of Translators and Interpreters) in 2013 confirmed that the sector of Legal Translation is rapidly growing: Law is the second area of specialization for translators, preceded by IT and followed by Marketing and Advertisement; and law firm, translation agencies and private clients are constantly seeking translators with such a specialization. In order to be competitive these translators should master three important skills: a thorough knowledge of the source and target legal systems, the knowledge of the intra-textual elements of the juridical text (its content, its linguistic and terminological peculiarities) and the knowledge of its extra-textual elements (i.e. scope, reader/receiver, context, juridical status of the translation).

In the light of the above considerations, this study will focus on a specific type of legal documents, i.e. contracts. The use and the translation of modal verbs and other verbal constructions will be investigated. In fact, these linguistic elements are a peculiarity of this specific legal *genre* and – as shown by a large number of studies – tense,

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<https://thelawdictionary.org/letter/c/page/183/>), unless the term *agreement* appears in specific collocations or in quotations taken from books and articles by other authors.

aspect and modality have a strong semantic and pragmatic function (Bondi / Diani 2010; Crystal / Davy 1969; Facchinetti, 2001; Garzone 2001 and 2013; Gotti 2001; Williams 2004a and 2007). This analysis will be carried out by means of a comparable parallel corpus that includes a selection of online contracts written in English and their corresponding Italian translations. Furthermore, the translation strategies adopted by Italian professionals to convey the semantic, functional and pragmatic values of these verbs will be investigated.

The choice of conducting a corpus-based research is due to the fact that in the field of LSP (Language for Specific Purposes) a growing trend towards the creation and use of specific corpora has been registered: they can be used in the area of translation studies to prepare dictionaries, extract terms for terminological databases, train information extraction software, and train translators (Biel, 2010: 4); and they “can be used to provide many kinds of domain-specific material for language learning” (McEnery and Wilson, 1996: 121). In the recent years several corpora of legal language were built in order to investigate this specific genre both from an intra-lingual and inter-lingual perspective.

In order to design and compile this corpus several steps were followed. First, it was necessary to establish a *sampling frame*, that is, the complete selection of text that served as illustrative samples (McEnery and Wilson, 1996: 78) in the corpus. Second, *representativeness* represented a crucial factor (Sinclair 1991; McEnery and Wilson 1996; Wynne 2005, etc.). The researcher must set the boundaries of its object of study: the choice of the texts were reasoned and justified; these texts met the requirement set in the project. Third, time was taken into consideration: according to Pearson, a corpus compiled for specific purposes should be delivered in the last ten years prior to the date of compilation (1998: 51) in order to be considered up-to-date and valid. Furthermore, even the



time span should be delimited: in a synchronic perspective, an interval of two or three years should be sufficient; on the contrary, if the study is conducted in a diachronic perspective, the minimum length should be five years.

Size is another key element since it may determine its *representativeness*. Indeed, a small corpus can be used exclusively with an illustrative aim; whereas, a bigger corpus will have a stronger predictive value. Nonetheless, experts have different opinions on this topic: Pearson (1998) argues that a million words is a reasonable number; on the contrary, Sinclair (1991) affirms that a representative corpus should include 10 to 20 million words. As regards legal corpora, in a paper entitled “Legal discourse: Opportunities and threats for corpus linguistics” (2004) Bhatia, Langton and Lung claim that large corpora are not necessary: given the conservatism and formulaic nature of this type of texts, “there is very little need for comprehensive or automatic linguistic frequency measures, as they are easily identifiable manually” (2004: 212). It would be reasonable to infer that a corpus of about 6 million word could be considered sufficiently adequate and representative.

Finally, a corpus should be well structured: it should reflect the variety of texts belonging to that specific language domain in order to facilitate the individuation of data and the comparison of results, and should respect its specific conventions in order to be easily consulted and searched.

The first chapter will offer a theoretical overview: the main linguistic and syntactical features of prescriptive legal texts will be presented and an entire section will be devoted to verbal construction. The second chapter will focus on contracts: their fields and their interactional and functional tenor will be presented. In the third chapter, the main challenges concerning the translation of contracts will be highlighted.

Finally the results of the linguistic analysis will be presented and discussed. This analysis will focus mainly on the use of modal auxiliaries: their frequency, their collocation in sentences and in the different section of the contracts will be investigated both from a diachronic and synchronic perspective in order to describe their behaviour; furthermore, translation patterns will be studied and investigated. Therefore, the corpus will cover a time span of three years (2013 – 2016) and comprise about 100.000 words. As far as content is concerned, different typologies of online contracts will be chosen (Purchase and Sale Contracts, Service Contracts, License Contracts, Supply Contracts, Banking Confidentiality Contracts) in order to provide a clear and exhaustive framework and to verify if the content of the analysed documents can influence the pragmatic and semantic value of these verbs.

Another aspect that will be taken into consideration is the interactional tenor of contracts (Trosborg, 1997), that is to say the relationship between the two parties stipulating the contract. As a matter of fact, this aspect could influence and determine the use of specific modal verbs and forms of address: in online contracts, where the receivers are mainly non-professional people, often the syntax is slightly modified and the tenor is lowered in order to facilitate the comprehension of the document. This shift in tenor represents an interesting challenge for translators and can produce some modifications both in the drafting and translation phases.

## CHAPTER 1. Prescriptive Legal Texts in English

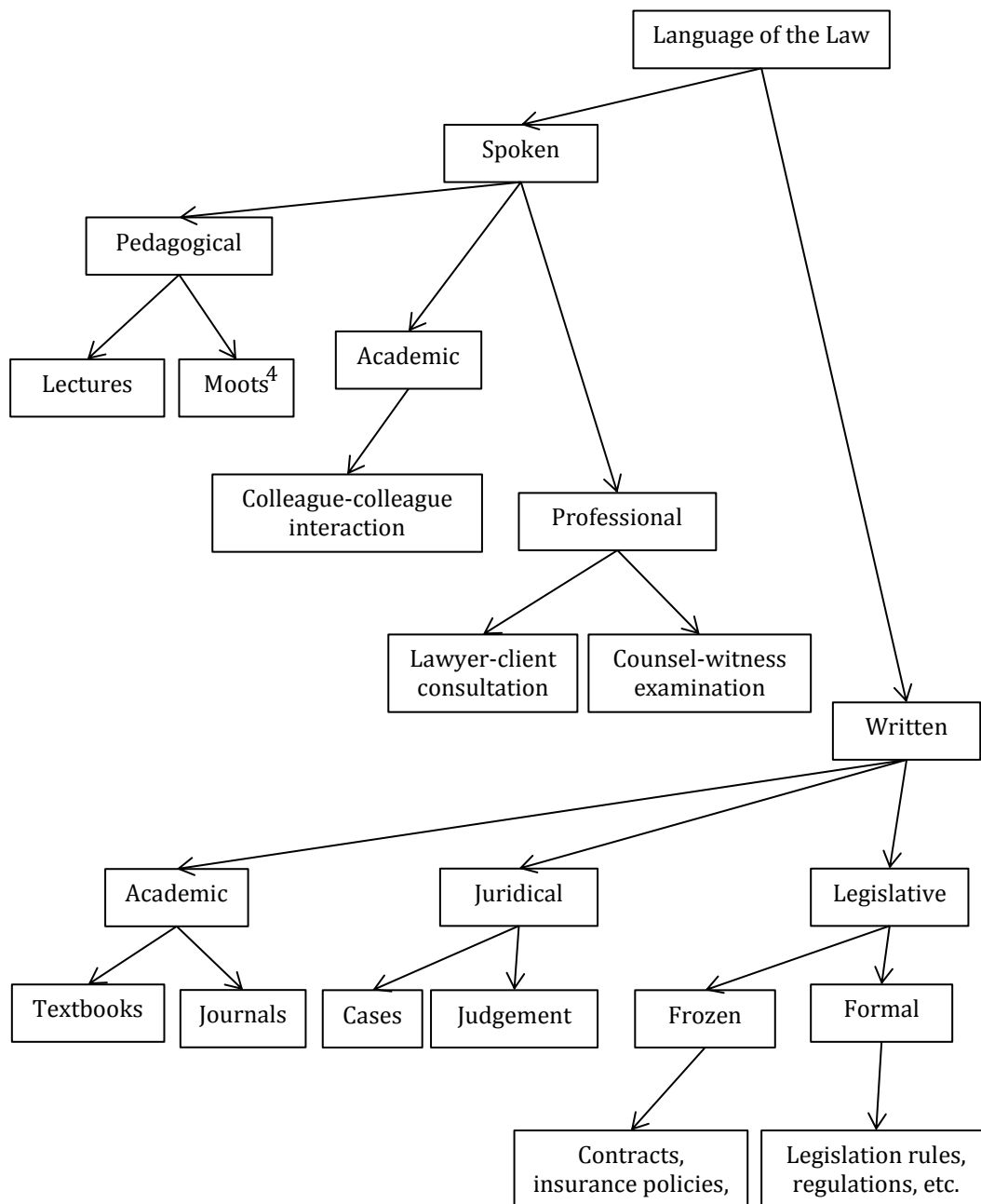
As underlined by several authors (Cao, 2007; Šarčević, 1997; Stolze, 2013), legal translation is a complex and multi-disciplinary activity that includes legal theory, language theory and translation theory (Joseph 1995: 14). Therefore, before dealing with contracts and with the challenges encountered by translators when dealing with such texts, it is necessary to provide the definition of several key terms. In this chapter, the concepts of *Language of the Law*, *Legal Language* and *Language of Legal Documents* will be briefly exposed and the main features of legal written texts will be presented.

### 1.1 Language of the Law or Legal Language?

One of the first linguists who started investigating and tried to categorize the complex and variegated language used in legal contexts was Bhatia. In 1987, in fact, he coined the umbrella term *Language of the Law*:

The Language of the law encompasses several usefully distinguishable genres depending upon the communicative purposes they tend to fulfil, the settings or contexts in which they are used, the communicative events or activities they are associated with, the social or professional relationships between the participants [...], the[ir] background knowledge [...] and a number of other factors” (1987: 227).

He made a first distinction taking into consideration the medium, i.e. written or spoken productions; then other variables came into play, such as the setting, the participants and the function. The following scheme clearly represents such categorization (Figure 1):



**Figure 1: Categorization of *Language of the Law***

His scheme was very detailed; but the category called Legislative could be considered not completely correct. In fact, the adjective legislative usually refers to “making or giving laws; pertaining to the function of law-making or to the process of enactment of laws” (Black’s Law Dictionary online) and Bhatia’s category

<sup>4</sup> A deliberative assembly primarily for the administration of justice; especially, one held by the freemen of an Anglo-Saxon community.

included not only laws or any other document laid down by the parliament, but also private documents, such as deeds, contracts and agreements.

Ten years later, Trosborg (1997: 20) solved this little problem introducing a further distinction. She proposed to use the term *Legal Language* as a superordinate term to describe all uses of legal language (so as a synonym of Bhatia's *Language of the Law*) and used the expression *Language of the Law* to define a sub-section that refers to all sorts of legal written documents. In this sub-section she distinguished between *Legislation*, i.e. rules, regulations, acts passed by a parliament, and *Common Law*, which includes deeds, agreements, contracts, and several other types of documents typical of legal communication.

However, as pointed by Williams (2007: 24-25), even Trosborg's classification could be improved. Referring to Maley (1994: 13), he decided to use the term *Language of the Law* to describe all those texts laid down by authoritative bodies (including not only laws, acts and regulations passed by the parliament, but also oral verdicts expressed by judges) and adopted the expression *Language of Legal Documents* to refer specifically to all those written prescriptive texts that are legally binding, i.e. legislative documents, deeds, or contracts. Hence, in this study the expression *Legal Language* will be used as a superordinate; the term *Language of the Law* will define documents – written or spoken – of authoritative nature and the expression *Language of Legal Documents* will indicate exclusively written prescriptive texts.

## 1.2 The features of the Language of Legal Documents

In this section the main features of the Language of Legal Documents (LLD) will be briefly highlighted. Quoting Crystal and Davis (1969: 193-194), three adjectives can be used to describe the LLD: they are *highly formal*, *professionally exclusive* and *archival*. As regards formality, legal documents are official papers and, as such, they are written following precise and agreed style rules: for instance, archaic formulae, Latinisms,

repetitions must be used; syntactically, nominalization, impersonal and passive constructions are preferred, and long and complex sentences often occur. But all these linguistic features will be discussed in depth in the second chapter of this study.

As underlined by Trosborg (2001: 27), Legal Documents are usually written for an *esoteric audience*, i.e. for all those people who work within the field of law (the Parliament which lays down the law, the lawyers who draft the laws, the lawyers who interpret the laws and the court who passes judgements according to the law, etc.). This implies the use of technical and specialized vocabulary.

Finally, these documents often have both an informative and regulative function: they provide normative information relating to rights and obligations that are officially recorded in case anyone needs to consult it in the future. Hence, the language used can be defined as *visual*, meant to be scrutinized in silence.

### 1.3 The features of Prescriptive Legal Texts

As mentioned in the previous chapter, the Language of Legal Documents is very complex and follows precise stylistic and linguistic rules. Several socio-historical reasons can be adduced to explain this phenomenon. First of all, the nature of law: in fact, the law is a system of rules written to impose obligations or conferring rights to people in order to regulate and control the behaviour of a specific social group (Bowers, 1989: 53). Therefore, legal documents can be considered as “instruments of ultimate authority and unique for their generality of effect and ultimate appeal for authoritative interpretation” (Trosborg, 1997: 28). Legal drafters, those professionals who compose these texts, “must take the greatest pain to ensure that they say what exactly they want to say and at the same time give no opportunities for no misunderstanding” (Crystal & Davy, 1969: 193).

Furthermore, legal drafting, whether public or private, cannot contain any emotional content and has exclusively a

descriptive and prescriptive function. “The drafter describes a particular world, large or small, and either prescribes a future behaviour in that world or describes consequences of anticipated behaviour” (Child, 1992: 172).

To conclude, a legal document must be incontestable and all-embracing. Some linguistic strategies, which will be described in the following paragraphs, can be adopted to achieve these goals:

- archaic or scarcely used words and expressions;
- Latinisms, loans from other languages (especially French);
- repetition of specific formulae and syntactic features;
- long, complex sentences, with intricate patterns of coordination and subordination;
- preference for passive constructions.

### 1.3.1 Archaisms and obsolete words or expressions

In legal texts the presence of archaisms or other obsolete words and expressions peculiar to the field of law can be observed. They occur in the form of:

- Adverbial expressions such as *hereof*, *hereinafter* or *heretofore* and adjectives such as *aforesaid*, *aforementioned*. They are usually placed in a marked position to clarify meaning and avoid ambiguity.
- Verbs such as *to arraign* (In criminal practice. To bring a prisoner to the bar of the court to answer the matter charged upon him in the indictment. – Black’s Law Dictionary).
- Nouns such as *surrejoinder* (In pleading. The plaintiff’s answer of fact to the defendant’s rejoinder)
- Collocations such as *with malice aforethought*, meaning “with the deliberate intention of committing a crime or harming someone”.

This reluctance on the part of legal drafters to abandon such expressions and adopt new and untested modes of expression

has led to an extreme linguistic conservatism and is one of the factors that provoked the birth of the Plain English Movement.<sup>5</sup>

### 1.3.2 Latinisms and other foreign terms

The Roman and Norman dominations deeply influenced the vocabulary connected to the spheres of politics, religion and law (Williams 2007: 32) in the Anglo-Saxon countries. Hence, legal documents display a great number of borrowings and words of Latin and French origin.

As regards Latin, for instance, in statutory construction the meaning of words is regulated by a set of rules which maintained their original name, such as the *Eiusdem generis principle*<sup>6</sup>, the *expressio unius et exclusio alterius* or the *noscitur socii principle*.

As regards French, several integral borrowings can be noticed, such as *profits à prendre*, and some calques, such as *plaintiff* or *defendant*. In recent years new French borrowings, such as *acquis communautaire*, have been introduced with the constitution of the European Union Law.

### 1.3.3 Repetition of specific words, expression and syntactic structures

Prescriptive legal documents must be unassailable, i.e. written to discourage further disputes in court, and, since they have a regulative and informative function, drafters try to avoid

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<sup>5</sup> This movement was born around the 1980s in the United Kingdom and has been organising campaigns against gobbledygook, jargon and misleading public information. Since then they have helped a large number of public institutions and other organizations to rewrite their documents in a clear and concise way so that everyone can access and understand information. For further information see: <http://www.plainenglish.co.uk>

In the United States the Plain Language Movement started in the 1970s. One of the major promoter and supported of the need of plain English in legal writing is David Mellinkoff, a professor at UCLA School of Law (*The Language of the Law*, 1963). For further information see: <http://www.plainlanguage.gov>

<sup>6</sup> “Where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned” (Black’s Law Dictionary).



ambiguities and to reach the highest degree of lexical exactness. In order to do so, they can adopt several strategies: they usually reduce to the minimum the use of pronoun reference and anaphora; and they recur to repetitions, sometimes even obsessively and with comic effects (Williams 2007: 33).

#### 1.3.4 Long and complex syntax

Another feature of legal written texts is the length and complexity of their sentences: it is not uncommon to find sentences containing hundreds of words and characterized by the presence of intricate syntactic patterns of coordination and subordination.

This syntactic strategy satisfies the need for clarity and exactness that we have already mentioned: for instance, “legal draftsmen try to insert qualifications right next to the word they are meant to qualify, even at the cost of making their legislative sentence inelegant, awkward or tortuous but never ambiguous” (Bhatia 1993: 112).

#### 1.3.5 Verbal constructions

As previously mentioned, law performs a directive function that can be explicitly signalled by the use of specific verbal constructions. Modal verbs, indicative forms, the active or passive voice and non-finite verbal constructions are some of the linguistic features that drafter can use in order to perform precise pragmatic functions. All these verbal constructions will be described in detail in chapter 4, entitled “Verbal construction in prescriptive legal texts”

#### 1.3.6 Impersonal style

In order to achieve impartiality and authoritativeness legislative text are written in an impersonal style. Therefore, the use of the passive form is very diffused: Williams highlights that “approximately one quarter of all verbal constructions in

prescriptive legal English take the passive form” (2004a: 231). Even nominalization is widely adopted since it allows for the juxtaposition of adjectives next to the noun, whereas verbs may be preceded by adverbs that are less numerous.

### 1.3.7 Vagueness vs. clarity-precision

As often pointed out, language is both the object of study and the means of analysis (Legault 1979: 20) in the field of law: as a matter of fact, words are the tools used by lawyers and legal drafters to describe reality and regulate the behaviour of a specific social group.

Most of the time, they will use clear and unambiguous language trying to reach the maximum degree of clarity in a document since they want to avoid unnecessary confusion and possible disputes in courts.

Nonetheless, language in legal documents may become a strategic weapon: lexical and syntactic ambiguity, as well as univocal interpretation, can be deliberately used to achieve precise objectives.

For instance, in a contract ambiguity might be useful to reach a compromise (Doonan 1995: 95-96) or to create uncertainties that one of the parties will try to exploit (Cornu 1990: 90). Or in international treaties, it may be adopted as a diplomatic tactic (Gémar 1979: 47). An example of deliberate lexical ambiguity can be found in the sentence “No vehicle is allowed in the park”: in this case, the term *vehicle* is open to different interpretation as to what constitute a vehicle, i.e. a car, an ambulance or a roller skater, etc. (Cao 2007: 74). Finally, vagueness is used as an “aid to precision”, as pointed out by Christie (1963):

Reasonable precision may be achieved through the use of several general terms to narrow down the intended meaning to the area of overlap of the terms used, somewhat as precision in spatial reference may be achieved through the overlapping of circles and the focusing of attention on the area which the several intersecting circles have in common.

## 1.4 The structure of Prescriptive Legal Texts

As any other specialized text, prescriptive legal texts have a precise textual structure which may slightly vary from one country to another, or from one political institution to another (for instance, the United Nations or the European Union have their own drafting procedures and practices) (Šarčević 1997; Williams 2001).

However, most of these texts are typically divided in three main sections defined as preliminary, principal and final provisions. In the following paragraphs a short description of each section will be provided.

