

THE ILLUSION OF NEUTRALITY IN LEGAL ENGLISH AS A LINGUA FRANCA

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This article analyses linguistic neutrality in legal English as a lingua franca. It examines two dynamics of transnational legal discourse that operate at once: the convergence of linguistic form and the conflict over doctrinal content. Conventional English drafting formulae, reused as templates, are analysed to show the mechanism that produces an appearance of neutrality. The aim is to define how the standardisation of legal English creates an impression of neutrality that its own doctrinal effects do not support. Three tasks follow. The first integrates research on English as a legal lingua franca, on interference in legal translation, and on the critique of neutrality in international arbitration into a single analytical framework. The second applies that framework to three common-law concepts routinely written into contracts governed by civil law: the entire agreement clause together with the parol evidence rule, consideration, and the duty of good faith in performance. The third sets out what the framework means for teaching English for Specific Purposes and legal English. The methods are critical discourse analysis, after Fairclough, and the functional comparative method, after Merryman and Pérez Perdomo. The analysis supports the following conclusions. Standardised English drafting forms converge across jurisdictions at the level of linguistic surface, while the doctrine they are assumed to carry stays anchored in the common law that produced them. Divergence forms a gradient: a recital of consideration remains inert under civil-law governing law, an entire agreement clause is weakened or displaced, and a duty of good faith may be read in despite the silence of the text. This decoupling of formal from doctrinal convergence sustains the illusion of neutrality. The claim that its interpretive costs fall unevenly is offered as a hypothesis for empirical testing, not as an established finding. Neutrality, then, is an artefact of standardisation rather than a property of English as a medium, which makes contrastive doctrinal literacy inseparable from terminological and generic competence in legal English curricula.

ІЛЮЗІЯ НЕЙТРАЛЬНОСТІ В ЮРИДИЧНІЙ АНГЛІЙСЬКІЙ ЯК ЛІНГВА ФРАНКА

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Ключові слова: англійська мова як правова лінгва франка, юридичний дискурс, конвергенція та конфлікт, мовна нейтральність, загальне і континентальне право, тлумачення договору, методика ESP.

У статті досліджено питання мовної нейтральності в юридичній англійській як лінгва франка. У центрі уваги є взаємодія двох динамік транснаціонального юридичного дискурсу: конвергенції мовної форми та конфлікту доктринального змісту. Предметом дослідження є конвенційні англійські договірні формули, що циркулюють як шаблони; їх аналіз дав змогу виявити механізм, який породжує враження нейтральності. Мета дослідження – визначити механізм, за допомогою якого стандартизація юридичної англійської створює враження нейтральності, не підтверджене доктринальними наслідками її застосування. Завдання дослідження: інтегрувати в межах єдиної аналітичної рамки дослідження англійської мови як правової лінгва франка, праці про інтерференцію в юридичному перекладі та критику нейтральності в міжнародному арбітражі; перевірити цю рамку на трьох поняттях загального права, які регулярно переносяться в договори, що регулюються континентальним правом, – застереженні про повноту договору разом із правилом про усні докази, зустрічному наданні та обов'язку добросовісності у виконанні договору; виявити наслідки запропонованої рамки для викладання англійської мови для спеціальних цілей та юридичної англійської. Відповідно до мети й завдань роботи використано критичний дискурс-аналіз за Fairclough та функціональну порівняльно-правову методику за Merryman і Pérez Perdomo. Аналіз результатів став підставою для таких узагальнень: стандартизовані англійські договірні форми конвергують між юрисдикціями на рівні мовної поверхні, тоді як доктрина, яку ці форми нібито передають, залишається вкоріненою в традиції загального права. Розходження утворюють градієнт: рецитація зустрічного надання залишається інертною за континентального застосовного права, застереження про повноту договору послаблюється або витісняється, а обов'язок добросовісності може бути доданий попри мовчання тексту. Саме це роз'єднання формальної та доктринальної конвергенції підтримує ілюзію нейтральності, інтерпретаційні витрати якої, як припускається, розподіляються нерівномірно; це положення сформульовано як гіпотезу для емпіричної перевірки. Отже, нейтральність – не властивість англійської мови як засобу, а артефакт стандартизації, що робить контрастивну доктринальну грамотність компетентністю, невіддільною від термінологічної та жанрової майстерності в програмах юридичної англійської.