### 1.4.1 Preliminary provisions

They are placed in the initial part of document. They usually include:

- A long title which shortly describes the content of the law or regulation;
- A preamble that describes the context in which the text was drawn up, the purpose and the scope of the law or regulation. This section contains clauses which are called *recitals* and *citations*, i.e. clauses beginning with non-finite -ing forms and/or “whereas clauses”.
- A short title which sums up the long title;
- An enactment clause which performs the speech act of certification which enhances its official status (for instance, in British law it is “*Be it enacted , by the Queen’s Most Excellent Majesty*);
- Application provisions that “specify under which conditions and to which persons or group of persons the text in question applies (Williams 2001: 43). In some documents they may appear among the principal provisions.

### 1.4.2 Principal provisions

These provisions, also known as main provisions, represent the body of the document. They include:

- Legal definitions which clarify the meaning of specific words or expressions recurring throughout a given section or throughout the rest of the text;

- Substantive provisions which lay down the main legal commands or orders;
- Procedural or administrative provisions which describe the procedures and the agents/actors.

#### 1.4.3 Final provisions

The last part of the document usually provides technical information and may include amendments. Sometimes transitional provisions, which set out special rules governing the shift from one set of legislated rules to another (Williams 2001: 50), may be included.

Finally, we may find the so-called commencement provisions that specify under which conditions a law or a contract may come into force.

### 1.5 Verbal constructions in Prescriptive Legal Texts

In prescriptive legal texts verbs and their construction play an important role, as they are the vehicles to impose rules and influence the behaviour of people.

Therefore, this section will focus on this subject. First, we will briefly describe modal and semi-modal verbs, which are a strategic feature of this genre; then, indicative forms will be analysed and the use of the passive voice will be discussed. Finally, the function of non-finite verbal construction will be described.

#### 1.5.1 Modals and semi-modals

Modality is a particular linguistic strategy or feature that allows people to express attitudes, obligations and intentions (Huddleston / Pullum 2002). Therefore, it is considered as a signal of Markedness typical of specific text types, such as legal language.

In English, modality can be expressed mainly through the so-called central modal verbs, namely *will, would, shall, should, may, might, can, could* and *must*, and semi-modals, such as *need, ought to, used to* and *dare*.

Three main types of modality can be listed:

- Epistemic modality: the set of linguistic devices that a speaker can use to express his/her various degrees of

knowledge regarding a proposition and is frequently associated with the idea of possibility and probability.

E.g. *It could be raining*

- Deontic modality: the set of linguistic devices that a speaker can adopt to impose obligation or prohibition, or grant permission or authorization.

E.g. *Passengers must fasten their seat belts*

- Dynamic modality (the most recent category): the set of linguistic devices that a speaker can use to express ability and disposition. It can also express power and prediction.

E.g. *Mary can speak English pretty well*

Given their prescriptive and directive function, in prescriptive legal texts deontic modality prevails. These verbs can be used to perform precise communicative and pragmatic functions and, therefore, can be divided into three main sub-categories:

- Modals with a mandatory function, imposing a higher or lower degree of obligation (*shall, must*);
- Modals with a prohibitive function (*shall not, may not, cannot*);
- Modals with a permissive function, allowing the addressee to perform a certain act (*may, might*).

In the following paragraphs the most used modals and semi-modals will be briefly described.

### *Shall*

The majority of legal experts and scholars who investigated this topic agree in affirming that this verb belongs to the category of deontic modals (Garner, 2001 and 2002; Williams, 2007; Garzone, 2013), which includes three further sub-categories, obligation, prohibition and permission modals.

The first sub-category respects the parameters set by the norm: as a matter of fact, according to the literature, 'shall' should have a compulsory or mandatory meaning, that is it can be considered as a synonym of 'must' and replaced by the paraphrase "it is necessary/it is required that". Three of the most famous and authoritative legal dictionaries confirm this claim providing the following definitions:

- “*Shall*. Providing generally, but not always, a **mandate**, where appearing in a constitutional provision” (*Ballantine's Law Dictionary*, p.1771).

- “*Shall*. As used in statutes, contracts, or the like, this word is generally **imperative** or **mandatory**. In common or ordinary parlance, and in its ordinary signification, the term *shall* is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation” (*Black's Law Dictionary*, p.1375).

- “*Shall*. A. In legislation. This overworked auxiliary verb invariably denotes an **imperative** rather than futurity when it appears in drafting” (*A Dictionary of Modern Legal Usage*, p. 502).

Example (1) shows that, in the case of obligation, ‘shall’ is preceded by a human agent as subject and followed by an action verb as predicate, as pointed out by Garzone (2013, 73); nevertheless, (2) demonstrates that it can also be introduced by inanimate objects as subjects.

- 1) Each judge *shall* declare to the President of the Court any additional activity. (*European Court of Human Rights*, rule 4 «Incompatible activities»)
- 2) All materials *shall* be clear and legible and *shall* be on white paper of good quality measuring 21.5 cm by 28 cm. (*Rules of the Supreme Court of Canada*, article 3.1)

As a prohibition modal, it usually occurs in the negative form (*shall not*) or, in other cases, its subject is a noun introduced by an indefinite negative adjective (*no, neither*) or an indefinite negative pronoun, such as *nothing* or *neither*:

*Neither party shall* assign this Agreement, directly or indirectly, without the prior written consent of the other party”. (Garner 2001, 105)

Finally, the permissive function, i.e. ‘shall’ enables the subject to do something, is usually performed when the subject is an animate agent:

Member States *shall* determine how such reference is to be made. (Commission Directive 2013/2/EU of 7/02/2013 amending Annex I to Directive 94/62/EC of the EP and of the EC on packaging and packaging waste)

However, other pragmatic values were identified. 'Shall' can be often used as an alternative to 'will' and several reasons are adduced to justify this tendency. First of all, the former "is seen as being stronger than [the latter], so that switching from one to the other may suggest [...] that duties and obligations are stronger than others" (Garner 1987, 506). Secondly, the norm<sup>7</sup> suggests that it would be more appropriate not to use the future in legal documents since law should be considered as a-temporal. In this case, the verb would not perform a predictive function, but it simply refers to a future situation:

There *shall* be body corporate known as the Energy Investment Advisory Board. (Energy Bill, 10/07/2013)

A further interesting function, called performative or constitutive, is highlighted and described in depth by Garzone (2013, 73-74). In this case the action/situation described is concurrent with the act of speech and, in that moment, becomes legally effective:

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. (Commission Directive 2013/2/EU of 7/02/2013 amending Annex I to Directive 94/62/EC of the EP and of the EC on packaging and packaging waste)

Finally, it can be used to replace the present simple or the present perfect tense to formulate conditions: it can occur in subordinate sentences which are describing "the circumstances that are required to precede the operation of [a] statute (i.e., the case or condition)" (Garner 1987, 516).

If any person *shall* give [read: *gives*] notice, he may appeal ... (Garner 1987, 516).

No person shall be a representative who *shall* not have attained [read: *has not attained*] to the age of twenty-five years. (*Constitution of the United States*, article 1).

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<sup>7</sup>For example the *Maine Legislative Drafting Manual* states that «[it is] never appropriate to convey the future tense» probably because «the mere fact that it has been enacted as law entails it is 'continually speaking' in the present » (Williams 2005, 85).

## *May*

Based on the statistics from the LOB and Brown corpora<sup>8</sup>, *may* is the only other modal that, together with *shall*, shows a greater usage in legal English than in everyday language (Foley 2001: 193).

It mainly occurs in affirmative sentences to express permission, i.e. it allows the agent/subject to perform a certain act:

A registered society *may*, if it has a common seal, *execute* a document by affixing that seal to it (UK Co-operatives and Community Benefit Societies Act 2003)

Or, in negative statements, it can be used to express prohibition:

The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin [...]. (Section 9.3 of the South African Constitution 1997)

Finally, several occurrences of epistemic *may* were found in main clauses of legal documents (Williams 2001: 122)

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<sup>8</sup> The Lancaster-Oslo/Bergen Corpus (LOB) was compiled by researchers in Lancaster, Oslo and Bergen. It consists of one million words of British English texts from 1961. The texts for the corpus were sampled from 15 different text categories. Each text is just over 2,000 words long (longer texts have been cut at the first sentence boundary after 2,000 words) and the number of texts in each category varies.

The Brown Corpus of Standard American English was the first of the modern, computer readable, general corpora. It was compiled by W.N. Francis and H. Kucera, Brown University, Providence, RI.

The corpus consists of one million words of American English texts printed in 1961. The texts for the corpus were sampled from 15 different text categories to make the corpus a good standard reference. Today, this corpus is considered small, and slightly dated.



## *Must*

As pointed out by Williams, this modal verb constitutes “little more than three per cent of all finite verbal constructions these days” (2001: 123).

Some drafters have started to use it from time to time to replace *shall*. According to Williams the use of *must* instead of *shall* is determined by the need to express a stronger mandatory obligation or urgent necessity, as in this example:

Every person when commanded to do so by an officer seeking to arrest an offender, *must air and assist* in making the arrest, and *must obey* the commands of the officer in respect thereto. (Section 99-3-5 of the Mississippi Code of 1972, as amended).

It can also be used as an alternative to *may* and *shall* in prohibitions.

## *Should*

*Should* represents only two percent of all the finite verbal constructions in legal texts: in fact, it expresses an “*escapable obligation*” (Declerck 1991b: 378) and using it would probably mean starting a litigation. However, its presence can be accepted when the drafter intends to write down general guidelines and principles with a strong moral and ethical value:

1. States parties shall recognize for every child the right to benefit from social security, including social insurance and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits *should*, where appropriate, *be granted*, taking into account the resources and the circumstances of the child and person having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child. (Article 26 of the UN Convention on the rights of the child 1989)

In negative sentences *should* may occur to express a strong warning not to perform a specific act. Finally, it might be found in the protasis of conditional clauses in a construction typical of formal English which implies the lack of conjunction, the presence of inversion and the need for a modal verb in the main clause.

### *Will*

*Will* is rarely used in prescriptive legal texts. It can be adopted as an alternative to *may* and *shall*.

### *Be to*

This is a quasi-modal form that is directly followed by the infinitive. It is a valid alternative to *shall* to impose obligation. However, it rarely occurs.

### *Would*

This modal verb is often used in courts to narrate past events in reporting of cases. On the contrary, its presence in prescriptive legal texts is very scarce: in fact, being a conditional, it may lead to ambiguities of interpretation and drafters tend to avoid such situations (Williams 2001: 137). However, it might be used to outline hypothetical situations.

### *Can*

*Can* may appear in prescriptive legal texts as a deontic modal: when accompanied by the adverbials *exclusively and lawfully*, it performs a permissive function; by contrast, in negative sentences it expresses prohibition.

## 1.5.2 Indicative forms

As highlighted by Williams (2001: 150), in prescriptive legal texts, even the indicative form plays an important role.

He points that the “most commonly-used verbal construction” in this type of document is the present simple. Most of the time, it can be found in subordinate clauses, such as relative clauses, in *when-clauses*, in *if-clauses* or other clauses containing conditional conjunctions. In main clauses, it is often

used to describe technical situation, for instance in technical provisions.

Then, the second most diffused verbal construction in prescriptive legal text is present perfect. It mainly occurs in the simple form and it can be found in subordinate clauses expressing the idea of completion. Several instance of present perfect constructions in main clauses sometimes occur at the end of preambles or treaties.

The past simple may occur as well, even if very rarely. It may be found in resolutions drawn up to deal with continent situations concerning major tragedies or emergencies.

Finally, some rare instances of the present progressive can be observed. This verbal construction is not considered elegant and formal enough, but it can be used to underline that a given situation is in progress.

### 1.5.3 Voice: passive vs. active

As regards verbs, another important feature of legal texts is the preference for the passive voice. As a matter of fact, this linguistic device can be adopted as a strategy in order not to specify the agent of an act.

### 1.5.4 Non-finite verbal constructions

Non-finite verbal constructions, namely non-finite *-ing* forms or *-ed* forms are mainly used as verbs, adjectives or adverbs (1997: 277).

In legal texts, the former are usually situated at the beginning of sentences and the most adopted verbs in this form are usually performative verbs, such as *reiterate*, *call for*, *deplore* or *acknowledge*. This verbal construction is used to express the idea that the “law is always speaking”.

The latter occur in initial sentence position, as well. In this case, the three most frequently used *-ed* particles are *concerned*, *determined* and *convinced*. They are rarely adopted and they usually express a state of mind, especially concern about a situation (therefore, some instances might be *outraged*, *shocked* or *alarmed*).

## CHAPTER 2. Contracts

In this chapter we will try to clearly explain what a *contract* is. First, a definition of the term *contract* will be provided; then, the main linguistic features of this specific legal genre will be listed using the framework of field, tenor and mode proposed by Halliday & Hasan (1976; 1990); the relation between the parties involved in a contract will be analysed and exposed; and finally, the functional tenor, i.e. the linguistic strategies adopted by drafters to impose rights and duties between the parties, will be described on the basis of the Speech Act Theory (Searle: 1969).

### 2.1 What is a contract?

By definition a contract is “a legally binding agreement, that is an agreement imposing rights and obligations on the parties which will be enforced by the courts” (Redmond 1979: 19).

If we analyse this definition, we can say that, contracts are legal documents that belong to the category of *prescriptive legal texts*: they are written productions meant to regulate the behaviour – in particular, they create and extinguish legal *rights and obligations* – of two or more agents who start a business relationship.

From a pragmatic point of view, they are *regulative texts* providing instructions without option (Hatim & Mason 1990: 156): they determine and influence the actions of the agents involved by means of precise instructions that are imposed in accordance with the law and must be followed.

Finally, a contract is *legally binding*: in other words, the instructions given in that specific document must be obeyed since that document is accepted by the law. This last condition is satisfied only when an agreement becomes effective: an offer is placed by one of the parties involved in the transaction and the other party confirms its acceptance. The parties involved are usually called the *offeror/sender* and the *offeree/receiver*.

This particular kind of legal document is designed to accomplish two main objectives: first, they are built to create legal relationships in which the parties commit themselves to exchanging rights and obligations and, second, to inform the general public and other legal specialists that a relationship has been established and produces legal effects.

Analysed at first from an integrative perspective, the accomplishment of the written contract can be perceived as an interaction between two cooperative master speech acts: the formation of the contract depends on the meeting between the offer and the acceptance of the offer.

Many systems of law require that some other factor be present in order for a promise to become legally binding. In the Anglo-American tradition that additional element is *consideration*. Although there is no simple definition, nonetheless various principles have evolved for characterizing consideration (Corbin 1952:164-7, sec 110). There must be: (i) an agreed exchange or *bargain*; (ii) a *benefit* accrued by the promisor; (iii) a *detriment* incurred by the promisee; (iv) a *quid pro quo* or a reciprocal performance.

In order to perform a valid exchange and hence an enforceable contract, each of the parties must satisfy the following four criteria, an adaptation of Searle's felicity conditions (1969). The criteria for a valid exchange are:

a) *Futurity condition*: each party is to perform (refrain from performing) a future act.

b) *Benefit condition*: each party sincerely regards the other party's performance as an exchange, and it is that sense that motivates entering into a bargain.

c) *Ability condition*: each party is able (physically, mentally, and/or financially) to perform the required act and will do something to further that performance.

d) *Non-expectancy condition*: a party is not expected to do the act in the ordinary course of affairs.

A violation of any of the four criteria will lead to insufficient consideration and hence to invalid contracts.

## 2.2 The fields of contracts

A first distinction – based on the duration and type of relation between the *offeror* and the *offeree* – can be made between *transactions* and *relational contracts*. *Discrete or transactional exchanges* are essentially one-shot deals signed between relative strangers, for example a tourist hiring car from a car rental, while *relational or intertwined dealings* are long term relations between people who get to know one another and whose futures are bound by their dealings, for example employment, long term supply contracts and marriage (Trosborg 2001: 55).

A further distinction can be made according to the type of transaction that is taking place between the parties. If the contract consists of a promise in exchange of a promise, both parties are bound on the exchange of promises although there has yet to be any performance of those promises. This type of contract, which is the most common and the most diffused, is called *bilateral*. An example might be the typical sale of goods agreement.

On the contrary, if the contract consists of a promise in exchange of an act, which implies that only one party is bound at the outset by a promise and the other's acceptance is the performance of the requested act, the agreement will be considered *unilateral*. An example might be the promise of a reward. (Poole 2013: 5)

## 2.3 The interactional tenor of contracts

Another element to take into consideration when dealing with contracts, especially when analysing the language used by drafters, is the relationship between the *parties* involved in the contract. Therefore it is necessary to shortly describe what are the different types of relationship that can be established between them.

The main dichotomy is based on the authoritative status of the interlocutors: it takes into account the extent to which the parties may be said to be insiders or outsiders of the domain/subject involved. Hence the relation might be

*symmetrical* or *asymmetrical*. In the case of contracts, the relation is usually symmetrical: in fact, either party holds something of great value and interest to the other – promise and consideration, respectively. Moreover, from a linguistic point of view both parties can be considered as *sender* and *receiver* at the same time since the text is usually written by a legal professional, the lawyer. In the negotiation phase, they act as *senders* discussing about the subject matter and laying down the main circumstances and conditions necessary to stipulate the contract; then, in the final phase, they act as *receivers* verifying and witnessing the content of the contract by their signature.

Finally, also the role of the *receivers* has to be considered. A contract is normally written for both an *exoteric audience* (outsiders, laypersons) and for an *esoteric audience*, (professionals, etc.). Therefore, its content will be orientated to the first group, represented by the parties who are the actors involved in the transaction; whereas the form, the way a text is written and organised, will be tailored for the second group, the lawyers who have their own language.

## 2.4 The functional tenor of contracts

As we said, a contract is a *regulative* text. In the framework of the Speech Act Theory, two main categories of regulatory acts can be identified: *directive acts*, which are intended to guide and influence the behaviour of the receivers of a message, and *commissive acts*, which are messages meant to oblige the receivers to perform precise instructions.

### 2.4.1 Directive acts

When a speaker performs a *directive* speech act, he wants a hearer to perform or not to perform a future action. A sentence including a verb functioning as a directive verb might be: “I *order* you to pay the defendant \$2000 as damages”. Other verbs with the same function include: *ask, command, request, recommend, suggest*.

Directive acts are normally issued for the benefit of the speaker and at the cost of the hearer, in Leech’s terminology (1983), they are “conflictive acts” to be adjusted in

communication relative to interlocutor and communicative intention (Tiersma & Solan 2012: 64).

As regards contracts, the terms and rules written by the drafter are formulated with the intent of ordering human relations. One party of the contract (e.g. principal, seller, franchiser) imposes precise behaviour on the other party (e.g. agent, buyer, franchisee) and vice versa.

In the case of unmodified imperatives and unhedged performative utterances, the directive is phrased explicitly without face redress and serves as an order. Likewise, modals like *shall* and *must are* employed to impose a high degree of obligation on the addressee. Face redress, on the other hand, can be obtained by means of conventionally indirect directives, either in the form of (i) 'hearer orientated' questions concerning the ability/willingness of the addressee to perform a certain action, e.g. by the use of the modals *can/could* or *will/would*, or by 'permission statements' through the application of the modals *may/might* or *can/could*, or (ii) 'speaker based' want-statements expressing the addresser's desires and needs. Finally, directives can be performed indirectly with no explicit marker of the impositive intent (i.e. 'off record').

Directive acts may present several degrees of imposition that vary according to the use of politeness strategies adopted by the addresser. The higher or lower degree of explicitness in imposing a rule or a provision is defined as **directness level**. The different degrees of directness level can be summed up as follows on the basis of Trosborg's classification (1997: 40).



Directive strategies (increasing directness)		
1) Indirect request	Str. 1 (mild)	I have to be at the airport in half an hour
	(strong)	My car has broken down. Will you be using your car tonight?
2) Conventionally indirect	Str. 2 Ability	Could you lend me your car?
	Willingness	Would you lend me your car?
	Permission	May I borrow your car?
	Str. 3 Suggestory formulae	How about lending me your car?
3) Conventionally indirect	Str. 4 Wishes	I would like to borrow your car
	Str. 5 Desires/needs	I want/need to lend me your car
4) Direct request	Str. 6 Obligation	You must/have to lend me your car.
	Str. 7 Performatives	
	(hedged)	I would like to ask you to lend me your car
	(unhedged)	I ask/require you to lend me your car
	Str. 8 Imperatives	Lend me your car, please.
	Elliptical phrases	Your car (please)

**Table 1: Directive strategies**

#### 2.4.2 Commissive acts

When a speaker performs a commissive speech act, he commits himself to perform a future action: “I *offer* to sell you my car for \$2500” (Searle 1976: 11). Among the various commissive illocutions, a promise is the strongest mode of commitment that one can make. Here, too, it would be more usual for a commissive utterance to be expressed explicitly. It is the commissive speech act that will be most relevant for contract formation.

According to Austin (1962), “the whole point of a commissive speech act is to commit the speaker to a certain course of action”. Obvious examples are utterances including the verbs *promise*, *vow*, *pledge*, *covenant*, *contract*, *guarantee*, *embrace* and *swear*. (Trosborg 1997: 63)

The speaker’s commitment to carry out the act described in the proposition can be expressed through the explicit

performative verb or by means of the modal verb *will* functioning as an implicit performative.

Promises are usually in the interest of the addressee (and at the cost of the sender) and belong to the category of “convivial acts”. The speaker can only promise “felicitously” of the intended act is in the interest of the hearer. An explicit statement of the promise is therefore desirable, and indirectness and/or hedging would only weaken the obligation and make it legally invalid. (Tiersma & Solan 2012: 64).

## 2.5 The structure of contracts

### 2.5.1 Title

A contract must have a title, usually a nominal sentence, which expresses the nature and/or the content of the document. In this section the name and other pieces of information concerning the parties involved may appear.

When the document is very long, a table of contents listing all the sections included in the document may be displayed at the beginning of the document in order to facilitate the reading and the consultation of the document.

### 2.5.2 Introduction

The introduction is the only section in the contract that is neither numbered nor headed. It states what is the nature/type of the contract and identifies the parties involved in the agreement/transaction. This section repeats the pieces of information given in the title since this section is not considered part of the document.

### 2.5.3 Recitals

Recitals usually precede the Definitions; they provide the information that forms the foundation or background for the document: the fact existing before the drafting of the contract and the reasons that led to the formulation of the contract.

Recitals cover the matters leading up to the signing of the document. They are usually formal statements that come before the operative part of the contract, setting out background and introductory materials. Nowadays, some contracts use the word 'recital' stating the background facts without using the word 'whereas'. (Cao 2007: 86).

Typically, preambles or recitals contain a number of so-called *citations*, usually clauses beginning with non-finite -ing forms and/or -ed participles, and/or a number of "whereas" clauses in which the word "whereas" may be repeated at the start of each separate clause.

#### 2.5.4 Definitions

This section is not mandatory. The drafter may insert it if he/she believes it is necessary to define and explain technical words that the receiver may not know or to provide *stipulative definitions* that differ from the usual definition of words in common use or, more simply, to provide the definition of a series of expressions that will recur throughout the document. These words are usually listed in alphabetical order.

*Stipulative definitions* alter the ordinary meaning of the words by narrowing or enlarging their sense by creating a wholly new meaning for them. Linguistically speaking, verbal expressions that may be found are *is deemed to be* or *is/are to*, or *is/are*.

#### 2.5.5 Body of the document

This is the most important part of the document since it contains the regulative acts that will come into force by means of the agreement and after the signature (the operative substance in Child's terms). The substantive provisions - which are principally concerned with laying down legal commands or orders, requirements, prohibitions, permissions and authorization - differ from one contract to another with regard to subject (for example, employment agreements, rental agreement-lease) and

are divided into sections, each numbered or lettered and each with an informative heading.

The provisions contained in this section are generally called *Main or principal provisions*. Their content should be organized respecting some basic governing principles. For instance, events should be listed and presented in the chronological order in which they are expected to happen, expected events before extra-ordinary disasters, important events before events of minor importance, promises before policies.

Further distinctions can be made: in this section we may find mandatory and administrative provisions, and provisos. A mandatory provision is not only legally binding, it entails that the performance of a specific act is required; failure to act accordingly is a punishable offence. The most used modal verb used in this case is *shall*. (Trosborg 1997: 46). But other modals that are usually used are *must* and *have to*, together with an other verbal construction typical of legal language that is *is to/are to*.

Administrative and procedural provisions are often related. They usually state who will be the actors, the executors of the agreement and the way the agreement will be performed. (Williams 2011: 50).

Provisos are a traditional feature of English legal drafting in both private legal documents and statutes. They operate as conditions or qualifications. They are usually introduced by specific linguistic formulae, such as *provided that, and provided that, and provided further that* (Cao 2007: 94). The syntax of these sentences is very important and respects precise rules: in fact, there are certain preferences for a particular type of clause to occur in a particular position in the sentence. For example, adverbial *if*-clauses specifying conditions and relative *where*-clauses tend to be placed at the beginning of the sentence. Overall, the right-branching position is, however, the most common. It is also likely to cause fewer processing problems for the reader than the other positions. (Tiersma & Solan 2012: 45)

Generally speaking, according to Coode, a legal sentence consists of four elements: the legal subject, the legal action, the

case to which the legal action is confined, and the conditions on which the legal action becomes operative. The preferred order of these elements is the following: (case), (condition), (subject), (action). Bhatia's functional classification of legal qualifications (1983: 31) confirms this scheme, providing the following categories: (1) preparatory that describe cases, specify conditions, placed at the beginning of the sentence; (2) operator that specify legal means and ascribe the purposes, with a variable syntactic position; and (3) referential qualifications that assign textual authority or provide textual mapping typically placed at the end of the sentence.

Recently, in most contracts involving parties coming from different countries a "language clause" has been added. It states which version of the document will prevail in case of dispute and which one will be considered exclusively as a translation, and therefore as an informative text.

#### 2.5.6 Signature and dates

This is the final and the most important section of the contract: it contains the most fundamental pieces of information, i.e. the signature and the date. In fact, to be valid a contract must be properly signed and dated. In it a variety of formalities pertaining the level of requirements for validity and enforcement are listed.

#### 2.6 The features of Online Contracts: differences and analogies with classic contracts

In the case of online contracts, the parties involved in the business transaction are usually a seller, who may provide a wide range of products or services, and a customer who is usually a layperson with no legal expertise.

For this reason, the European Union has recently laid down a proposal for a Directive – called COM/2015/0634 - 2015/0287 (COD)<sup>9</sup> – concerning contracts for the supply of digital contents.

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<sup>9</sup> You may read the entire directive at this link: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015PC0634>

This directive aims at regulating the business transactions that take place on the Internet in order to “contribute to a faster growth of the Digital Single Market, to the benefit of both consumers and businesses”. As a result, businesses finally obtained a uniform set of rules that apply across Europe and had the possibility to sell cross-border reducing legal costs when selling goods outside their domestic market; and consumers obtained “clearer contractual rights” and felt more confident about buying from other EU countries.

In this chapter, article 2 of this directive, which provides a long list of definitions, will be used to define what a *digital content* is; and article 6 will determine the criteria for a contract to be valid and legally binding.

First, in article 2 the definition of the term *digital content*, which is usually the object of an online business transaction, is provided. This term includes a wide range of items:

- Data produced and supplied in the digital form, for example video, audio, applications, digital games and any other software;
- Services allowing the creation, processing and storage of data in digital form, where such data is provided by the consumer;
- Services allowing sharing of and any other interaction with data in digital form, provided by other users of the service.

Moreover, the EU Directive on consumers’ right<sup>10</sup> of 2011 clearly states that information in contracts must be given in plain and intelligible language. Therefore, an online contract usually includes the following terms:

1. Parties: the names and the roles of the contracting parties are to be clearly stated;

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<sup>10</sup> For further details, you may consult Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights at this link: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0083>

2. Definitions and Interpretations: it is necessary to provide clear definitions of the items, procedures and any other pieces of information concerning the contract;

3. Payment provisions: the exact prices and the dates for payment must be clearly set out;

4. Description of the goods and services: the *digital data* which are the object of the transaction must be clearly described;

5. Terms of contract: the length of the contract should be clearly stated;

6. Limitation of liability: the degree of legal responsibility of each party involved in the contract has to be delimited;

7. Termination provisions: the circumstances under which the parties can terminate the contract should be clearly described;

8. Confidentiality: it lists sensitive data or other information that are protected and should not be used or disclosed;

9. Warranties: it describes the events that oblige the seller to replace or repair an item;

10. Applicable law: it indicates which law governs the contract.

The section Signature and Date, described in the former paragraph of this chapter, usually does not exist in online contracts. In fact, a user or client who enters an e-contract often signs a “click to Agree” contract: he/she simply clicks an “I Agree” button on a page containing the terms of the contract before the transaction can be considered completed.

## **CHAPTER 3. Translating online Contracts**

Contracts are private legal documents and, either original or translated, may serve many purposes: some of their major functions include creating, conferring, varying or negating legal rights and obligations and recording such rights and obligations (Aitkin and Butter 2004). In case of dispute, they may be used before a court or legal authorities to protect rights or enforce obligations.

Therefore, a translator who decides to specialise in legal matter, or more in detail in contracts and agreements, should know that he has to develop or have precise competences:

a. Organisational competences: they include excellent grammatical knowledge and competence (vocabulary, morphology, syntax, etc.) and textual competence (cohesion, rhetorical organisation);

b. Pragmatic competences: they include illocutionary competence, that is the ability to recognize and perform acceptable language functions, and sociolinguistic competences, that is the mastery of appropriate language in specific sociolinguistic contexts. (Cao 2007: 45) in order to achieve the important communication goals that characterize this specific variety of legal texts.

### **3.1 Main Challenges**

As already mentioned contracts are among the most commonly translated private legal documents from and into English. They are often written in similar styles; they may vary in their actual content, which can be wide ranging from intellectual property rights transfer to the sale of equipment, depending upon the needs of the clients; they also vary in terms of length and complexity. (Cao 2007: 85)



### 3.1.1 Terminology

The legal vocabulary in a language, including both legal concepts and legal usage, is extensive. It results from and reflects the law of the particular legal system that utilises that language. Words matter. In law, words often become points of legal contention. In translation, due to the systemic differences in law, many legal words in one language do not find ready equivalents in another, causing both linguistic and legal complications (Cao 2007: 53)

As regards contract law, it is important to underline that there several technical terms which have a double meaning: they can be used in non-legal or everyday settings, but they can also carry special legal significance in this legal field.

Term	Non-legal setting (OALD)	Contract law (Black's Law Dictionary)
<i>Offer</i>	Act of saying that you are willing to do something for somebody or give something to somebody.	Promise which, when accepted constitutes an agreement.
<i>Consideration</i>	Act of thinking carefully about something.	Something which is legally sufficient and makes a contract binding.
<i>Performance</i>	Act of performing a play, concert or some other form of entertainment.	The fulfilment or accomplishment of a promise, contract, or other obligation according to its terms.
<i>Remedy</i>	A way of dealing with or improving an unpleasant or difficult situation.	The means by which the violation of a right is prevented, redressed, or compensated.
<i>Assignment</i>	A task or piece of work that somebody is given to do, usually as part of their job or studies.	The act by which one person transfers to another, or causes to vest in that other, the whole of the right, interest, or property which he has in any realty or personality, in possession or in action, or any share, interest, or subsidiary estate therein.

Table 2: Legal terms with an equivalent in everyday language

When dealing with these terms, the translator will have to pay great attention and will have to demonstrate that he has very good paralinguistic competences.

Another lexical item that usually poses problem when translating is what we call a “word string”. It can be defined as a series of nouns, verbs, adjectives, adverbs or other phrases that always occur together and are usually synonyms (for instance, *liabilities, expenses, losses, damages and costs, or exist, may exist or have ever existed*). It seems that this tradition dates back to the Anglo-Saxons who used to join together two similar words with closely related meaning. In legal language this tradition was kept to convey the meaning of *all-inclusiveness* that is to cover all possible situations and eventualities that may arise in the future.

Some of the most common word strings that we may find in contracts are:

*Bind and obligate*

*Full and complete*

*Furnish and supply*

*Have and hold*

*Null and void*

*Cost, charges and expenses*

*Changes, variations and modifications*

*Business, enterprise or undertaking*

Word strings may pose problems in translation since other languages may not have a string of corresponding words with a similar meaning. A translator should carefully consider when it is possible and/or appropriate, in his/her target language, to combine the synonyms in one word.

### 3.1.2 Verbal constructions

As already mentioned, verbs and verbal constructions are an important feature of contracts. In this section, the linguistic conventions applied by Italian legal drafters will be described in order to outline a stylistic framework of reference for analysing

our corpus. The focus will be on the translation of modal verbs, mood, indicative forms and the voice (passive vs. active forms).

### 3.1.2.1 Modal Verbs

In English prescriptive legal documents, especially in contracts, the use of modal verbs is very diffused: they are strategically used to convey deonticity, i.e. they inform people about which actions they may be allowed to do or which actions they may be prohibited from doing and they provide further information about the degree of imposition.

Generally speaking, in Italian deonticity can be conveyed using the modal verbs *dovere* and *potere*: the former expresses obligation and the latter permission.

Italian manuals on legal drafting stress the importance of clear communication: as regards contracts, the language must be clear and the distinction between commissive and directive acts must be explicit in order to avoid misunderstanding and miscommunication which may lead to litigation. According to Vigotti (2003: 8-9), to express obligation the drafter can use verbs or verbal forms such as *dovere*, *impegnarsi*, *obbligarsi*, *promettere*, *essere tenuto a*, or the future tense, called *futuro iussivo*. On the contrary, permission might be expressed by means of verbs such as *potere* or *avere facoltà*.

At the moment there are no clear style guides concerning the translation of contracts and, in particular, the translation of modal verbs. However, a circular letter of 2 May 2001 by the Italian Government recommends not using verbs such as *dovere* or *potere* in legislative and administrative documents since they are defined as “insidious” and may lead to misunderstanding. The use of the present simple is preferred.<sup>11</sup>

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<sup>11</sup> The entire text of the circular letter is available at this link:  
<http://gazzette.comune.jesi.an.it/2001/101/8.htm>

### 3.1.2.2 Mood: indicative forms

Law is atemporal, i.e. it exists and must be applied without relation to time, and carries a strong deontic value. Consequently, in English, indicative forms are strongly recommended and widely used by drafter.

In Italian the same stylistic rule applies. In fact, the circular above mentioned says that the most suitable verbal form for the juridical norms is the indicative form, in particular the present simple, which correctly expresses an imposition. The subjunctive and the future cannot produce the same effect, since they add a hypothetical nuance to the verb and do not express the immediacy of the legal precept.

### 3.1.2.3 Voice: passive vs. active

Lawyers like to use passive structures since the passive voice is a linguistic construction that permits the writer to avoid naming or referring to the person or thing that performs the action. For instance, the sentence ‘The contract was breached’ simply states the fact. It does not indicate who was the wrongdoer who breached the contract.

By using passive structures, lawyers manage to avoid directly referring to or identifying the person involved or assigning responsibilities. Sometimes, they tend to overuse this structure (Goldstein and Lieberman 2002: 131). Even when the subject or doer of an action is known and identified, passive structures are still used, as consequence of a diffused habit.

In translation, passive structures are often translated following the original pattern. However, in some languages and in some instances where passive structures are not as commonly used as they are in English, adjustments may be necessary. It is not imperative that the passive structure is carried over in the TL. (Cao 2007: 94)

#### 3.1.2.4 Non-finite verbal constructions

Non-finite verbal constructions, such as the non-finite -ing form and the non-finite -ed participles, are not very common in English contracts: usually, they can be found in preambles of resolutions (Williams, 2007: 161-163).

An equivalent form in Italian prescriptive legal texts might be the *gerundio*. However, drafters recommend not using it since it might render the comprehension of the text more difficult; it is better to replace it with a subordinate clause having the same meaning or function.

#### 3.1.3 Interactional tenor of contracts

A contract always involves two parties that are usually specified and described in the introduction and that play prefixed roles, e.g. *principal/agent, seller/buyer* or *franchiser/franchisee*. In this case, the parties act both as senders and receivers: in the initial part of the negotiation, they can be considered as receivers, since they discussed and agreed on the content of the contract drafted by the lawyers; then, after the signature, they can be defined as readers, as they verified and approved the contract by posing their signature at the end of the document (Trossborg, 1997: 59-60).

These two parties are in a symmetrical position: first, they both hold something of great value and great interest to the other; second, they witness the contract by the respective hand.

Given these premises, the content of a contract must be authoritative and in conformity with the legal framework of reference; but, at the same time, it must use some politeness strategies in order to reduce the face threatening acts (Brown and Levinson 1987) of the prescriptive legal document.

When translating a professional will have to take into consideration this aspect and apply the same strategies: particular attention should be paid on the use of forms of address and on modal verbs, which are important strategic linguistic features to recreate this high degree of politeness and formality.

### 3.1.4 Vagueness vs. clarity/precision

Another challenging yet fundamental feature of legal language is its strategic use of linguistic properties of generality and vagueness (see Bix 1993, Endicott 2000).

Linguistic uncertainty can be intralingual uncertainty, that is, within one language, and interlingual uncertainty, that is, uncertainty arises when two languages are considered or when one language is translated into another language. In such cases, a word, phrase or sentence in one language may or may not be uncertain, but additional uncertainty may arise when they are considered across two or more languages.

Interlingual uncertainty includes ambiguity, vagueness, generality or other indeterminacy where words, phrases or sentences in two or more languages that are deemed to be equivalent do not correspond exactly when compared, thus giving rise to uncertainty (for discussions of different types of interlingual uncertainty in bilingual and multilingual legal texts, see Cao 2007). Such uncertainty is most often found in situations where translation is involved. We know that in translation, it is impossible to achieve absolute exactness or complete identity between any languages. As pointed out, translation always falls short of its goals of conveying the meaning and style of a text in a new text that reads like an original composition in the second language (Joseph 1995: 14). The law is always subject to interpretation. The meaning of words is never fixed: the kind of precision that law demands of language, and formal semantics attempts to represent, is based on an illusion of human linguistic behaviour (Joseph 1995: 14). As Joseph notes, if indeterminacy is already the condition within languages, it holds *a fortiori* between languages.

An important point for the legal translator with regard to linguistic uncertainty is that one should always bear in mind the task of the translator. The legal translator is not the lawyer. The central task of the translator is to translate, not to solve legal problems. Lawyers and courts may interpret any vague or ambiguous words very differently, and courts are often asked to

adjudicate and make a determination. Only the judicial interpretations of disputed words are the correct or enforceable ones. Thus, one of the tasks for the translator in such situations is to recognise and appreciate the linguistic uncertainty that may have occurred, intentionally or unintentionally, in the first place in the original text, and then to convey and retain the vagueness or ambiguity in translation. The translator must always resist the temptation to clarify or make a word more precise or less ambiguous, thus potentially limiting the possible interpretations by the court in the future. As rightly pointed out, translators have no authority to resolve ambiguities in the original texts, although this can be brought about inadvertently if the translators do not have sufficient legal and linguistic expertise to appreciate the delicate situation in the first place (Northcott et al. 2001). Conversely, in translation, new linguistic uncertainty, that is, interlingual uncertainty, may be created due to the differences in linguistic and legal systems. This sometimes is inevitable, not due to translators' mistakes, but because of the inherent nature of language. Often, the translator has to make hard decisions within the constraints of language.

## CHAPTER 4. Online Contracts: corpus design and methodology

In this chapter we shall describe the main features and the criteria that led to the creation of the “Contract Corpus”, the bilingual parallel corpus of online contracts specially compiled for this study.

### 4.1. Criteria of corpus-design

In order to design and compile a corpus several steps must be followed. First, it is necessary to establish a *sampling frame*, that is, the complete selection of text that will serve as illustrative samples (McEnery and Wilson, 1996: 78) in the corpus.

Second, *representativeness* is a crucial factor (Sinclair 1991; McEnery and Wilson 1996; Wynne 2005, etc.). The researcher must set the boundaries of its object of study: the choice of the texts must be reasoned and justified; the chosen texts must meet the requirement set in the project.

Third, time must be taken into consideration. The time span should be delimited: in a synchronic perspective, an interval of two or three years should be sufficient; by contrast, if the study is conducted in a diachronic perspective, the minimum length should be five years. According to Pearson, a synchronic corpus compiled for specific purposes should be delivered in the last ten years prior to the date of compilation (1998: 51) in order to be considered up-to-date and valid.

Size is another key element since it may determine its *representativeness*. Indeed, a small corpus can be used exclusively with an illustrative aim; whereas, a bigger corpus will have a stronger predictive value. Nonetheless, experts have different opinions on this topic: Pearson (1998) argues that a million words is a reasonable number; by contrast, Sinclair (1991) affirms that a representative corpus should include 10 to 20 million words. As regards legal corpora, in a paper entitled



“Legal discourse: Opportunities and threats for corpus linguistics” (2004) Bhatia, Langton and Lung claim that large corpora are not necessary: given the conservatism and formulaic nature of this type of texts, “there is very little need for comprehensive or automatic linguistic frequency measures, as they are easily identifiable manually” (2004: 212).