Introduction. This study matters for two reasons. English is increasingly central to transnational legal practice, and there is still no linguistic account of the neutrality that role is assumed to carry. Cross-border commercial, judicial and arbitral activity has grown over the past three decades. English has become the de facto working language of that practice, including where none of the parties, drafters or adjudicators speaks it natively. International commercial contracts are

routinely drafted in English whatever the parties' domiciles. Empirical surveys of arbitration practice report English as the predominant language of institutional proceedings under the rules of the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and comparable bodies (Queen Mary University of London & White & Case, 2021). The European Union, for all its formal commitment to multilingualism, relies on English as a working

language of drafting and negotiation in its legislative and judicial institutions (Mori, 2018; Biel, 2014).

This dominance is rarely treated as a deliberate choice. It is naturalised as a pragmatically neutral default. English is taken to maximise efficiency and assumed to carry legal meaning across languages and jurisdictions without changing it. That assumption is what this study examines.

Legal meaning is system-bound in a way that much of the general content studied in research on English as a Lingua Franca (ELF) is not. A legal term does not simply translate a concept. It carries a doctrinal architecture: a mechanism of contract formation, a theory of interpretation, and a rule on who bears the burden of good faith. Each developed within a particular tradition (Tiersma, 1999; Cao, 2007). When common-law terminology becomes the lingua franca of deals between civil-law parties, the language is not an empty vessel. It imports interpretive defaults that may have no counterpart in the systems of the parties bound by them. English converges legal communication at the level of form while conflicting with it at the level of substance. The neutrality that convergence produces is, on inspection, an illusion, and it is sustained by the very efficiency it enables.

Research on English as a legal lingua franca (LELF) grew out of the wider ELF paradigm, which has moved through several phases. Early work described the phonological and lexicogrammatical features of interaction among non-native speakers (Seidlhofer, 2011). A second phase treated ELF pragmatically, as a communicative resource negotiated locally (House, 2003; Mauranen, 2012). A third reframes English as one resource among several within multilingual, translanguaging repertoires (Canagarajah, 2013; Jenkins, 2015). In parallel, forensic and professional discourse analysis has shown that legal texts are shaped by highly conventionalised generic structures (Bhatia, 1993; Gibbons, 2003).

Within legal studies the body of work is small. Anesa (2019) moves towards a formal account of legal English as a lingua franca and asks whether the idea of a lingua franca, which presupposes that concepts are relatively interchangeable, can apply to a discourse as tied to doctrine as law. A second strand documents interference in legal translation. Sustained exposure to English drafting conventions reshapes legal texts in the target language, often in ways that do not preserve the interpretive intentions of the receiving civil-law system (Šarčević, 1997; Cao, 2007; Biel, 2014). A third, thinner strand looks at spoken legal ELF, including courtroom and arbitral proceedings where litigants and counsel translanguage between English and their first languages.

A related debate runs through arbitration scholarship. It asks whether neutrality of forum, procedure or language is achievable at all, or whether it is better read as a constructed, performative claim that institutions and drafters actively produce (Bernini, 1989; Park, 1995). Recent work extends the same scepticism to international criminal justice, treating professional neutrality as a strategic posture rather than an inherent property (Mehta, 2025). Historical work on “neutral English” in language teaching makes a parallel point about the construction of an unmarked variety (Lowe & Smith, 2020). This debate has rarely met ELF-informed discourse analysis, though it approaches from the doctrinal side the same question LELF research approaches from the linguistic side.