Finally, a corpus should be well structured: it should reflect the variety of texts belonging to that specific language domain in order to facilitate the individuation of data and the comparison of results, and should respect its specific conventions in order to be easily consulted and searched.

#### 4.2 The Sampling frame of the “Contract Corpus”

The first step for the construction of the corpus was to understand what *e-commerce* and *online contract* are. The term *E-commerce* refers to “any kind of business transaction in which the parties interact electronically rather than by physical exchange or direct physical contact” (Timmers, 1998). When the parties involved in the transaction are business companies or professionals, we talk about *B2B (business-to-business) e-commerce* and contracts are created, sent and signed privately via email. By contrast, if the transaction takes place between businesses and consumers we talk about *B2C (businesses-to-consumers) e-commerce*. It usually involves customers gathering information, purchasing physical goods (i.e., tangibles such as books or consumer products) or information goods (or goods of electronic material or digitized content, such as software, or e-books), and, for information goods, receiving products over an electronic network. In this case, contracts are usually displayed in two forms: a web page which contains Terms and Conditions and Terms of Service documents that the user can consult at any time; or a “Click to agree” contract, i.e. the user has to click an “I Agree” button on a webpage containing the terms of agreement to execute the contract.<sup>12</sup>

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<sup>12</sup> Definition taken from the article “Creating Legally Binding Contracts Online” by J. Hirby (<http://thelawdictionary.org/article/creating-legally-binding-contracts-online/>).

Then it was necessary to choose between these two types of agreements, i.e. B2B agreements and B2C agreements. Two simple criteria were taken into considerations: the degree of *availability*, how easily and rapidly these documents could be found and obtained, and their *linguistic interest*, the presence of relevant and interesting linguistic features. The choice fell on B2C agreements.

B2B agreements are private documents, written by and exchanged between companies and/or businesses. Therefore, they cannot be easily obtained: since they often contain sensitive information and are covered by non-disclosure clauses. They are written in an extremely formal register, they include standardized formulae and specialized terminology. On the contrary, B2C agreements can be easily accessed since they are displayed in the Terms and Conditions web page of any website; their register and the syntax are often slightly modified in order to allow the users, who might not have any legal background, to clearly understand the clauses of the contract they are going to execute.

A large portion of business is conducted entirely online these days. Only in Europe, according to a recent survey published by Eurostat in December 2016, during 2015 one out five enterprises in the EU-28 made electronic sales.<sup>13</sup> Therefore, a further selection had to be performed. The main criterion used was the size and the turnover of companies providing services and selling goods on the Internet: only big retailers were taken into consideration since they are the only ones which sell cross-boarder and which have their Terms and Conditions web page translated in various languages (Italian included). Among these big online sellers, only thirteen were chosen on the basis of the products and services provided. According to several market research agencies the bestselling products and services sold on the Internet are in the sectors of IT, accommodation and fashion; and online platforms connecting professionals and customers are becoming more and more popular.

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<sup>13</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce\\_statistics#Wide\\_variation\\_in\\_the\\_share\\_of\\_e-sales\\_among\\_countries](http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics#Wide_variation_in_the_share_of_e-sales_among_countries).

For these reasons, the “Contract Corpus” includes the official Terms and Conditions webpages and the corresponding Italian translations of the following companies (names will not be disclosed; only a short description will be provided for privacy reasons):

Description of the company	Word Count (EN)	Word count (IT)	Country of origin	Year of publication
A - Terms and Conditions of the largest Internet-based retailer in the world	6142	6518	US	2014
B1 - Software licence of one the world's largest information technology company by revenue.	6051	6340	US	2013
B2 - Terms and Conditions of use of the website of the above mentioned company	14133	15078	US	2014
C - Terms and Conditions of the online-based platform which provides an accommodation reservation service thanks to the support of local group companies	3155	3309	NL	2015
D - Terms and Conditions of the English flight carrier and the largest airline in the UK	11270	11620	UK	2015
E - Terms and Conditions of the largest business and employment-oriented social networking service operating via websites	3884	4190	US	2015
F - Terms and Conditions of a big online platform where individuals or companies of all sizes find professionals for their projects and freelancers and agencies find work and grow their businesses	6163	6571	DE	2015
G - Terms and Conditions of a big file hosting service that offers cloud storage, file synchronization, personal cloud, and client software	2063	2235	US	2015

H - Terms and Conditions of a multinational technology company specializing in internet-related services and products in the hotel, lodging and meta-search fields	1480	1322	DE	2015
I - Terms and Conditions of an online platform which offers professional translations which includes more that 200.000 translators	860	790	IT	2015
J - Terms and Conditions of a freeware, cross-platform and end-to-end encrypted instant messaging application for smartphones	7545	8198	US	2016
K - Terms and Conditions of a rental company which operates a global online marketplace for short-term rentals and private accommodation	4414	4367	DE	2015
L - Terms and Conditions of a multinational corporation engaged in the design, development, manufacturing and worldwide marketing and sales of footwear, apparel, equipment, accessories and services	5224	4707	US	2014
	72384	75245	TOT	147629

**Table 3: Contracts included in the Contracts Corpus**

### 4.3 The data

The corpus has an illustrative aim: it describes the current strategies adopted by Italian translators when dealing with modal verbs and specific verbal constructions in online contracts.

Therefore, it includes 36 texts; it amounts to a total of 147,629 words (72,384 in the English section and 75,245 in the Italian section) and covers a diversified range of e-commerce areas (from IT products to sport apparels; from instant messaging services to social networking platforms). In a synchronic perspective, it takes into consideration a time span of three

years, from 2013 to 2016. All texts are considered in their entirety, including titles and preambles.

The majority of texts come from the US, where the biggest multinational companies and Internet retailers are based; the second largest group is represented by texts coming Germany. The others come respectively from the United Kingdom, the Netherland and Italy. For all these texts, the English version is considered the official document in case of dispute.

The modal verbs and verbal constructions analysed in the corpus will be the following: *will, may, shall, must, can, should, would, could, need to, might, is/are to*, both in the affirmative and negative form.

#### 4.4 Quantitative analysis

The presence of the above-mentioned modal verbs and verb constructions has been searched and analysed in the EN\_CC, the English sub-corpus: the number of occurrences (and the corresponding percentages) has been registered in each text and in the entire English corpus. Moreover, recurrent collocations were searched and registered in order to provide a semantic and pragmatic map for translators.

In order to verify the hypothesis formulated in this research project, the Cortec Corpus, a corpus of 200,000 words that includes a selection of contracts written in English,<sup>14</sup> was chosen as the best option both in terms of content and currency. The frequency of modal verbs in both corpora will be compared in order to verify if differences between regular contracts and online contracts in the use of modal verbs can be found and if there

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<sup>14</sup> The CorTec is a parallel scientific-technical corpus that includes a wide range of specialized corpora (environment, cooking, information technology, cardiology and contract Law). The Contract Law corpus is made up of two sub-corpora: the former is written in English and includes 134 contracts; the latter is written in Portuguese and includes 48 contracts. Each sub-corpus totals about 200,000 words. It was compiled by Luciana Carvalho Fonseca Corrêa Pinto, member of the Translation and Terminology Centre of the University of St. Paul in Brazil. (For further information, visit: <http://comet.fflch.usp.br>)

has been any change in the use of these modal verbs since 2012, the year when the Cortec Corpus was compiled.

The IT\_CC, the Italian Corpus will be scanned and analysed in order to verify the presence of the corresponding modal verbs (such as *potere* and *dovere*).

#### 4.5 Qualitative analysis

The monolingual analysis has represented a crucial phase of the research project. First, it was possible to observe any differences between the US and Europe in the use of modal verbs in contract drafting. Second, it was verified whether the use of modal verbs has declined as recommended by Williams, Trossborg and other international institutions or to what extent it still is in this type of legal documents.

Subsequently, on the basis of the collected English and Italian parallel corpora, a search was run in order to identify current trends in the translation of modal verbs and verbal constructions and to highlight possible problems related to the semantic disambiguation of the modal verbs and offer solutions.

#### 4.6 Tools and software used

The analysis is run using the software ParaConc. This is a bilingual or multilingual concordancer that can be used in contrastive analyses, language learning, and translation studies/training.

It performs a wide range of useful actions, such as:

- a. **Alignment:** Utility for semi-automatic alignment.
- b. **Searching:** Simple text search; regular expression search; tag search and parallel search;
- c. **Translations:** Search for potential translations in results window.
- d. **Collocate Frequency Span:** Collocates of spans from 1L-1R to 4L-4R
- e. **Collocate highlighting:** Collocates of the search term are highlighted in colour in the concordance lines. This allows the

combination of (visual) collocate frequency information with the usual presentation of concordance patterns.

f. **Advanced Sort:** Primary and Secondary Sorting of results. Advanced Sort option allows primary, secondary and tertiary sorting. Also sorting on ends of words, sorting according to the value of tracked tags.

g. **Advanced Collocation:** the program counts collocations in various ways. A useful Span feature has been introduced. Once a search has been completed, the user chooses a span (2 to 5 words) and the software calculates the most frequent collocations of the specified size containing the search word.

## Chapter 5. Results and discussion

### 5.1 Analysis of the EN\_CC

The observation of Table4 shows that, as we may expect, modal verbs represent a small percentage of the most used lexical units used in the EN\_CC corpus. It seems that drafters are recurring less and less to this type of verbs, following the instructions provided by the Plain English Movement and by other international institutions. Moreover, it can be observed that the use of *shall*, which was strongly discouraged, has decreased: in fact, it occupies the fourth position in the list. And *may* remains at the top performing mainly a permissive function.

By contrast, surprisingly the presence of the modal *will* in the EN\_CC is very important and does not only convey an idea of *futurity*, as we might expect: it performs a wide variety of communicative functions which will be discussed in the following sections of this chapter. Other interesting results concern the verbs *must* and *can*: they do not usually appear (they rarely appear) in prescriptive legal texts and especially in contracts.

In the following sections a quantitative and qualitative analysis of all the verbs listed in Table4 will be carried out: the number of occurrences and the corresponding percentages will be highlighted and their main communicative functions will be described. The verbs will appear in a decreasing order.



This analysis will be preceded by a brief comparison between the EN\_CC and the Cortec Corpus. This comparison is made to verify if there has been any interesting variation in the use of modal verbs has occurred since 2012, the year when the Cortec Corpus was compiled.

Word list	A	B1	B2	C	D	E	F	G	H	I	J	K	L	Tot	%
May	50	85	168	16	70	30	12	26	8	0	66	3	31	565	0,78
Will	43	30	115	8	149	14	34	18	5	1	42	17	69	545	0,75
Must	5	3	11	0	54	5	8	2	1	5	18	29	9	150	0,2
Shall	0	11	53	11	5	5	17	0	0	22	3	4	16	147	0,2
Can	9	10	15	5	14	12	23	2	2	0	17	24	9	142	0,2
Should	7	5	13	4	4	1	8	1	0	0	1	0	1	45	0,06
Cannot	4	1	7	3	9	2	1	0	1	0	1	5	6	40	0,05
Would	1	0	3	2	5	1	0	1	0	0	4	1	0	18	0,02
Could	4	4	2	0	2	0	1	0	0	0	3	0	1	17	0,02
Need to	0	0	4	0	4	0	1	0	0	0	1	0	3	13	0,02
Might	2	0	0	0	2	1	0	0	0	0	3	0	0	8	0,01
Is to	0	0	0	0	2	0	1	0	0	0	0	0	0	3	-
Are to	1	0	0	0	0	0	1	0	1	0	0	0	0	3	-
Need not	0	0	0	0	0	0	0	0	0	0	0	0	0	0	-

**Table 4: Quantitative analysis of modal verbs in the Contract Corpus**

## Analysis of the Cortec Corpus

Word list	Occurrences	%
Shall	2767	1,4
May	792	0,4
Will	529	0,26
Would	157	0,08
Could	70	0,03
Must	54	0,03
Might	28	0,014
Should	21	0,01
Can	20	0,01
Cannot	19	0,01
Is to	15	0,007
Are to	11	0,005
Need to	4	-
Need not	3	-

Table 5: Quantitative analysis of modal verbs in the Cortec Corpus

As we might expect, it can be observed that in both corpora modal verbs represent a low frequency lexical category. However, some interesting observations can be made if we compare our data (the EN\_CC to the control corpus, the Cortec Corpus). While *shall* features as the most used modal verb in the Cortec Corpus (1,4%), its use appears to have greatly decreased in the EN\_CC. On the other hand, the use of *may* and *will* follows in frequency, but they are slightly more frequently used in the EN\_CC (0,78% for *May* and 0,75% against 0,4% and 0,26% in the Cortec Corpus).

Surprisingly, *must* and *can*, which were a low frequency lexical category in the Cortec Corpus, gain several positions and increase tenfold in the EN\_CC (*must*: 0,03% in the Cortec Corpus

vs. 0,2% in the EN\_CC; *can*: 0,01% in the Cortec Corpus vs. 0,2% in the EN\_CC). Other constructions, such as *is to/are to*, *need/need not to*, are rarely used in both corpora.

### 5.1.1 Verbal constructions

#### May

*May* is the first most used modal verb in the EN\_CC. Its presence was registered in all the analysed contracts, to the exception of contract I; and it mainly occurs in contracts written in Anglo-Saxon countries (see Table4). Linguistically speaking, it is usually preceded by human subjects (*client, licensor, users, we, you*); it mainly occurs in main clauses, and it can be found both in the active and passive voice.

As regards the discursive functions, five different uses can be highlighted. They will be listed in a decreasing order:

- Epistemic function;
- Permissive function;
- Forbidding function;
- Performative function;
- Commissive function.

Occurrences of <i>may</i> in the EN_CC – Tot. 565 (0,78%)				
Main Clauses: 404 (74,12%)			Sub: 141 (25,9%)	
Epistemic	Permissive	Forbidding	Performative	Commissive
260	193	46	30	14
(47,70%)	(35,41%)	(8,44%)	(5,50%)	(2,56%)

Table 6: Occurrences of *may* in the EN\_CC

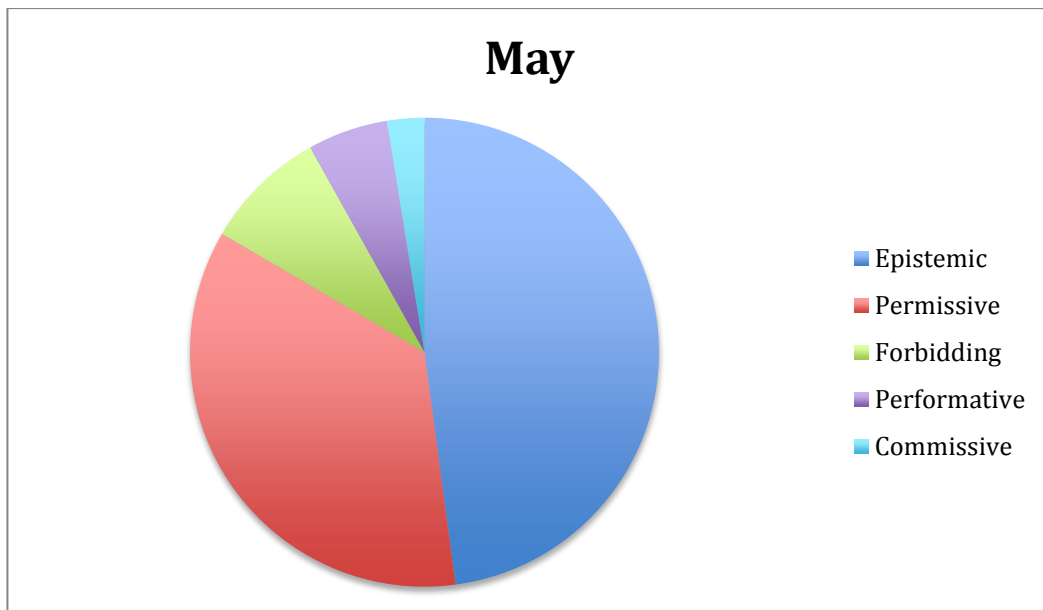


Figure 2: Discursive chart of the modal *may*

When performing an epistemic function, i.e. when describing events that could possibly occur and that cannot be controlled, *may* occurs both in main and subordinate clauses, and is usually preceded by inanimate subjects (*information, location, results, services, etc.*):

(1) *The currency converter is for information purposes only and should not be relied upon as accurate and real time; actual rates may vary.*

(2) *You agree that meeting these requirements, which may change from time to time, is your responsibility.*

It mainly occurs with verbs in the passive voice or with stative verbs, such as *have, change, include, etc.*:

(3) *Despite our best efforts, a small number of the items in our catalogue may be mispriced.*

(4) *Please note that changing the country of delivery may have an influence on the price.*

When performing a permissive function, it generally occurs in main clauses and is generally paired with human subjects (*licensor, client, users, we, you*): in fact, the provider of the service or the client is given the right to perform a specific action.

*(5)Xxx and its partners, licensees and third party developers may transmit, collect, maintain, process and use your location data*

*(6)Xxx may use service providers as subcontractors for the creation of xxx products and the performance of the xxx product-services*

*(7)The client may choose his preferred service provider from such a list and order the xxx product from xxx via the online platform*

*(8)The Licensor may also impose limits on the use of or access to certain External Services, in any case and without notice or liability.*

*(9)we may suspend or terminate your use of the Services if you're not complying with these Terms*

*(10) EXERCISING YOUR RIGHT OF WITHDRAWAL. If for whatever reason you are not happy with the products you ordered, you may return the products delivered to you within 30 calendar days after the product is delivered, without giving us any reason*

Some instances of the permissive *may* in the passive voice can be found, as well:

*(11) The Usage Rules may be controlled and monitored by xxx for compliance purposes*

(12) *For each Associated Device, you may specify which type of Eligible Content, if any, may be auto-downloaded to it.*

(13) *Some xxx Products, including but not limited to Film rentals, may be downloaded only once*

Other four functions remain, but their percentages strongly decrease. *May* also covers a forbidding function: the drafter uses it to describe those actions that cannot be performed in accordance with the terms of the contract. In this case, the verb is mainly associated with the subjects *you* or *users*, which refer to the client, and is in the negative form:

(14) *You may not copy (except as expressly permitted by this licence and the Usage Rules), decompile, reverse-engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Licensed Application*

(15) *You may only resolve disputes with us on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action*

(16) *This also signifies in particular that the user may not send messages with advertising content (especially spam-messages) without the consent of the recipient.*

Moreover, it can occur in the passive voice. In this case, the most recurrent syntactical forms are *No+noun+MAY+V* or *nothing+may*:

(17) *No xxx Service, nor any part of any xxx Service, may be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without our express written consent*

(18) *No portion of the Service may be reproduced in any form or by any means, except as expressly permitted in these terms.*

However, instances of the forbidding may in the negative form are also found:

(19) *Finally, our Services are not intended for and may not be used by people under the age of 13*

(20) *In particular, but without limitation, the Licensed Application may not be exported or re-exported (a) into any U.S.-embargoed countries or (b) to anyone on the U.S.*

Several instances of May covering a performative function were found in the corpus: the lexical field belongs to the area of arbitration and applicability of provisions:

(21) *any other use of the xxx Products may constitute a copyright infringement.*

(22) *If you are denied boarding against your will on a flight for which you have both a valid ticket and a confirmed reservation, we will pay you compensation and provide refreshments and other care as required by any law which may apply*

Finally, *may* covers also a commissive function: the drafter highlights the main services that the seller or the service provider will provide to the clients. In this case, the most recurrent subject is *we* or services/actions performed by the seller or service provider; dynamic verbs often occur:

(23) *xxx may not use your messages for any purposes*

(24) *Nothing you shared may be shared*

(25) *we may update this policy*

(26) *we may contact you*

## Translation of *may* in the IT CC

The modal verb *may* was rendered with a great variety of solutions on the basis of the communicative functions that it covered. Translators used both verbal moods and lexical expressions in creative ways.

As regards the epistemic *may*, translators used various moods: they mainly used the conditional since it is the most suitable solution to render the idea of uncertainty and possibility; but some occurrences in the subjunctive and in the *indicativo presente* were found, as well.

<i>(1EN) We offer a wide range of xxx Services, and sometimes additional terms may apply</i>
<i>(1IT) Offriamo un'ampia gamma di Servizi xxx e talvolta potresti essere soggetto a termini e condizioni ulteriori.</i>
<i>(2EN) Photo resolution may vary depending on the device to which the photos are downloaded.</i>
<i>(2IT) La risoluzione delle foto può variare a seconda del dispositivo sul quale vengono scaricare le foto.</i>
<i>(3EN) If you opt in to diagnostic and usage collection, you agree that xxx and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical, usage and related information</i>
<i>(3IT) Se scegliete la raccolta dei dati di utilizzo e diagnosi, accettate che xxx, le sue società affiliate e i suoi agenti possano raccogliere, conservare, processare e utilizzare informazioni tecniche, di diagnosi, utilizzo e altre informazioni a esse collegate</i>



As regards the commissive function, the translators opted for the *indicativo futuro* without expressing directly the function.

<i>(4EN) xxx may not use your messages for any purpose</i>
<i>(4IT) xxx non utilizzerà i messaggi di xxx dell'utente per scopi diversi</i>
<i>(5EN) Nothing you shared on xxx may be shared</i>
<i>(5IT) Nulla di ciò che gli utenti condividono su xxx, [...], sarà pubblicato</i>

As regards the forbidding function, it is interesting to underline that translators mainly adopted impersonal verbal forms, such as *non è possibile, non è consentito*, even when in the original version the subject was *you*. By using these impersonal verbal forms, translators probably wanted to achieve two goals: the register is more formal and the client feels less threatened.

<i>(6EN) You may not extract and/or re-utilise parts of the content of any xxx Service without our express written consent.</i>
<i>(6IT) Non è consentito estrarre e/o riutilizzare sistematicamente parti dei Servizi xxx senza l'espresso consenso scritto di xxx.</i>
<i>(7EN) You may not frame or use framing techniques to enclose any trademark, logo or other proprietary information (including images, text, page layout, or form) of xxx without our express written consent.</i>

*(7IT) Non è possibile procedere al framing o utilizzare tecniche di framing per appropriarsi indebitamente di qualsiasi marchio, logo o altra informazione proprietaria (inclusi immagini, testo, impostazioni di pagina, o formato) di xxx in assenza di un espresso consenso scritto da parte nostra.*

As regards the permissive function, the modal verb *potere* is the most diffused option; however, other similar expressions were found: *è possibile, avere facoltà, riservarsi il diritto* and *consentire*. It is interesting to underline that usually the expression *riservarsi il diritto* is the structural calque of the English expression *reserve the right to*; in this case, the translator decided to apply it also to the modal verb *may*. A possible explanation might be the following: the provision where this solution was adopted presents a legal content, therefore a more formal expression typical of legal jargon was more appropriate. Finally, the choice of the verb *consentire* (in English, *to allow*) is curious: in the English version the right to perform a specific action was given implicitly to the service provider by the law; in the Italian version, the Client is involved by accepting the application of this right.

*(8EN) We may decide to accept payment in another currency.*

*(8IT) Ci riserviamo la facoltà di decidere se accettare il pagamento in una diversa valuta.*

*(9EN) xxx may also impose limits on the use of or access to certain Services, in any case and without notice or liability.*

*(9IT) xxx si riserva altresì il diritto di imporre limiti sull'utilizzo e sull'accessibilità di alcuni Servizi, in qualunque momento e senza previo avviso né vincolo alcuno.*

*(10EN) By using the xxx Software, you agree that xxx may transmit, collect, maintain, process and use these identifiers for the purpose of providing and improving the xxx feature.*

*(10IT) Utilizzando il Software xxx, consentite a xxx la trasmissione, la raccolta, la conservazione, l'elaborazione e l'utilizzo di tali identificatori, al fine di fornire e migliorare la funzionalità.*

## Will

*Will* is the second most used modal verb in the EN\_CC. This datum is quite surprising given the fact that lawyers and academics discourage its use and affirm that *will* cannot be considered a modal verb typical of legal language. We may suppose that its presence in the EN\_CC might be explained by the fact that this type of prescriptive legal texts are written for laypersons, who may not be lawyers or legal experts and may have little or no knowledge of legal discourse.

Occurrences of <i>will</i> in the EN_CC – Tot. 545 (0,75%)			
Main Clauses: 478 (87,70%)		Sub: 67 (12,29%)	
Commissive 196 (38%)	Performative 165 (32%)		Dynamic 56 (11%)
Permissive 43 (8%)	Epistemic 36 (7%)	Mandatory 26 (5%)	Forbidding 23 (5%)

Table 7: Occurrences of *will* in the EN\_CC

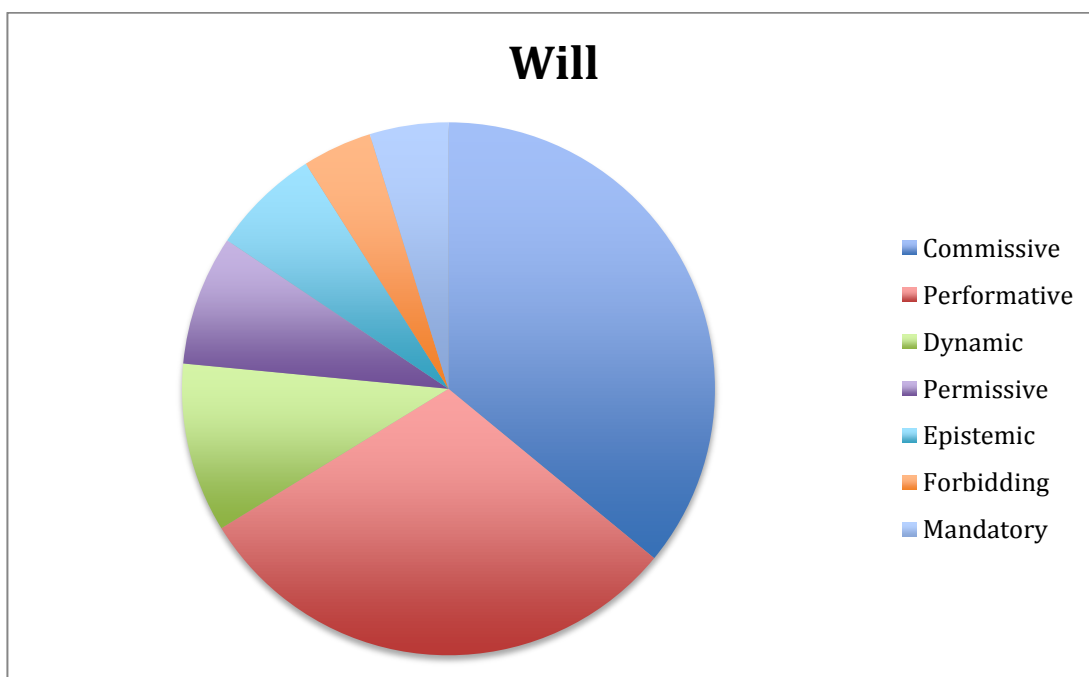


Figure 3: Discursive chart of the modal *will*

If we look at Table 4, it can be observed that *will* mainly occurs in main clauses (456 – 88%) and rarely in subordinate clauses (67 – 12%). This modal verb performs seven different functions. They will be listed in a decreasing order: commissive, performative, dynamic, permissive, epistemic, mandatory and forbidding.

When performing a commissive function, the most recurrent subjects are *you* and *we* or other nouns that refer respectively to

the service provider or the client (*user/s, service provider, provider, contractor, client, agents, etc.*). Inanimate subjects usually refer to services that are offered to the client (*any product, any service, our service, the booking, the product, the refund, your purchase, etc.*). By using the commissive *will*, the company and the drafter avoid imposing rules on the client and create a relationship based on trust. By this reciprocal promise to respect specific terms of the contract, the client gets the impression that he is playing a more active and conscious role in the transaction and that the company will do the same. In this case, the verb can occur both in the affirmative and in the negative form:

- (1) You agree that you will not use any third-party materials in a manner that would infringe or violate the rights of any other party*
- (2) You will not share an account with anyone else and will follow our rules and the law.*
- (3) You agree that you will pay for all products you purchase through the Stores*
- (4) We will communicate with you by e-mail or by posting notices on the website*
- (5) We will always try to search, screen or x-ray your baggage when you are present*
- (6) In the event that your credit card company or bank charges the deductible from you because of unauthorised transactions resulting from a reservation made on our website, we will pay you this deductible, up to an aggregate amount of EUR 50 (or the equivalent in your local currency).*

The second communicative function covered by *will* is the performative function: in this case, this verb occurs with verbs and/or phrasal groups belonging to the lexical field of law and arbitration (*govern, resolve, be null and void, be responsible, apply, constitute, etc.*). When in subordinate clauses, in the main clause the expression “*You and xxx agree that...*”, which reinforces the feeling of reciprocal commitment and trust of the parties involved in the transaction, often occurs:

*(7) You will be subject to the terms and conditions, policies and Conditions of Use in force at the time that you use the xxx Services.*

*(8)e. If you breach this Agreement, you will be liable to xxx, its directors, officers, employees, affiliates, agents, contractors, and licensors for any claim arising out of your breach.*

*(9) You and xxx agree that any judicial proceeding to resolve claims relating to these Terms or the Services will be brought in the federal or state courts of San Francisco County, California, subject to the mandatory arbitration provisions below.*

*(10) Any unlawful use or any of the aforementioned actions or behaviour will constitute a material infringement of our intellectual property rights (including copyright and database right).*

Moreover, *will* covers a dynamic function: it occurs in all those sentences describing technical and practical actions that the client performs or is able to perform. Therefore, dynamic verbs (*post, view, delete, send*) follow and words belonging to the lexical field of IT (*digital wallet, photo, image, map features, banning notice*) often occur:

(11) *A banning notice will also ask you not to buy a ticket or ask or allow anyone to do so for you.*

(12) *By deleting the account any and all of the User's data will be permanently removed.*

(13) *Your device will also send xxx other information, such as your name and nickname.*

(14) *You understand that your xxx telephone number will be displayed to the other party on the call (even if you have a blocked number) or your email address will be shown, depending on what setting you choose.*

In the permissive function, *will* usually occurs with the *service provider* or *seller* as subjects: it describes all the actions that the party is allowed to perform in accordance with the terms of the agreement:

(15) *xxx will use this information to match songs to those currently available on the xxx Store,*

(16) *When you opt in to the xxx feature, xxx will, from time to time, automatically collect information that can be used to identify media in your xxx library on this computer, such as your play history and playlists.*

However, it can also occur to describe which services the client may have right to:

(17) *Assistance dogs will be carried free save that we may make a charge if an adjacent seat has to be withdrawn from use to accommodate a passenger with a disability and accompanying assistance dog.*

(18) *Overpayments will be credited to the client at the end of the project to the payment source used to make the deposit.*

The epistemic *will* usually occurs in subordinate clauses to describe possible exceptions or event in which a specific provision might apply:

(19) *XXX DO NOT GUARANTEE THAT THE SERVICES WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS,*

(20) *The auto-renew feature of the subscription will be turned off if the Publisher increases the price of the subscription*

### Translation of *will* in the IT CC

In the IT\_CC the modal verb *will* was simply rendered with the *indicativo futuro* to convey the idea of futurity; all the functions described in the previous section were not directly and explicitly expressed. As a matter of fact, the use of *will* is not common in legal documents: its role and the communicative functions that it covers in this type of text has not been codified and analysed in depth. Further research and further data are necessary to confirm with certainty this new trend and its features.

Subordinate clauses containing *will* were rendered with the verb in the infinitive.

<i>(1EN) This information will be stored anonymously and will not be associated with your name or Account.</i>
--

<i>(1IT) Queste informazioni saranno memorizzate anonimamente e non saranno associate al Suo nome o al Suo Account.</i>
---

<i>(2EN) In no event will xxx be liable for making these changes.</i>
---



*(2IT) In nessun caso xxx sarà responsabile per questi cambiamenti.*

*(3EN) You agree that you will not use such proprietary information or materials in any way whatsoever except for use of the Service in compliance with this Agreement.*

*(3IT) Lei accetta di utilizzare tali informazioni coperte da privativa e materiali esclusivamente per l'utilizzo del Servizio nel rispetto delle disposizioni del presente Contratto*

## Must

*Must* is the third most used modal verb in the EN\_CC. This phenomenon is surprising: as you may remember, according to Williams (2001: 123), this verb represents only three cent of all the verbal constructions that can be found in prescriptive legal documents these days.

The presence of *must* is registered in all the analysed contracts, to the exception of contract C. It generally occurs in main clauses and it is usually preceded by human subjects (*you, the user, users, the provider*) and introduces dynamic verbs in the active form.

As regards its discursive functions, four different areas can be highlighted:

- Strong mandatory obligations: actions that are to be performed in accordance with the terms and conditions of the contract;
- Urgent necessities: actions that must be fulfilled within a specific amount of time in order to be valid;
- Necessary instructions: instructions that are to be carefully and precisely followed in order to be valid;

- Prohibitions: actions that are prohibited and may have serious legal consequences.

Occurrences of <i>must</i> in the EN_CC - Tot. 150 (0,2%)			
Main Clauses: 133 (88,6%)		Subordinate Clauses: 17 (11,33%)	
Strong obligations: 79 (52,66%)	Prohibitions: 23 (15,3%)	Necessary instructions: 23 (15,3%)	Urgent necessities: 5 (3,3%)

Table 8: Occurrences of *must* in the EN\_CC

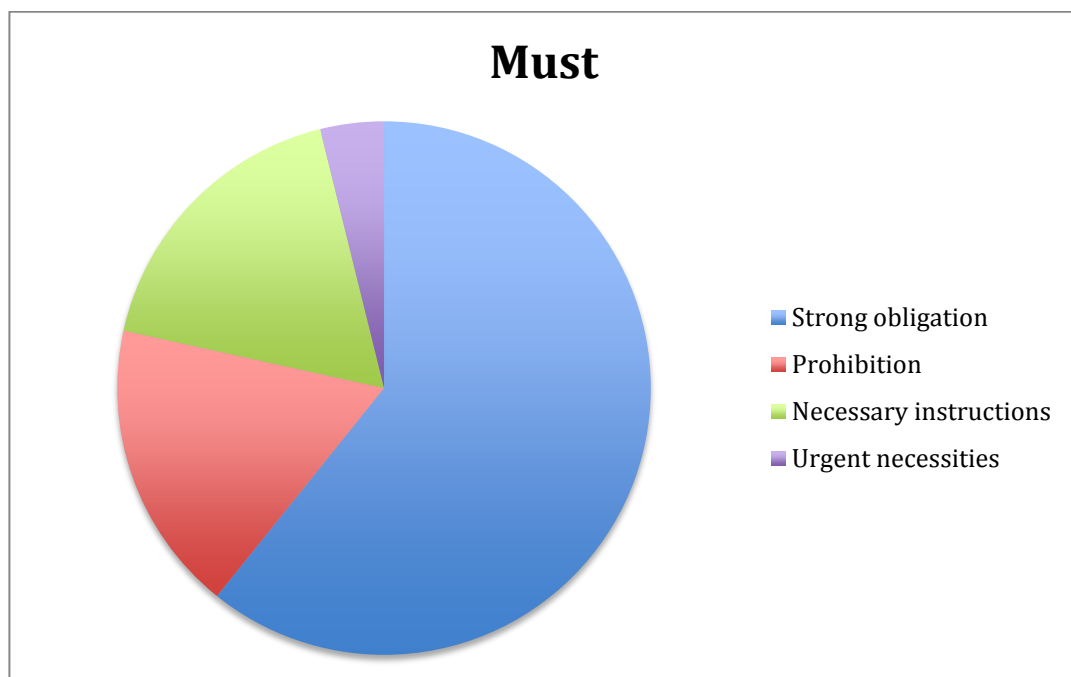


Figure 4: Discursive chart of the modal *must*

As regards *must* conveying strong obligations, it can be observed that it generally occurs with the subject *you* or other subjects that refer to the client (*users, the user, the client, users*); it generally describes legal actions that are to be performed; it can sometimes precede verbs in the passive voice.

- (1) You must pay any taxes, fees and charges imposed on us or on you by governments or other authorities, or by operators of airports.*
- (2) You must obey all laws, regulations and orders of any countries you fly from, enter or travel through or in which you are a transit passenger*
- (3) Our Regulations. When we carry you and your baggage you must obey our regulations.*
- (4) Moreover, the client must reimburse any expenses xxx incurs to settle the case.*
- (5) Certain rules must be complied with to ensure that the various media are utilised legally so that neither the user nor Wimdu can be made liable.*
- (6) Certain rules must be complied with to ensure that the various media are utilised legally so that neither the user nor Wimdu can be made liable.*

Moreover, *must* was used in several cases to stress the importance of time constraints and deadlines:

- (7) Actions for damages must be brought within two years. You will have no right to damages if an action is not brought within two years calculated from:*
- (8) The amount of the security deposit must be stipulated prior to the booking. It must also be clarified in advance when the amount must be paid (e.g. three months before arrival, in cash on arrival).*

*Must* was also used to highlight a series of actions that the client has to carefully follow if he/she wants to achieve specific purposes. It can occur both with verbs in the active or passive voice:

(9) *All complaints must be accompanied by the original documents, disputed translations, and a letter of explanation.*

(10) *All translation requests must be accompanied by an order including the price established by the parties.*

(11) *A termination must be made in writing, can be sent by e-mail or fax and is to be directed to the following addresses*

Finally, in the negative form *must* outlines actions that are not permitted in accordance with the terms and conditions of the contract or actions that may harm third parties. It occurs with the subject *you* and it can sometimes precedes verbs in the passive voice:

(12) *You must not carry the following in your baggage (whether as checked baggage or unchecked baggage)*

(13) *You must not use these items when we have told you that they are not allowed.*

(14) *The member name cannot be an e-mail or Internet address, must not violate third-party rights in particular naming or trademark rights and must not transgress the bounds of common decency.*

### Translation of *must* in the IT CC

In the English corpus, *must* covered four different communicative functions: it conveyed strong mandatory obligations, urgent necessities, necessary instructions, or prohibitions.

In the Italian translations all these functions were rendered with various expressions that have a clear mandatory function:

in most of the cases, the translators opted for the modal verb *dovere*, both in the present and future tense; however, other solutions were adopted, such as *essere tenuto*, *spettare*, *essere gli unici responsabili*. Interestingly, as in the English version, in the Italian documents the use of the verbs in the active voice prevails; no segment was transformed in the passive voice: this choice stresses the moral involvement of the client.

<i>(1EN) Note that you must send back the goods by following the instructions available on our return centre no later than 14 days from the day on which us you communicate your cancellation.</i>
<i>(1IT) Tieni presente che sei tenuto a restituirci i prodotti seguendo le istruzioni disponibili nel nostro Centro resi entro 14 giorni dal giorno in cui hai comunicato il recesso.</i>
<i>(2EN) You must inform us of your decision to cancel your order.</i>
<i>(2IT) Dovrai comunicare ad xxx, l'esercizio del diritto di recesso</i>
<i>(3EN) Dovrai comunicare ad xxx EU Sarl, 5 Rue Plaetis, L-2338 Lussemburgo, l'esercizio del diritto di recesso</i>
<i>(4EN) Dovrai comunicare ad xxx EU Sarl, 5 Rue Plaetis, L-2338 Lussemburgo, l'esercizio del diritto di recesso</i>
<i>(4IT) Per abbonarsi Lei deve aver registrato una carta di credito valida nell'archivio di xxx.</i>

To the contrary, as regards the prohibitive function, in the Italian corpus the passive voice or impersonal verbal forms were

preferred in accordance with the norms and uses of the formal register.