Three gaps sit at the intersection of these strands. The work on convergence and the work on conflict stay disconnected; because they belong to different subfields, they are rarely read as two faces of one mechanism. The critique of neutrality as performative has not been joined to discourse analysis of legal English, so the claim of an illusion of neutrality is under-theorised in linguistic terms. And the pedagogical consequences for ESP and legal English teaching are undeveloped, even though such teaching routinely presents common-law terminology as culturally unmarked technical vocabulary.

The aim is to define the mechanism by which the standardisation of legal English creates an impression of neutrality that its doctrinal effects do not support. Convergence and conflict are treated as simultaneous, mutually constitutive dynamics of legal ELF, not as consecutive stages.

The following tasks have been set:

- 1) to integrate within a single analytical framework the research on English as a legal lingua franca, on interference in legal translation and on the critique of neutrality in international arbitration;
- 2) to test that framework against three documented doctrinal divergences in contract interpretation;
- 3) to reveal the consequences of the proposed framework for the design of ESP and legal English curricula.

The novelty here is conceptual, not empirical. The three doctrinal contrasts examined below are established comparative-law material, not new findings. What is new is the framework that connects them to ELF theory, and the account of neutrality as an artefact of standardisation that this connection makes available.

Material and Methods. This study is conceptual and integrative. It reports no corpus study, and no new interactional data were collected. The analysis works by critical synthesis of scholarship, plus two

analytical procedures applied to conventional textual and doctrinal material.

Three kinds of material are used. The first is the scholarly literature on ELF and LELF, on legal translation, and on neutrality in international arbitration; it grounds the framework. The second is the repertoire of conventional drafting formulae that circulate as boilerplate in English-language commercial contracts: recitals of consideration, entire agreement clauses, and clauses on governing law and dispute resolution, along with the model clauses published by arbitral institutions. These formulae are treated as type specimens of a textual convention, not as attributed extracts from individual contracts, because it is their detachment from any single transaction that makes them evidence of convergence. The third is doctrinal secondary literature on the comparative law of contract interpretation, together with reported English case law, used as an evidentiary case study rather than as an object of independent legal inquiry.

The first procedure is a discourse-analytical reading after Fairclough (2003). It identifies the markers through which convergence is enacted in the text: standardised terminology, formulaic clause syntax, the patterning of deontic modality in obligation clauses, and hedging devices that project procedural neutrality. It then traces how those markers relate to the doctrinal content they are assumed to carry.

The second procedure is functional comparison in the tradition of Merryman and Pérez Perdomo (2007), adapted to a linguistic rather than a strictly doctrinal purpose. It maps three common-law concepts onto their nearest civil-law equivalents or functional analogues. The question is not which system is doctrinally better. It is what happens, communicatively, when a term that encodes one system's assumptions is used as if it were a neutral default good across systems.

The analysis runs in five stages, matching subsections 3.1 to 3.5. It first documents convergence at the level of surface linguistic behaviour. It then documents conflict at the level of doctrinal content, using three concepts as test cases. The two readings are brought together to reconstruct the mechanism that produces an appearance of neutrality. Next comes the strongest counter-argument, that autonomous international instruments already remove the problem. The last stage sets out the pedagogical consequences.

Three limitations follow from this design, and I state them here rather than only in the conclusions. The study rests on documentary and secondary material, so its claims are conceptual and need empirical testing. The case base is three concepts within contract law; it does not exhaust contract

doctrine, let alone either legal tradition, and the analysis should not be read as a general survey. The claim in subsection 3.3 about the uneven distribution of interpretive costs is a hypothesis, not a result established by the material used here.

Results and Discussion.

Convergence: English as an engine of standardisation

Convergence is the most visible effect of the dominance of English. Decades of institutional arbitration have produced a recognisable repertoire of boilerplate. Entire agreement clauses, force majeure clauses, and clauses on governing law and dispute resolution circulate across jurisdictions with little variation, whatever the parties' domestic legal system. Arbitral institutions reinforce this directly: the model clauses of the ICC, the LCIA and UNCITRAL work as templates that non-native-speaker drafters reproduce with minor changes. The European Union shows a comparable pattern, where English has become a working language of legislative drafting despite the formal equality of the official languages. Research on EU legal language calls the resulting text type a "Eurolect", shaped by translation-driven standardisation and by drafting originals in English (Mori, 2018; Biel, 2014).