<i>(5EN) 8c) Items you must not carry in baggage</i>
<i>(5IT) 8c) Items you must not carry in baggage</i>
<i>(6EN) You must not carry the following in your baggage (whether as checked baggage or unchecked baggage)</i>
<i>(6IT) È fatto divieto di inserire nel suo bagaglio (sia registrato che non registrato):</i>

Shall

Occurrences of <i>shall</i> in the EN_CC – Tot: 145 (0,2%)				
Main Clauses: 135 (93,10%)			Subordinate clauses: 11 (7,6%)	
Performative	Permissive	Mandatory	Commissive	Forbidding
79	20	19	14	13
(54,5%)	(13,80%)	(13,10%)	(9,65%)	(9,0%)

Table 9: Occurrences of *shall* in the EN\_CC

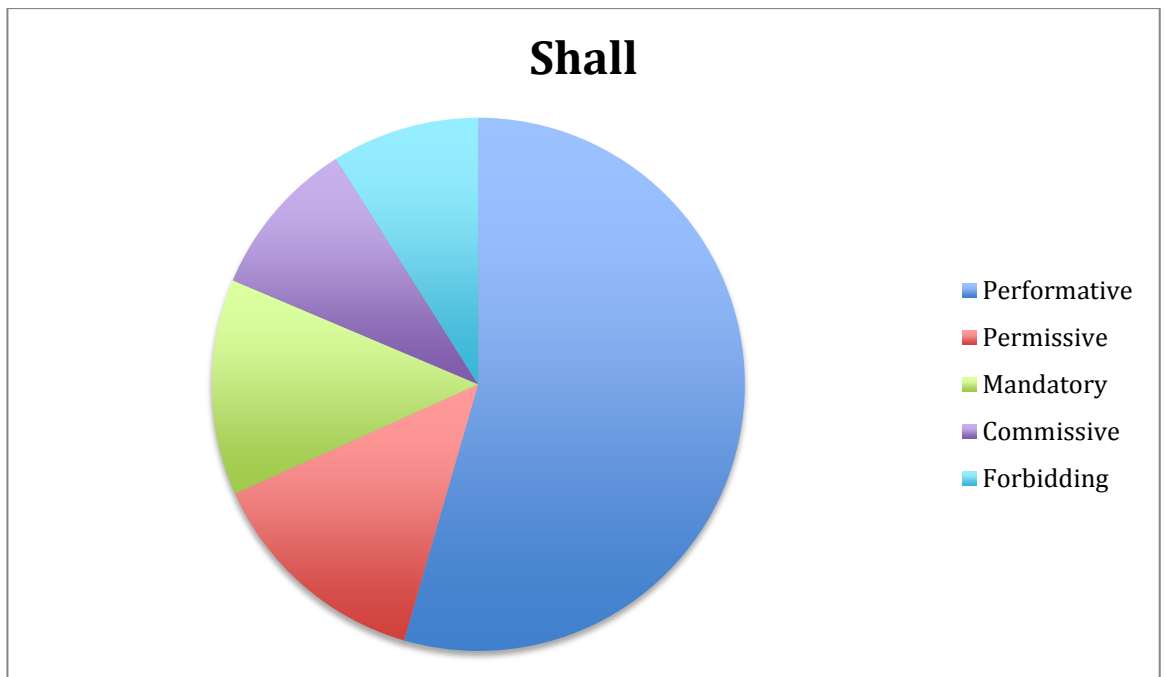


Figure 5: Discursive chart of the modal *shall*

Shall is the fourth most used modal verb detected in the Contract Corpus. It occurs both with human and inanimate subjects. It performs five main communicative functions that will be listed below in a decreasing order:

- Performative function;
- Permissive function;
- Mandatory function;
- Commissive function;
- Forbidding function.

As regards human subjects, it mainly occurs in sentences containing *you*, which usually designates the Client in this type of documents. From a syntactical point of view, *you+shall* often precedes the verb *to be*, performs mainly a permissive function and can be found in collocations such as *shall be able*, *shall be authorized*:

*(1) You shall be authorised to use xxx Products only for personal, non-commercial use.*

*(2) You shall be able to store xxx Products from up to five different Accounts at a time on compatible devices...*

It can also cover a mandatory function with verbs that refer to intentional acts performed by the Client, such as *pay, use, and cease*:

*(3)[...] you shall use xxx Products in compliance with the applicable usage rules*

*(4)[...] you shall cease all use of the Licensed Application and destroy all copies, full or partial, of the Licensed Application.*

In the negative form (in the form *shall not*) it always performs a forbidding function when followed by verbs that refer to an intentional action (*access, exploit, upload*):

*(5) You shall not upload commercial content on the Website*

*(6)[...] you shall not exploit the Service in any unauthorised way whatsoever*

A great number of occurrences as a performative verb were found in the affirmative form:

*(7) you shall remain bound by all other provisions hereof*

*(8) You shall be responsible for backing up your own system*

Several occurrences of *we+shall* were detected. In several contracts this pronoun was used as a synonym of "our company": in this case, *shall* performs mainly a commissive and a performative function. In the first case, the company makes a legally binding promise reinforced by this modal; all the verbs belong to the field of "payment and money":

*(9) we [...] shall make such advanced payment.*

*(10) we shall reimburse to you all payments received.*



In sentences 9 and 10, *shall* renders the action immediately and legally effective. It usually collocates with *be/not be liable, be responsible/not be responsible*), as well:

(11) *If xxx fails to comply with these general conditions, we shall be responsible for loss or damage you suffer that is a foreseeable result of our breach of these general conditions or our negligence.*

*Shall* covers a performative function also in the negative form when paired with other agents who represent the company:

(12) *in no case shall xxx, its directors, officers, employees, affiliates, agents, contractors, or licensors be liable for any loss or damage caused by xxx, its employees or agents [...]*

As regards inanimate subjects, few considerations can be made. First of all, when associated with them, *shall* always covers a performative functions: it is used to clearly and firmly set precise and indisputable conditions or to guarantee the validity of a promise. The questions that require such regulations are the following:

- Conditions of payment or reimbursement:

(13) *an advance payment shall not be less than*

(14) *a reimbursement shall be paid [...] up to an amount of 100% of the job delivered late*

- validity and application of the contract or parts of it:

(15) *the remainder of this License shall continue in full force and effect*

(16) *14.2 of these GTC shall apply with regards to the applicable law*

- liability of the company:

(17) *In no event shall xxx's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of two hundred and fifty dollars*

(18) *Our liability for proved damages sustained in the event of death, wounding or any other bodily injury by a passenger in the event of an accident shall not be subject to any financial limit.*

(19) *If you complete a special declaration of higher value at check-in and pay the applicable fee, our liability shall be limited to the higher declared value.*

(20) *Our liability shall be limited to the amount of the invoice.*

*Shall* generally occurs in main clauses. However, several examples of subordinate clauses containing this modal can be observed:

- relative clauses. All the functions previously described are performed.

(21) *... intrusion which shall be events of Force Majeure*

- after main clauses containing *agree, acknowledge, warrant*. In this case *shall* can be considered as an intensifier:

(22) *The person who uploaded the photo warrants that the photos/images shall not contain any viruses, Trojan horses or infected files and shall not contain any pornographic, illegal, obscene, insulting, objectionable or inappropriate material and does not infringe any third party (intellectual property right, copyright or privacy) rights.*

(23) *You agree that the laws of the State of California, U.S.A., excluding its conflict of laws rules, shall exclusively govern any dispute relating to this Agreement and/or the Services.*

(24) *You agree that you shall immediately notify xxx in writing of any objectionable content appearing on the Website.*

(25) *You agree that any use by you of such features, including any materials submitted by you, shall be your sole responsibility, shall not infringe or violate the rights of any other party or violate any laws, contribute to or encourage infringing or otherwise unlawful conduct, or otherwise be obscene.*

(26) *You acknowledge and agree that you shall have no claim against xxx or any other party should any User Generated Content created, posted or sent by you be used in the above sense by xxx or such other party.*

Geographically speaking, it seems that the use of *shall* is rapidly decreasing both in the US and in the EU. The drafters of the contracts A, G and H completely erased it.

### Translation of *shall* in the IT CC

Given the great variety of functions covered by the modal *shall*, the translators showed their creativity and provided numerous solutions. Generally speaking, the translators used mainly the indicative mood, both in the *indicativo presente*, the equivalent of the Simple Present, and in the *indicativo futuro*, a choice that might be explained by the fact *shall* includes an idea of *futurity*

(see Section 1.5.1 on *Shall*). It is also interesting to underline that for each function several translations were found and that they would vary on the basis of the legal strength of the provision.

As regards the performative function, the use of the present tense prevails; the future is preferred in provisions describing conditions of payment or reimbursement or the validity of the contract; and the use of the passive voice typical of legal language is maintained.

<i>(1EN) The confirmation of receipt of the order shall not constitute acceptance of the client's offer.</i>
<i>(1IT) La conferma della ricezione dell'ordine non costituisce accettazione dell'offerta del cliente.</i>
<i>(2IT) The Court of Rome shall have jurisdiction for all disputes.</i>
<i>(2IT) Il foro competente è quello di Roma.</i>
<i>(3EN) Notices shall become effective immediately.</i>
<i>(3IT) Le comunicazioni avranno effetto immediato.</i>
<i>(4EN) the English language version to the extent permitted by law shall apply, prevail and be conclusive.</i>
<i>(4IT) il testo inglese prevarrà e sarà la versione conclusiva.</i>
<i>(5EN) these terms and conditions and the provision of our services shall be governed by and construed in accordance with Dutch law</i>
<i>(5IT) i presenti termini e condizioni, nonché la fornitura dei nostri servizi, saranno regolati e interpretati in conformità alla legge olandese</i>

When *shall* covered a commissive function, the translators opted mainly for the future tense and preferred the passive voice in order to maintain a more formal register. However, several instances where the subject *we* was kept were found, as well. Finally, it is interesting to highlight a segment where the translator switched from the passive voice to the active voice using the subject *we*: we have the impression of a more transparent and trustworthy contract between the parties and a stronger involvement of the company in the economic transaction.

<i>(6EN) xxx shall use reasonable efforts to protect information submitted by you</i>
<i>(6IT) xxx effettuerà ogni ragionevole sforzo per proteggere le informazioni da Lei fornite</i>
<i>(7EN) In such event, such invalid provision shall nonetheless be enforced to the fullest extent permitted by applicable law,</i>
<i>(7IT) In tal caso <u>provvederemo</u> a sostituire la suddetta clausola con una clausola che sia valida e vincolante, che abbia un effetto quanto più possibile simile a quella sostituita</i>
<i>(8EN) The English version is available on our website (by selecting the English language) or shall be sent to you upon your written request</i>
<i>(8IT) Il testo inglese è disponibile sul nostro sito web (selezionando la lingua inglese) o verrà inviato previa richiesta scritta.</i>

When *shall* performed a *forbidding* function, translators used different solutions, which range in strength (from the weakest *non potrà*, to the strongest and more peremptory *non dovrà*).

<i>(9EN) no purchase or obtaining of any other product shall be construed to represent or guarantee you access to the Service.</i>
<i>(9IT) né l'acquisto o l'ottenimento di ogni altro prodotto potranno rappresentare o garantirle l'accesso al Servizio</i>
<i>(10EN) you shall not exploit the Service in any unauthorised way whatsoever</i>
<i>(10IT) non potrà sfruttare il Servizio in modo non autorizzato</i>
<i>(11EN) You shall not be entitled to burn video xxx Products or tone xxx Products other than for backup purposes</i>
<i>(11IT) Lei non è autorizzato a masterizzare Prodotti xxx video o Prodotti xxx suono se non a fini di backup</i>
<i>(12EN) You shall not access or attempt to access an Account that you are not authorised to access.</i>
<i>(12IT) Lei non dovrà accedere o tentare di accedere ad un Account al cui accesso non sia autorizzato.</i>

When *shall* covered a permissive function, many solutions were adopted: most of them included the legal term *diritto*, i.e. *the right* (*ha il diritto, avrà il diritto, si riserva il diritto*); only a couple of instances presented the permissive modal verb *potere* and some other equivalent expressions, such as *è autorizzato, ha la possibilità*.

<i>(13EN) The client shall be entitled to request a refund of funds deposited to the xxx Wallet in the following cases</i>
<i>(13IT) Il cliente ha il diritto di richiedere un rimborso dei fondi depositati sul xxx-Wallet nei seguenti casi</i>
<i>(14EN) Defects present in one part of the translation shall not be grounds, for any reason whatsoever, for questioning the entire translation.</i>
<i>(14IT) In nessun caso i difetti presenti in una parte della traduzione potranno rimettere in questione l'intero lavoro.</i>
<i>(15EN) You shall be able to store xxx Store Products from up to five different Accounts</i>
<i>(15IT) Lei è autorizzato a memorizzare i Prodotti xxx Store da un numero massimo di cinque Account</i>

When *shall* performed a mandatory function, translators mainly opted for the mandatory modal verb *dovere*. However, other similar expressions were adopted, such as *essere tenuti a, sarà sua responsabilità*. Only one instance was translated with the impersonal expression *è fatto obbligo*, which contains the legal term *obbligo* and has, therefore, a stronger legal value:

<i>(16EN) Upon the termination of this License, you shall cease all use of the xxx Software</i>
<i>(17IT) In seguito alla conclusione di questa Licenza, è fatto obbligo di interrompere l'utilizzo del Software xxx.</i>
<i>(18EN) You shall be responsible for backing up your own system, including any xxx Products purchased from the Service.</i>

*(19IT) Sara Sua responsabilita effettuare back-up del Suo sistema, ivi inclusi i Prodotti xxx acquistati dal Servizio*

*(20EN) the user shall ensure that the third party has consented to the receipt of the information.*

*(20IT) lo stesso utente dovrà dapprima assicurarsi che il soggetto terzo in questione sia concorde al ricevimento della relativa notificazione.*

Finally when *shall* appeared in subordinate clauses, the translators usually decided to omit it (therefore, the communicative function was not directly expressed) and simply used a verb in the subjunctive mood:

*(21EN) You agree that any use by you of such features, including any materials submitted by you, shall be your sole responsibility, shall not infringe or violate the rights of any other party or violate any laws, contribute to or encourage infringing or otherwise unlawful conduct, or otherwise be obscene*

*(21IT) Lei accetta che qualsiasi utilizzo da parte Sua di tali caratteristiche, incluso qualsiasi materiale da Lei inviato avvenga sotto la Sua unica responsabilità, non costituisca violazione dei diritti di terzi o di qualsiasi norma di legge, non contribuisca o incoraggi condotte illegali, o risulti altrimenti osceno.*



## Can

*Can* is the fifth most used modal verb in the Contract Corpus: in total, 142 occurrences are registered and it is homogeneously distributed in all the analysed contracts. It is generally used in the active form; it collocates with human subjects (*you, we, users, visitors, contractors*) and usually occurs in main clauses.

In the corpus *can* performs four different communicative functions:

- **Dynamic:** it states which actions the subject has the opportunity to perform in accordance with the terms of the agreement;
- **Permissive:** it outlines which actions the subject is legally allowed to perform in accordance with the terms of the agreement;
- **Forbidding:** it states which action are not legally permitted in accordance with the terms of the agreement;
- **Epistemic:** it outlines any possible condition in which a provision may apply.

Occurrences of <i>can</i> in the EN_CC Tot. 142 (0,2%)			
Main Clauses: 100 (70,4%)		Subordinate Clauses: 42 (29,6%)	
Permissive: 79 (55,6%)	Dynamic: 52 (36,6%)	Epistemic: 6 (4,2%)	Forbidding: 5 (3,6%)

Table 10: Occurrences of *can* in the EN\_CC

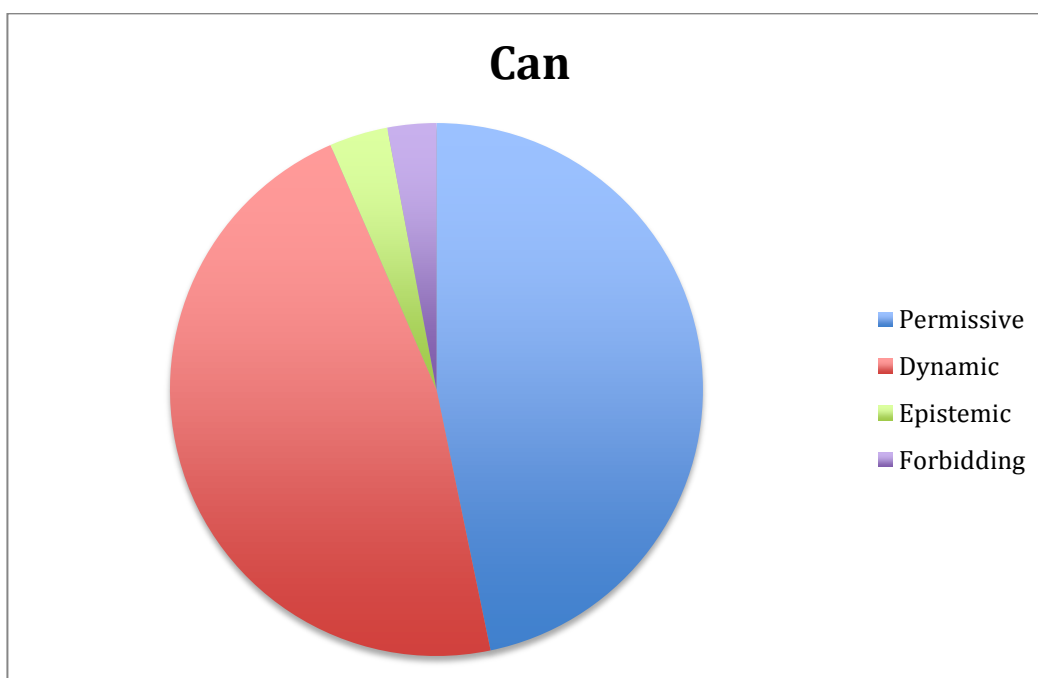


Figure 6: Discursive chart of the modal *can*

When performing a permissive function, *can* occurs both in main and subordinate clauses:

- (1) *All products from the xxx sites can be returned within 30 days of receipt of the products to xxx if the products are complete and are in an unused and undamaged condition.*
- (2) *the total amount you can recover from us and our agents, servants, employees and representatives will not be more than the total amount of our own liability, if any.*

It collocates mainly with *you*, is followed by dynamic verbs and describes the client's rights:

- (3) *Without affecting your right of cancellation set out in section 2 below, you can cancel your order for a product at no cost any time before we send the Dispatch Confirmation E-mail relating to that product.*

*(4) You can revoke your opt-in choice at any time by turning off the xxx feature from the Store menu in xxx on your computer.*

Several occurrences with verbs in the passive voice are found, as well:

*(5) Some Products can only be downloaded once*

*(6) xxx Store Products can be updated through the xxx Store only.*

Several instances were also found with the subject *we*, which defines the company or the company and the client:

*(7) We can change your seat at any time, even after you have boarded the aircraft, as we may need to do this for operational, safety or security reasons.*

*(8) We can each end this Agreement anytime we want.*

When *can* covers a dynamic function, it is once again preceded by *you* and introduces dynamic verbs:

*(9) You can access and update much of the information you have provided us with, including your account settings, in the Your Account area of the website.*

*(10) you can choose to allow your computer or xxx TV to remember your password to remain authenticated.*

*(11) You can turn off the ability to make xxx Product purchases or change settings to require a password for every transaction by adjusting the settings on your computer, xxx Device, or xxx TV.*

*(12) You can control which applications are permitted to use cellular data and view an estimate of how much data such applications have consumed under Cellular Data Settings.*

*Can* performs a forbidding function in five sentences. They are main clauses; and the field of discourse is liability.