Through the discourse-analytical procedure above, this convergence shows up in four recurrent markers. The first is a closed terminological inventory: a small set of terms of art, most of them common-law in origin, reused across unrelated transactions. The second is formulaic clause syntax, as in the recital "in consideration of the mutual covenants herein contained" or the declaration "This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof". Both are reproduced with high fidelity and little variation. The third is a stable pattern of deontic modality: "shall" marks obligation and "may" marks permission with a consistency rarely seen in general English. The fourth is a set of hedging and reservation devices, such as "unless otherwise agreed in writing" or "save as expressly provided herein", which project procedural completeness and, with it, the impression that the text governs itself.

These markers work at the level of linguistic form and pragmatic routine, not legal content. Parties reproduce a shared clause structure, terminology and discourse convention well before, and often without ever, checking that the doctrine those forms are assumed to carry is shared too. Convergence works here as a device of efficiency: it lowers the transaction costs of cross-border legal communication by supplying a predictable surface. The gap between that surface and the doctrine beneath it is the subject of the next subsection.

Conflict: three doctrinal test cases

The clearest evidence that convergence in legal ELF works independently of doctrinal convergence comes from three concepts routinely transplanted, through standardised English drafting, into contracts governed wholly or partly by civil law. They appear here in ascending order of interpretive consequence.

The entire agreement clause and the parol evidence rule. Under English law, and under the contract law of much of the United States, a written instrument meant as the complete and final expression of the bargain generally excludes evidence of prior or contemporaneous negotiations. The text is treated as sufficient in itself. Civil-law systems usually take the opposite default. They allow, and in some traditions require, the adjudicator to look past the text to the parties' actual common intention, including pre-contractual negotiations. The entire agreement clause is built on the common-law assumption. Copied verbatim by non-native-speaker drafters as part of convergent practice, under civil-law governing law it may prove much weaker, or give way to an independent inquiry into intent. The clause converges in language across jurisdictions while diverging in legal effect.

Consideration. In the common law a promise binds only where something of legal value is exchanged for it: a detriment or benefit bargained for and given by the promisee. Civil-law systems generally require no such exchange. The historical requirement of cause in French law and the German reliance on the declared intention of the parties, or *Willenserklärung*, do partly overlapping but distinct work, and several civil-law jurisdictions drop any exchange-based requirement of formation altogether. When an English-language contract opens with a recital of consideration in a civil-law transaction, that wording does nothing under the governing law. It survives as a formal residue of an inherited drafting habit. This is the least consequential of the three cases, because the clause is inert rather than misleading. It earns its place because that inertness shows how far form has travelled from function.

The duty of good faith in performance. Civil-law codes usually impose a general, codified duty of good faith across formation, performance and termination. Article 1104 of the French Code civil and paragraph 242 of the German *Bürgerliches Gesetzbuch* are the standard examples. English common law has long resisted any general free-standing duty of good faith in performance, preferring piecemeal doctrines such as estoppel or the implied term. Case law has since moved some way towards context-specific duties in relational contracts, notably *Yam Seng Pte Ltd v International Trade Corp Ltd* [2013] EWHC 111 (QB) and *Bates v Post Office Ltd (No 3)* [2019] EWHC 606 (QB),

though the movement is contested and fact-sensitive. Where an English-language contract says nothing about good faith, silence being the common-law default, an adjudicator trained in a civil-law system and applying civil-law governing law may still read a general duty of good faith into the relationship. That outcome is one the common-law-trained drafter did not expect, and one the ostensibly neutral English text gave no sign of.

The same pattern recurs in all three cases. Convergent English drafting reproduces a stable linguistic surface across legal systems, while the interpretive content that surface is taken to encode does not travel with it. The contract looks identical whether drafted for a common-law or a civil-law deal; its legal operation is not. This is how convergence and conflict are simultaneous rather than sequential. One clause is at once a site of linguistic standardisation and a site of doctrinal incommensurability. Table 1 summarises the three cases.

Read as a series, the three rows of Table 1 show a gradient rather than a uniform effect. Divergence ranges from the merely inert, through the weakened, to the reversed. The gradient matters for teaching: it shows that contrastive treatment cannot be reduced to a single warning about false friends, since each clause type fails in different ways.

The illusion of neutrality: how convergence manufactures an appearance

The analysis so far lets me specify the mechanism, rather than just assert it, by which legal ELF holds up an appearance of neutrality its own doctrinal effects fail to support. In the arbitration literature, neutrality is best read as a constructed, performed status produced through recurrent, standardised behaviour, rather than as an inherent property of a language, forum, or procedure. Bernini (1989) separates neutrality in this operational sense from impartiality, a subjective, relational status tested case by case. Park (1995) frames the appeal of a *lingua franca* in transnational dispute resolution, historically French and now English, as resting on its capacity to project predictability, not on any culturally unmarked status. In practice predictability and neutrality are treated as interchangeable, although the second does not follow from the first.

Convergence is what produces this appearance of predictability. Because the same clauses, terms and conventions recur across a huge volume of transactions, whatever the parties' legal backgrounds, English in legal ELF takes on the feel of a stable, universal medium. Its repetitiveness reads as evidence of its neutrality. Yet the cases above show that the repetitiveness sits almost entirely at the level of form. The interpretive content remains anchored in the tradition that produced it and diverges once

Table 1

Convergent English form and divergent doctrinal effect in three test cases

Concept / clause type	Common-law default	Civil-law default	Effect of the convergent English form under civil-law governing law
Entire agreement clause / parol evidence rule	Prior and contemporaneous negotiations excluded; the written text is self-sufficient	Adjudicator may, and sometimes must, establish the parties' actual common intention, including pre-contractual negotiations	Weakened or displaced: the clause is read against an inquiry it was drafted to exclude (reversal of effect)
Consideration	Exchange of something of legal value is a condition of enforceability	No equivalent exchange requirement; cause (France) and Willenserklärung (Germany) perform partly overlapping functions	Inoperative: the recital survives as a formal residue with no function under the governing law (inertness)
Duty of good faith in performance	No general free-standing duty; piecemeal doctrines, with context-specific movement in relational contracts	General codified duty across formation, performance and termination (Code civil, art. 1104; BGB, para. 242)	An unstated obligation may be read into the contract despite the silence of the text (addition of effect)

civil-law governing law or an adjudicator trained in it enters the picture.

On this account, neutrality is an artefact of convergence rather than a property of English as a medium. The more standardised and widely reproduced a form becomes, the more neutral it looks, whether or not the doctrine beneath it has converged at all. That is what makes “illusion” the right word rather than an overstatement. The problem is not simply that English legal terminology is less neutral than assumed. The mechanism that produces the assumption, standardisation through repetition, is structurally decoupled from the doctrinal question the assumption claims to answer. This parallels what has been said about the construction of an unmarked “neutral English” in teaching (Lowe & Smith, 2020) and about the strategic uses of professional neutrality in international justice (Mehta, 2025).

A further consequence concerns who bears the cost. Common-law interpretive defaults built into convergent forms are, by hypothesis, less visible to drafters working outside that tradition, because the clauses read as generic, technical and culturally unmarked. If that holds, interpretive surprises such as an inoperative recital of consideration, a weakened entire agreement clause, or an unexpected duty of good faith would fall more heavily on non-native-speaker, civil-law-trained parties and counsel. On this reading the illusion of neutrality is also a distributive problem, with consequences for legal certainty and for fair access to a transnational legal order that practice in English is presumed to make available to everyone. I want to be clear that this study does not establish the distributive claim. It follows from the mechanism described above and stands as a hypothesis, testable against the outcomes of disputes where such clauses were contested.

A counter-argument: do autonomous instruments dissolve the problem?