(13) *Requirements of law, a court, or an official authority mean that the use of the platform can no longer be offered in this form;*

(14) *After terminating a contract, the user no longer has access to his account, resp. his profile, and can no longer view information, messages, files or other contents posted on the platform.*

(15) *Certain rules must be complied with to ensure that the various media are utilised legally so that neither the user nor Wimdu can be made liable.*

(16) *Although we will use reasonable skill and care in performing our services we will not verify if, and cannot guarantee that, all information is accurate, complete or correct, nor can we be held responsible for any errors*

(17) *There can be no claim to availability.*

Finally, *can* has also an epistemic value. In this case, it mainly occurs in subordinate clauses (relative clauses) that usually have an inanimate subject:

(18) *As to the latter: we run partly automated checks on all purchases to filter out unusual or suspect transactions, or transactions which can be identified as susceptible to fraud.*

(19) *"ISBN-10" stands for International Standard Book Number and is a ten (10) digit identifier that can be found on some book listings under Product Details.*

## Translation of *can* in the IT CC

In the IT\_CC the modal verb *can* is mainly rendered with the equivalent Italian modal verb *potere*. When it performs a permissive function, *potere* occurs in the indicative mood (in this case, the present and the future tenses are both used) or with other equivalent expressions: when the subject is *the user, you* or any other noun designing the client or the service provider, expressions, such as *avere la possibilità*, can be found; when the verb is in the passive voice and the subject is an inanimate subject other expressions, such as *essere consentito/possibile*, can be found:

<i>(1EN) The user can revoke their consent at any time without any costs.</i>
---

<i>(1IT) L'utente potrà revocare il consenso gratuitamente in qualsiasi momento.</i>
--

<i>(2EN) Users who register for the Community can publish self-generated content, as well as actively participate in the platform's development via the administrative functions.</i>
---

<i>(2IT) Gli utenti che si registrano alla Community possono pubblicare contenuti personali</i>
---

<i>(3EN) Both parties to the agreement can agree to withdraw a review that has already been issued</i>
--

<i>(3IT) Se entrambe le parti sono d'accordo sarà possibile eliminare una recensione che è già stata inserita.</i>
--

<i>(4EN) One of the options shown under Cancellation Policies can be agreed.</i>
--

*(4IT) Sussiste la possibilità di scegliere una delle opzioni di storno presenti nelle politiche di cancellazione*

In the case of negative clauses concerning the liability of the service provider, the modal is avoided or maintained. The translator opted for the verbs in the indicative mood in the present tense:

*(5EN) Beyond what we say on that page or otherwise on the website, we cannot be more specific about availability*

*(5IT) Oltre alle informazioni fornite in tale pagina o altrove sul sito, non siamo in grado di dare indicazioni più precise in merito alla disponibilità dei prodotti.*

*(6EN) nor can we be held responsible for any errors*

*(6IT) né possiamo essere ritenuti responsabili per qualsiasi errore*

## Should

*Should* is one of the most used modal verbs found in the Contract Corpus: in fact, 45 instances were registered; it mainly occurs in contracts written in Anglo-Saxon countries; however, several instances were also found in contracts written in the EU.

As regards functions, three main fields of application were found: in the affirmative form *should* is used – as we might expect – to write down general guidelines or moral and good sense principles; in the negative form it is used to express a warning; and, finally, it can outline a hypothetical situation in the

protasis of conditional clauses in the construction *should + subject + verb*.

Occurrences of <i>should</i> in the EN_CC - Tot. 45 (0,06%)		
Main Clauses 29 (64,4%)		Should + S + V in protasis 16 (35,6%)
Affirmative form (Guidelines/ethical principles)	Negative Form (Warnings)	
21 (46,6%)	8 (17,8%)	

**Table 11: Occurrences of *should* in the EN\_CC**

In the first case, *should* mainly occurs in main clauses and in the active voice. The subjects are usually human agents: the most frequent is *you* (18 instances); the other subject is *parents*:

(1) *You should take all necessary steps to ensure that the password is kept confidential and secure and should inform us immediately if you have any reason to believe that your password has become known to anyone else, or if the password is being, or is likely to be used in an unauthorised manner.*

(2) *Parents should monitor their children's use of the products offered through the Stores for signs of symptoms.*

Moreover, two instances in the passive voice were found:

(3) *The guest review form should be regarded as a survey and does not include any (further commercial) offers, invitations or incentives whatsoever.*

(4) *We respond to notices of alleged copyright infringement if they comply with the law, and such notices should be reported using our Copyright Policy.*

Two instances of *should* providing guidelines in subordinate clauses were found, as well:

*(5) We will tell you if you need to reconfirm and how and where you should do this.*

*(6) If a court with authority over this Agreement finds any part of it not enforceable, you and us agree that the court should modify the terms to make that part enforceable while still achieving its intent.*

In sentences in the negative form, it can be observed that *should* expresses a stronger warning when it follows a human subject:

*(7) If you prefer that we do not collect and use information from your xxx library in this manner, you should not enable the xxx feature.*

If the client or user does not follow this instruction, his/her privacy will be surely violated.

*(8) The user should not divulge this data to the use by third parties.*

If the client divulges this data, he/she may incur legal consequences because he/she is breaching this provision of the contract. In both cases, the consequences might be serious.

By contrast, when it is used in the passive voice and is preceded by inanimate subjects, it simply provides good advice: users should follow that piece of advice for their own good.

*(9) Please note that unless otherwise stated on the website, delivery estimates are just that. They are not guaranteed delivery times and should not be relied upon as such.*

*(10) Financial information displayed by any External Service is for general informational purposes only and should not be relied on as investment advice.*



Finally, when found in protasis, *should* does not perform any specific discursive function; it is simply used in a construction typical of formal English. In this corpus, it mainly occurs with human subjects and describes possible situations where a provision may apply:

(11) *External payment service provider, additional contract terms. XXX is entitled to employ external contractors for the handling of the payment transaction, and, should the client decide to make a payment via the xxx safePay service which is available on the website, to manage the project amount paid by the user in an escrow account.*

(12) *Should the client confirmation be missing, and should the client not object to the termination query of the contractor by pressing the button "Decline", the project sum will be transferred to the personal wallet of the contractor...*

### Translation of *should* in the IT\_CC

In the IT\_CC, when the modal verb *should* is used in main clauses, it is generally rendered with the corresponding Italian modal verb *dovere*. When it is used to give good sense advice that has no legal consequences, it is rendered with the verb *dovere* in the conditional mood.

*(1EN) you should consult with a financial or securities professional who is legally qualified to give financial or securities advice*

*(1IT) Lei dovrebbe consultare un consulente finanziario o esperto in titoli azionari*

*(2EN) If you are 13 or older but under the age of 18, you should review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand it.*

*(2IT) Lei dovrebbe rivedere queste condizioni con l'assistenza di un genitore o un tutore per essere sicuri che sia Lei sia il Suo genitore o tutore abbiate compreso le presenti condizioni.*

By contrast, when there might be legal consequences, the translators opted for the same modal verb in the indicative mood or for other equivalent expressions that have a more peremptory tone:

*(3EN) The user should not divulge this data to the use by third parties.*

*(3IT) l'utente non deve divulgare a terzi tali informazioni*

*(4EN) You should check the reconfirmation requirements of any other carriers involved in your journey*

*(4IT) E' tenuto a controllare i requisiti di riconferma richiesti da ogni altro vettore interessato nel suo viaggio*

*(5EN) You should take all necessary steps to ensure that the password is kept confidential*

*(5IT) Ti impegni a prendere tutte le precauzioni necessarie per garantire che la tua password rimanga sicura e riservata.*

When *should* occurs in the subordinate clauses, it is rendered with verbs in the subjunctive mood. The shift in register is rendered with introductory phrases such as “*nel caso in cui*”, “*qualora*”, which are typical of official and more formal types of documents in Italian:

*(6EN) Should another user request a formation of contract in breach of the regulation of the previous paragraph*

*(6IT) Nel caso in cui un utente richiedesse che un contratto venga concluso violando le regole previste nel paragrafo precedente*

*(7EN) should the client decide to make a payment via the xxx service*

*(7IT) qualora il cliente decida di effettuare un pagamento mediante il servizio xxx disponibile sul sito*

Cannot

*Cannot* is the seventh most used modal verb of the Contract Corpus: it was found in almost all the documents analysed, to the exception of contracts G and I. It generally precedes verbs in the passive voice: in this case subjects are inanimate objects.

As regards the communicative functions covered, it mainly performs a dynamic function: it expresses the inability to perform a specific action. In this case, it occurs before verbs both

in the active and in the passive voice and can be found both in main clauses and in subordinate clauses. In main clauses it is used mainly in the active voice, it informs the clients about the actions that the company is able to perform:

*(1)xxx cannot assure that harmful, inaccurate, deceptive, offensive, threatening, defamatory, unlawful or otherwise objectionable User Generated Content will not appear on the Website.*

*(2)we or our authorised agents cannot book you on another flight which you are prepared to accept;*

In subordinate clauses, it generally appears in hypothetical clauses to delimit and describe the situation/s in which a certain rule may or may not apply:

*(3)If the court cannot do that, you and us agree to ask the court to remove that unenforceable part and still enforce the rest of this Agreement.*

*(4)This condition does not affect your legal right to have goods sent or services provided within a reasonable time or to receive a refund if goods or services ordered cannot be supplied within a reasonable time owing to a cause beyond our reasonable control.*

Moreover, *cannot* may also perform a forbidding or prohibitive function: it is usually preceded by *you*, but it can be found with inanimate subjects and verbs in the passive voice:

*(5)you are allowed to try garments or shoes on for fit, unless we have indicated otherwise - but you cannot wear them)*

*(6)You cannot transfer your ticket.*

*(7)A user account cannot be transferred*

*(8)Receivables cannot be transferred to third parties*

Finally, a third communicative function was found, the performative function: the drafter states which events or actions are not valid, i.e. legally acceptable in accordance with the agreement. In this case, the subject is usually an inanimate object and the verb is in the passive voice:

(9) *Some xxx Products, including but not limited to Film rentals, may be downloaded only once and cannot be replaced if lost for any reason*

(10) *Gift Certificates, xxx Cards, Content Codes, and Allowances, in addition to unused balances, are not redeemable for cash and cannot be returned for a cash refund.*

(11) *we agree that changes cannot be retroactive.*

An example with *you* as subject was found, as well:

(12) *you cannot derive any rights from the translated version*

### Translation of *cannot* in the IT\_CC

In the IT\_CC the modal verb *cannot* is generally rendered with the Italian equivalent modal verb *potere*. Only few instances containing other translations were found when *cannot* performs a performative or a forbidding function. In the first case, the modal verb is eliminated to stress the fact that the following legal imposition which cannot be changed:

(1EN) <i>changes cannot be retroactive</i>
(1IT) <i>questi cambiamenti non hanno efficacia retroattiva</i>

In the second case, the Italian translator probably preferred using the passive voice, when imposing a prohibition, in order to use a less peremptory and threatening tone:

<i>(2EN) but you cannot wear them</i>
---------------------------------------

<i>(2IT) ma non è consentito indossarli</i>
---

Would

This modal verb occurs 18 times in the EN\_CC. As observed for other verbal constructions, it usually appears in contracts written in Anglo-Saxon countries where drafters are probably more conservative.

It is generally used in subordinate clauses. However, at least one instance in a main clause was registered (in contract A). In this case, *would* was used as a form of politeness. The company kindly informs its clients about possible inspections by customs officers:

*(1)Your privacy is important to us and we would like our international customers to be aware that cross-border deliveries are subject to opening and inspection by customs authorities.*

When in subordinate clauses, it is usually used, as we would expect, to outline hypothetical situations. In this case, it occurs in sentences introduced by *if*, *to the extent that* and also in relative clauses:

*(2)If carrying you would break government laws, regulations, or orders*

*(3)To the extent that you would (wholly or partly) use or combine our (translated) content (including guest reviews) or would otherwise own any intellectual property rights in the website or any (translated) content or guest reviews,*

*(4)you may have legal rights in your country of residence which would prohibit the following limitations from applying to you*

Several instances of *would* are found in final clauses, as well. Even in this case, the function of the verb is to introduce a hypothetical situation, but it also conveys the idea that the actor/subject might commit a criminal or illegal action with *intent*:<sup>15</sup>

*(5)You agree that you will not use any third-party materials in a manner that would infringe or violate the rights of any other party*

*(6)you sign an agreement to repay us any costs and losses, up to the value of the original ticket, which we or another airline would suffer as a result of the ticket being misused*

*(7)You must not take any item into the aircraft cabin if we tell you that we reasonably believe that its presence there would*

---

<sup>15</sup> INTENT - in criminal law and the law of evidence. Purpose; formulated design ; a resolve to do or forbear a particular act; aim; determination. In its literal sense, the stretching of the mind or will towards a particular object. . "Intent" expresses mental action at its most advanced point, or as it actually accompanies an outward, corporal act which has been determined on- Intent shows the presence of will in the act which consummates a crime. It is 'the exercise of intelligent will, the mind being fully aware of the nature and consequences of the act which is about (o be done, and with such knowledge, and with full liberty of action, willing and electing to do it. Burrill, Circ. Ev. 284. and notes. (Black's Law Dictionary: <http://thelawdictionary.org/intent/>)

*affect the safety and security of the aircraft or any person in it.*

Finally, an instance where *would* is used to impose a restriction was found in contract D:

*(8) We will only carry animals if it would be legal for them to arrive at your place of destination or transit point.*

### Translation of *would* in the IT CC

When found in hypothetical clauses, the modal verb *would* is rendered with verbs in the indicative or subjunctive mood. The epistemic function is therefore lost and the Italian sentences sound more peremptory:

<i>(1EN) If carrying you would break government laws, regulations, or orders.</i>
---

<i>(1IT) Se il trasportarla costituisce violazione di leggi statali, regolamenti o provvedimenti</i>
--

<i>(2EN) we reasonably believe that its presence there would affect the safety and security of the aircraft or any person in it.</i>
--

<i>(2IT) la cui presenza possa compromettere la sicurezza dell'aeromobile</i>
---

<i>(3EN) in any manner that would infringe or violate this Agreement or the rights of any other party</i>
---

<i>(3IT) in qualsiasi maniera che possa costituire una violazione di questo Contratto o dei diritti di qualsiasi altro terzo</i>
--



In the sentence where *would* is used to impose a restriction, the Italian translator opted for this solution:

*(4EN) if it would be legal for them to arrive at your place of destination or transit point.*

*(4IT) accettati a norma di legge nel luogo di destinazione o nel punto di transito*

The expression “*it would be legal*” is rendered with the nominal phrase “*a norma di legge*”: the sentence becomes shorter and more comprehensible in the Italian version and even the register sounds more formal.

Finally, as regards the only instance of *would* in main clause, in the Italian version this segment is translated only partially: the subordinate containing *would* was changed and no reference to inspections by custom authority was made:

*(5EN) Your privacy is important to us and we would like our international customers to be aware that cross-border deliveries are subject to opening and inspection by customs authorities*

*(5IT) La tua privacy è importante per noi e sappiamo che tieni molto al modo in cui le informazioni relative al tuo ordine sono utilizzate e condivise.*

Could

Only 17 occurrences of *could* were registered in the Contract Corpus and only one instance of *could* was found in a main clause where it performed an epistemic function:

*(1) Messages you may receive containing marketing could include an offer for something that might interest you.  
(Contract A)*

In all the other cases, *could* is found in subordinate clauses where it performs different functions. It mainly has an epistemic function introducing or describing possible situations; and it occurs especially in relative clauses:

*(2) The user guarantees furthermore that the contents are unencumbered by third party rights, which could exclude the granting of rights and their use as covered by the contract.*

*(3) IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE CONTENT, DATA OR INFORMATION PROVIDED BY THE xxx SOFTWARE OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE (capital letters in the original text)*

Then, in the past tense and in subordinate clauses that have a human agent as a subject, it usually performs a dynamic function:

*(4) we could not deliver to the address provided by you*

*(5) If you are prevented from travelling within the validity period of a ticket because we could not confirm your reservation at the time you asked for it*

*(6)the consequences of which you could not have avoided even if you had taken all due care.*

Finally, in contract A *could* is used after the introductory collocation *You accepted that*. In this case, it corresponds to *may* and performs both a permissive and forbidding function:

*(7)you accepted when you placed your order that we could start to deliver it, and that you could not cancel it once delivery had started.*

### Translation of *could* in the IT CC

In the IT\_CC the modal verb *could* is mainly rendered with the equivalent modal verb *potere* in the conditional mood: this solution is commonly used to cover an epistemic function in Italian. In some cases, the translators decided to translate the subordinate clauses with a noun phrase in order to simplify the syntax in Italian and facilitate the comprehension:

*(1EN) The user guarantees furthermore that the contents are unencumbered by third party rights, which could exclude the granting of rights and their use as covered by the contract*

*(1IT) Inoltre l'utente garantisce che i contenuti non contengono diritti di terzi che potrebbero opporsi alla cessione dei diritti e utilizzo facenti parte del contratto.*

*(2EN) we could not deliver to the address provided by you;*

*(2IT) in caso di impossibilità di effettuare la consegna all'indirizzo fornito dall'utente*

In the example found in contract A, the mandatory and forbidding *could* were rendered with two noun phrases. This solution is more imposing and less explicit: the acceptance of the service implies the fact that the client allows the provider to perform the delivery service and he renounces to his/her right to cancel the order:

*(3EN) if xxx has fully performed it and you accepted when you placed your order that we could start to deliver it, and that you could not cancel it once delivery had started*

*(3IT) se hai espressamente consentito all'esecuzione del servizio da parte nostra accettando la perdita del diritto di recesso a seguito della piena esecuzione del contratto.*

Need to

The presence of the semi-modal *need to* was recorded in 13 sentences. Eight occurrences were observed in US contracts, four occurrences in one UK contract and only one in a non-Anglo-Saxon country. Therefore, we might infer that *need to* is a stylistic feature of contracts written in Anglo-Saxon countries.

*Need to* appears mainly in main clauses preceded by the subject *you* (7 occurrences). In this case, it is used to give instructions. The same function is covered when it is preceded by two other modals, *will* and *may*:

*(1)If you have elected to share your library from multiple computers, you need to turn off the xxx feature from each computer.*

*(2)Once you have authenticated your Account using your xxx ID and password, you will not need to authenticate again for fifteen minutes on your computer or xxx Device.*

*(3)If you paid via bank transfer you need to give this information to Customer Service when you initiate the return so that we can refund the money directly to your account.*

*(4)[...] you may need to set your browser to accept both (functional) cookies and pop-ups in order to be able to use all the functionalities of the Website*

Other possible subjects found were *we, contractors* and the company name. The occurrences with *we* were found in a single document and performed a necessity function, i.e. the company warned its clients:

*(5)We can change your seat at any time, even after you have boarded the aircraft, as we may need to do this for operational, safety or security reasons.*

*(6)We may need to change the scheduled departure time of your flight*

An interesting example can be found in the following sentence:

*(7)In order to submit bids for projects, the contractors (depending on the respective membership) need to have xxx Credits.*

In this case, *need to* covers a mandatory function. In subordinate clauses, *need to* is used in hypothetical clauses to express a necessity or a necessary condition:

*(8)If you need to change any aspect of your transportation because of events beyond your control, ...*

### Translation of *need to* in the IT CC

In this case the translator used different strategies to express all the communicative functions performed by *need to*. Generally speaking, in most of the cases the translators opted for a formal register: they used impersonal verbs or the Italian formal form of address Lei. When *need to* expressed instructions with *you*, the translators adopted impersonal verbal phrases, such as *avere bisogno*, *sarà necessario*, and chose to use the future tense:

*(1EN) you will not need to authenticate again for fifteen minutes on your computer or xxx Device*

*(1IT) non avrà bisogno di effettuare nuovamente l'autenticazione per quindici minuti sul Suo computer o dispositivo xxx*

*(2EN) you need to turn off the Genius feature from each computer*

*(2IT) sarà necessario disabilitare il programma Genius su ciascuno di tali computer.*

In the occurrence with *may*, given the presence of a second modal verb, the translator decided to transform the sentence in:

*(3EN) You need an e-mail address to place an order, and you may need to set your browser to accept both (functional) cookies and pop-ups in order to be able to use all the functionalities of the Website*

*(3IT) Per trasmettere un ordine è necessario disporre di un indirizzo email e potrebbe essere indispensabile impostare il proprio browser affinché accetti i cookies (funzionali) e i pop-up per potere accedere a tutte le funzionalità del Sito Web*

Therefore, he attributed an epistemic function to *may* and rendered it with the conditional mood.

*Need* as a warning with *we* was rendered with subordinate clauses with an impersonal verb or with noun phrases in order to simplify the syntax in Italian and facilitate the comprehension:

*(4) in caso ciò sia necessario per ragioni operative, di incolumità e sicurezza.*

*(5) La informeremo circa la necessità della riconferma e su come e dove effettuarla.*

When *need* was used to perform a mandatory function, the translator used a verbal phrase which has the same communicative and imposing strength in Italian, as well:

*(6EN) the contractors (depending on the respective membership) need to have xxx Credits.*

*(6IT) i fornitori (in funzione della loro iscrizione) sono tenuti a possedere crediti xxx.*

In hypothetical clauses expressing a necessary condition, the translator used an equivalent Italian expression.

*(7EN) If you need to change any aspect of your transportation because of events beyond your control,*

*(7IT) Se ha necessità di cambiare qualche aspetto del suo trasporto a causa di eventi di forza maggiore,*

It is important to underline that in most of the cases, the translators used expressions or phrases, which convey the idea of necessity, even if sometimes it was not the case.

### Might

As we could expect, the presence of *might* is almost irrelevant: only 8 occurrences were registered (and exclusively in contracts written in Anglo-Saxon countries). It mainly occurs in relative clauses and has no legal value: it is used as an epistemic modal to express that an event or situation has little possibility to take place:

*(1)cover instances where you might have to cancel your ticket.*

*(2)for any criminal offences you might have committed.*

Only two instances (one is a repetition) of *might* in main clauses were found and exclusively in contract A, but once again it performs an epistemic function:

*(3)If these laws apply to you, some or all of the above limitations may not apply to you and you might have additional rights.*



### Translation of *might* in the IT CC

In this case, the translator opted for the subjunctive mood which is the most suitable verbal mood to cover the epistemic function performed by *might* in the English corpus:

<i>(1EN) to cover instances where you might have to cancel your ticket.</i>
---

<i>(1IT) coprire le eventualità in cui si veda costretto a cancellare il biglietto.</i>
---

<i>(2EN) for any criminal offences you might have committed.</i>
--

<i>(2IT) per qualsiasi offesa penale che lei abbia commesso.</i>
--

Be to

### Presence in the EN CC

As we may expect, the quasi-modal *be to*, which usually performs a mandatory function, occurs only six times. However, it is interesting to highlight that it appears four times in main clauses; the subject is always an inanimate object and the drafters used it to provide the instructions to obtain a specific goal:

*(1) A termination must be made in writing, can be sent by e-mail or fax and is to be directed to the following addresses:*

*(2) Costs which may occur due to non-transfer of the amount debited or back transfer are to be paid by the user unless the non-transfer or back transfer is caused by xxx.*

*(3) The products are to be returned via our Returns Support Centre.*

(4) *all and any claims of the user under the hotel reservation are to be asserted against the third party (the booking site) and not against xxx.*

(5) *You, your - any person holding a ticket who is to be carried or is carried on an aircraft, except members of the crew, or, in relation to ticket refunds, the person who paid for the ticket. (See also the definition for passenger.)*

(6) *Passenger - any person holding a ticket who is carried, or is to be carried, on an aircraft, except members of the operating crew. (See also the definition for you, your.)*

#### Translation of *be to* in the IT CC

In the EN\_CC all the occurrences of the quasi-modal *be to* are translated with the verbal construction *dovere+infinitive* which performs the same mandatory function: the syntactic structure of the sentences is unaltered and the verb introduced by *dovere* is maintained in the passive voice. Only one sentence is translated avoiding the use of *dovere*. In fact, in sentence (5), the only sentence where the agent (*the user*) is clearly mentioned, the translator opted for a less peremptory tone:

<p>(5EN) <i>Costs which may occur due to non-transfer of the amount debited or back transfer <u>are to be paid by the user</u> unless the non- transfer or back transfer is caused by xxx</i></p>
---

<p>(5IT) <i>Spese derivanti dal mancato accredito <u>sono a carico dell'utente</u>, a patto che il mancato accredito non sia da addebitarsi a xxx.</i></p>
--

He/she simply uses the phrase *essere a carico* – which has exactly the same meaning – in the present simple: the reader is not receiving an imposition; he/she is simply informed that he/she is expected to pay in that specific situation. Moreover, this verbal phrase is typical of the legal jargon.

### 5.1.2 Interactional tenor

Comparing the EN\_CC to IT\_CC and, in particular, comparing the translation of verbal construction my attention fell on the subjects as well. I would have expected to find nouns and noun phrases typical of legal language and contracts, such as *client, user, the company*.

Surprisingly, in the vast majority of the contracts analysed the company was designated by the pronoun *we* and the client by the pronoun *you*. This choice implied two important consequences. On a linguistic level, it caused a shift in register: the drafter passed from the formal register to a more informal one: in contract L the drafter even used the contracted form of the verb *cannot*, which is typical of oral language:

*Although we use encrypted security software, the security of information and payments transmitted via Internet or via e-mail can't be guaranteed.*

On a communicative level, it led to a greater involvement of both parties in the economic transaction since both parties are constantly addressed.

This communicative strategy had some interesting consequences on the Italian translation. Some translators opted

for a more formal register translating we with the name of the company or any references was eliminated:

*(1EN) You agree that any such notices that we send you electronically will satisfy any legal communication requirements.*

*(1IT) Riconoscete che tali notifiche inviate elettronicamente da xxx soddisfano ogni requisito di comunicazione legale.*

*(2EN) For each delivery, we will inform you in our Dispatch Confirmation E-mail if an electronic invoice is available.*

*(2IT) L'emissione della fattura elettronica relativa ad un ordine ti verrà comunicata nell'e-mail di conferma spedizione.*

The same strategy was adopted when translating you: the translators used more generic expressions, such as *il cliente*, or impersonal forms:

*(3EN) By using the xxx Software, you represent and warrant that you are not located in any such country or on any such list.*

*(3IT) Utilizzando il Software xxx, l'utente afferma espressamente e garantisce di non trovarsi in uno di tali paesi, ovvero di non figurare negli elenchi di cui sopra.*

*(4EN) 1-Click is a convenient feature that allows you to make a purchase from the Stores with a single click of your mouse or other input device.*

*(4IT) 1-Click è un'opzione utile che permette di acquistare nei Negozi con un solo click del mouse o di altro dispositivo di input.*

*(5EN) and you are not entitled to copy, scrape, (hyper-/deep)link to, publish, promote, market, integrate, utilize, combine or otherwise use the content (including any translations thereof and the guest reviews) or our brand without our express written permission.*

*(5IT) Nessuno è autorizzato a copiare, ricavare, riportare tramite link, pubblicare, promuovere, integrare, utilizzare, combinare, né in nessun altro modo utilizzare i contenuti del sito (traduzioni e giudizi degli ospiti inclusi) o il nostro marchio in assenza di una nostra espressa approvazione scritta.*

*(6EN) To the extent that you would (wholly or partly) use or combine our (translated) content (including guest reviews) or would otherwise own any intellectual property rights in the website or any (translated) content or guest reviews, you hereby assign, transfer and set over all such intellectual property rights to xxx.*

*(6IT) Nel caso in cui un soggetto utilizzi o combini (in parte o totalmente) i nostri contenuti (inclusi i giudizi degli ospiti e le traduzioni) o in altro modo prenda possesso di qualsiasi diritto di proprietà intellettuale del sito o di qualsiasi contenuto (o traduzione), esso dovrà attribuire, trasferire e cedere interamente tali diritti di proprietà intellettuale a xxx.*

*(7EN) xxx provides the xxx Services and sells our products to you subject to the conditions set out on this page (~~the~~ Conditions of Sale)*

*(7IT) xxx fornisce i Servizi xxx ai seguenti termini e condizioni ("Condizioni Generali di Uso e Vendita").*

In other cases, the translator used a formal register using the polite form of address *Lei*; or, they opted for *voi*, the pronoun second person plural:

*(8EN) We will only carry you if you are the passenger named in the ticket.*

*(8IT) Il trasporto verrà effettuato solo se lei è il passeggero indicato sul biglietto.*

*(9EN) If you reside in the United States, your agreement is with xxx Corporation and if you reside outside of the United States, your agreement is with xxx Ireland (each, “xxx” or “we”).*

*(9IT) Se Lei risiede negli Stati Uniti, il contratto che conclude è con xxx Corporation e, se Lei risiede al di fuori degli Stati Uniti, il contratto che conclude è con xxx Ireland (rispettivamente, “xxx” o “noi”).*

*(10EN) We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement.*

*(10IT) Eseguiremo il rimborso utilizzando lo stesso metodo di pagamento da voi usato per la transazione iniziale, salvo che abbiate espressamente convenuto altrimenti; in ogni caso non vi sarà addebitata alcuna spesa relativa al rimborso.*

Some translators showed greater courage and translated with *tu*, the pronoun second person singular. In this case, a shift in register occurred: from the formal register, typical of official or

legal documents, they passed to a more informal and friendly register:

<i>(11EN) By using xxx Services, you signify your agreement to be bound by these conditions.</i>
<i>(11IT) Utilizzando i Servizi xxx accetti integralmente le presenti Condizioni Generali d'Uso.</i>
<i>(12EN) When you use our Services, you provide us with things like your files, content, email messages, contacts and so on ("Your Stuff").</i>
<i>(12IT) Quando utilizzi i nostri servizi, ci fornisci file, contenuti, messaggi email, contatti e altro ancora ("I tuoi file").</i>

It is also important to highlight that the choice to use a more informal tone was not influenced by the year of publication of the contract: in fact, the presence of the pronoun was registered in all the contracts, from the oldest, which was published in 2013, to the most recent, which was published in 2016; nor by the content of the contract nor by the country of origin. It might be inferred that, in this case, the drafters applied the instructions given by the Plain English Movement: they decided to adopt a simpler and more comprehensible language.

In the Italian corpus translators showed a more variegated approach. A preference for a more formal register was observed: as regards the forms of address, the use of *Lei*, *voi* or impersonal verbs prevails.

## 5.2 Results

The analysis of the Contract Corpus, both from an intra-lingual and inter-lingual point of view, showed some interesting results. We will start discussing the results of the intra-lingual analysis. In all the contracts present in the EN\_CC, the drafters adopted a more informal register. First of all, they addressed directly the client using the pronoun *you* and often designated the service provider or company using the pronoun *we*. Secondly, in several contracts, they used language in a creative and amusing way: used metaphors (“*respect for your privacy is coded into our DNA*”) or phrases taken from everyday language (“*xxx “DOs” and “DON’Ts”*”) or invented neologisms (*spammy experience*). Thirdly, in some contracts drafters used greetings at the beginning of the document (*Welcome, and thanks for using xxx*). Finally, some morphological constructions typical of the oral language, such as contractions (*can’t* or *we’ll*), were also registered. However, it is also important to say that constructions typical of a more formal register were maintained: the use of the passive voice or the construction *should+subject*.

As far as legal language is concerned, the use of modal verbs has decreased, but has not completely disappeared: *may* and *shall*, which are two modal verbs typical of the legal language, are still used and maintain their communicative functions; surprisingly, *will*, *must* and *can*, which are usually adopted in every day language and are rarely used in legal documents, made their appearance. As regards *will*, it can be observed that it has been introduced by drafters to create a new communicative function in the field of legal discourse: in fact, in the corpus, it



was often used as a commissive modal verb; by using *will*, nor the client nor the service provider felt they were obliged to perform a specific action according to the law, but they felt they had willingly promised to perform it. As regards *must*, it was sometimes used as a mandatory verb, together with *shall*. A possible explanation might be that laypeople, who are not legal experts, may better understand that a sentence has a mandatory function when it contains this verb. As regards *can*, it is interesting to underline that a rise in the use of the permissive function can be registered; moreover, the use of *cannot* in sentences conveying a forbidding function was observed, as well.

Finally, it is also interesting to underline that these choices in the use of modal verbs allowed the drafter to adopt a more polite and less peremptory tone. In fact, they preferred using permissive verbs: *may* is the first most used modal verb in the EN\_CC and *can* is the fifth; and they avoided using mandatory verbs opting for the commissive *will*. Mandatory verbs, such as *shall* and *must*, were used exclusively to introduce important legal provisions or instructions that have to be strictly respected.

By contrast, the analysis of the IT\_CC showed that the Italian translators have a more conservative attitude even if openings for innovation could be found as well.

First of all, as far as the interactional tenor is concerned, translators opted for a more formal register. For instance, when translating the form of address *you*, they usually rendered it with the Italian polite form of address *Lei* (even if, as already highlighted in the previous section, other more informal solutions were proposed) and sometimes they also opted for a more *legalese* solution, that is to say using phrases such as *the*

*Client or the User*; when translating the pronoun *we*, they kept a formal tone using impersonal phrases such as *l'azienda* or the proper name of the company. As regards the creative use of language, once again translators preferred using more formal and standard solutions:

<i>(1EN) xxx dos and don't"</i>
<i>(1IT) Attività consentite e attività non consentite da xxx</i>
<i>(2EN) spammy experience</i>
<i>(2IT) una esperienza simile allo spam</i>

Even the use of contracted forms, typical of informal register, was not rendered in Italian: translators used standard verbal forms and did not attempt to lower the register using more colloquial terms or expressions:

<i>(3EN) We'll honor the choices you make about who gets to see your information and content</i>
<i>(3IT) Noi rispetteremo le scelte che farà su chi può vedere le Sue informazioni e contenuti.</i>
<i>(4EN) we can't read them</i>
<i>(4IT) i messaggi di xxx dell'utente non saranno condivisi su xxx per essere visti da altri.</i>

However, they showed a friendlier attitude translating the forms of greeting:

(5EN) <i>Welcome, and thanks for using xxx and other services and apps!</i>
(5IT) <i>Le diamo il benvenuto e La ringraziamo di utilizzare xxx e/o altri servizi e applicazioni!</i>
(6EN) <i>Preamblel Welcome to xxx!</i>
(6IT) <i>Preambolo Benvenuti su xxx!</i>

As regards modal verbs and their translation, it interesting to underline that the attitude of translators varied in the basis of the communicative functions that these verbs performed. For instance, permissive modal verbs such as *may* and *can* were often rendered with the corresponding Italian modal verb *potere*. By contract, with mandatory verbs, such as *shall*, *must* or *should*, translators decided to use the Italian verb *dovere* only when there was a strong imposition; in all the other cases, they opted for more neutral forms using the *presente indicativo* or the *futuro indicativo*. It also important to underline that in some cases, translators opted for a more formal register using impersonal forms even when in the original version drafters used *you* or *we*. Generally speaking, Italian translators showed a more traditional way of drafting: the general rules of Italian contract drafting were followed. Few examples of a more creative and more reader-friendly translations were found.

### 5.3 Discussion

The analysis of the Contract Corpus confirmed the impression that the language of contract drafting in English is slowly changing: in particular, the use of modal verbs and the interactional tenor of this type of legal documents has undergone interesting changes.

As regards the presence of modal verbs and their communicative functions, several considerations can be made:

- The presence of permissive modal verbs, such as *may* and *can*, is still important.
- The presence of mandatory modal verbs, such as *shall* and *must*, has changed; the occurrences of *shall* have diminished, and, by contrast, the occurrences of *must* have increased (probably influenced by the shift in register).
- The presence of *will* has increased; but this verb does not simply convey an idea of *futurity*, it can also perform a commissive function.
- The modal verb *shall*, which in the past was considered ambiguous, still covers a great variety of functions; but a careful linguistic analysis can solve these disambiguation problems.

In the Italian parallel corpus, translators preferred using more formal and neutral linguistic solutions; however, the presence of *potere* and *dovere*, expressing respectively a permissive and a mandatory function, was registered.

As regards the interactional tenor of contracts, it can be observed that, in the English corpus, there has been a shift in register: from a formal register the drafter opted for a more informal and friendlier one. Contracted verbal forms, the

pronouns *you* and *we* (referring to the client and to the service provider), metaphors and greetings were some of the linguistic strategies used to achieve this goal. As regards the use of the personal pronouns *you* and *we*, it would be interesting to compare their frequency in the EN\_CC and in the Cortec, the monolingual corpus of contracts that we previously consulted.

	Cortec		EN_CC	
	occurrences	%	occurrences	%
<i>you</i>	202	0,1	334	0,4
<i>we</i>	5	-	117	0,1

Table 12: Occurrences of *you* and *we* in the Cortec Corpus and in the EN\_CC

As it can be observed, the presence of these two pronouns has increased showing that drafters are gradually trying to create a relationship based on trust and cooperation between the client and the company.

To conclude, in the English documents drafter are moving towards simpler and more comprehensible documents.

In the IT\_CC Italian translators showed a more traditional and conservative attitude: they preferred using more polite and more formal forms of address, such as *voi* or *lei*; they rarely recurred to a creative and amusing language and preferred syntactical constructions typical of the legal language. However, in several occasions they used the pronoun *tu* and kept several metaphors.

## Conclusions

The sector of online commerce is constantly growing around the world: more and more people buy goods, create business relationships, book accommodation, exchange various types of communication, using specific applications and websites. All these activities need to be regulated by means of a written contract, which is usually drafted in English, and this contract has to be translated: consumers or users can clearly understand the conditions of the economic transaction they are going to perform.

This research project aimed to analyse the presence, the use and the translation of modal verbs and verbal constructions in this type of legal texts, i.e. online contracts written in English. As a matter of fact, modal verbs are considered an important feature of legal English documents. They are usually used to express a wide variety of communicative functions: they can perform a permissive function, a performative function and a mandatory function.

The analysis was carried out using the Contract Corpus, a bilingual comparable corpus, compiled for this purpose, that included a selection of contracts written in English and their corresponding translations into Italian. Quantitative and qualitative analyses were run in order to verify whether the presence of modal verbs in contracts, and in particular in online contracts, have varied in the last five years and to identify the linguistic and pragmatic behaviour of these verbs. The analysis focused in particular on frequent collocations, syntactic patterns, and communicative functions.

The choice to analyse this specific type of legal document was motivated by two different reasons: in the field of legal translation, contracts are the most required and most frequently translated type of legal documents. Moreover, no precise directions and instructions have been written on the translation of contracts so far.

Analysing modal verbs and verbal constructions, my attention fell on the interactional tenor of contracts, i.e. the linguistic relationship between the parties involved in the transaction. Therefore, the investigation was focused on the most widely used expressions referring to the client and the company, and if they could influence the use of modal verbs or other verbal constructions.

The analysis highlighted that the presence of modal verbs has diminished following the directions and instructions provided by a small number of movements, such as the Plain English Movement, that have been recommending a simpler and more comprehensible style in the drafting of legal documents. However, the constant presence of several modal verbs can be observed: the permissive *may* is still in the first position; the mandatory *shall* is still in the top five, even if it has been replaced by *must*, whose use was extremely limited before. *Will*, which was not very common in the past, comes in the second place and has acquired a new communicative function: in the past, it mainly conveyed an idea of *futurity*; in the EN\_CC, it also performs a commissive function, i.e. it is used to favour the involvement of both parties in the economic transaction. The presence of two new modal verbs was registered, *can* and *must*. These two verbs were not found very frequently in legal documents in the past; by contrast, they are quite frequent in the EN\_CC. This datum might be explained by the fact that there has been a shift in register in the EN\_CC.

In fact, as regards the interactional tenor of online contracts, it is interesting to point out that in the EN\_CC the parties involved are not designated, as we might expect, with the traditional phrases *the Client* and *the Company* (or other similar expressions), but they are often identified with the pronouns *you* and *we*. Consequently, they have become the actors and the subjects of the economic transaction: the client, who is constantly addressed, feels involved and the company, using the pronoun *we*, shows a greater engagement and establishes a stronger relationship based on trust and transparency. This new and “warmer”, friendlier approach requires a series of linguistic

adaptations. First of all, the register becomes more informal: contracted verbal forms, typical of everyday language, appear; metaphors, neologisms and creative language expressions are introduced. Secondly, the use of modal verbs varies: those verbs, which were traditionally used in legal documents, decrease and others are introduced. For instance, *shall* is kept to cover two main functions, the performative and the mandatory functions: in the first case, the verb is used to introduce legal actions which cannot be influenced or controlled by the parties; in the second case, the verb introduces those provisions that are imposed by the law. By contrast, *must* is introduced, as an alternative to the mandatory *shall* to precede a different kind of mandatory provisions: strong mandatory obligations, urgent necessities, necessary instructions, or prohibitions. This phenomenon might be explained by the fact that the final readers of this type of contracts are laypeople, who may have little or no legal knowledge and need to clearly understand the content of the contract they are going to sign. The use of modal verbs conveying a permissive, a mandatory and a prohibition function in everyday language becomes therefore important.

As regards the translation of all these linguistic features, it can be observed that Italian translators showed a conservative approach. Even if the majority of the documents presented an informal register and a friendlier tone, most of the Italian translations maintain a more formal and controlled style: *you* is often rendered with the polite form of address *Lei*; impersonal verbal forms and the passive voice are sometimes introduced; expressions typical of Italian legal language are used; neologisms or creative language expressions are rarely translated. Modal verbs are usually rendered with a wide variety of creative solutions: sometimes, the Italian modal verbs *potere*, conveying permission, and *dovere*, conveying obligation, are adopted; some impersonal legal expressions are used, as well. Translators employed a wide variety of solutions to render the different degrees of legal imposition.

This project represents a starting point in this field of research. Certainly, it would be advisable to enrich the EN\_CC



with a larger selection of contracts and their translations in order to verify the validity of these results. Secondly, it could be interesting to analyse in depth the use of creative language in contracts: this is a completely new feature of this sort of texts which would be worth investigating. Finally, as regards translation, it would be interesting to find out which decisions and instructions influenced the solutions adopted by Italian translators.

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