The framework invites an obvious objection, which I take up here to mark the limits of the claim. One might say the problem is already solved. Autonomous international instruments exist precisely to supply an interpretive frame that belongs to neither tradition. The United Nations Convention on Contracts for the International Sale of Goods, the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law all set out autonomous rules on interpretation, and the latter two on good faith. Where such an instrument governs, the objection runs, the divergences in Table 1 do not arise.

The objection has force but does not dissolve the mechanism, for three reasons. Parties often exclude these instruments; opting out of the Convention is itself standard boilerplate, and the exclusion is usually drafted in the same convergent English. Autonomous rules still have to be applied by adjudicators trained in national traditions, and the literature on their application records a steady pull back towards domestic interpretive habits. Most important for this argument, the instruments act on the applicable law, not on the drafting register. The clause repertoire from subsection 3.1 keeps circulating unchanged and keeps projecting the same self-sufficiency. The illusion of neutrality belongs to the textual surface, and an instrument that changes the governing law leaves that surface intact.

Implications for ESP and legal English pedagogy

These findings bear directly on teaching English for Specific Purposes and legal English, where common-law terminology is routinely presented, openly or by default, as culturally unmarked

vocabulary to be mastered rather than as doctrine-laden content that needs contrastive treatment. Competence-based curricula built around vocabulary lists, template clauses and genre conventions risk reproducing the very illusion this article sets out to dismantle. They train learners to reproduce convergent forms fluently and leave the assumptions those forms encode unexamined.

A curriculum built on this framework would treat contrastive doctrinal awareness as a core competence next to terminological and generic competence. A learner drafting or reading an entire agreement clause would need its conventional wording, and also how its legal effect shifts with the governing law, and why. This matters most in programmes preparing students for jurisdictions that combine active legal harmonisation, through instruments shaped by the common law, with a substantively civil-law framework. Ukraine is a clear example, given its approximation to EU law and its growing engagement with international commercial arbitration and cross-border litigation.

The proposal can be made concrete. Here is a single task sequence of about two contact hours for an upper-intermediate legal English course. Learners first take a standard entire agreement clause in English and paraphrase its effect in their own words. They then get two short scenarios where the same clause operates under English and under Ukrainian governing law, and predict the outcome in each. They read a short doctrinal note on the two interpretive defaults and revise their predictions. Last, they redraft the clause so its intended effect survives under civil-law governing law, and justify each change. The language work, on nominalisation, deontic modality and the syntax of exclusion, stays on the same text throughout, so formal and doctrinal learning are not split apart.

Mapped onto Ukrainian educational programme descriptors, the sequence develops general competences, above all analysis and synthesis; special competences, above all the ability to use a foreign language in professional legal communication; and programme learning outcomes for producing and interpreting professional texts. It needs no redesign of the existing competence framework, only a rereading of what mastering a clause type involves. The result is a pedagogy that treats fluency in legal ELF and contrastive doctrinal literacy as inseparable objectives, not sequential ones.

Conclusions. The analysis supports the following generalisations. Convergence and conflict are not consecutive or alternative results of English's role as a legal lingua franca. They are simultaneous, mutually constitutive dynamics, and their interaction produces an illusion of neutrality.

Across three doctrinal test cases, the analysis has shown that the standardisation of drafting forms works largely independently of the doctrine those forms are assumed to carry. It is that independence, not anything inherent in English as a medium, that manufactures the appearance of neutrality documented in both the ELF and the arbitration literatures.

Three contributions follow. The first is an integrative framework that connects three bodies of work developed in isolation: the conceptualisation of LELF, research on interference in legal translation, and the critique of neutrality in arbitration scholarship. The second shows that claims of linguistic neutrality can be tested against doctrinal evidence instead of asserted in theory, using comparative contract doctrine as the test instrument. The third turns that critique into a concrete pedagogical proposal, with a worked task sequence for legal English programmes in civil-law jurisdictions that are harmonising their law.

The limitations point to the next steps. The analysis rests on documentary and secondary material, so its central mechanism is established conceptually, not empirically. One natural extension would look at how convergence and conflict surface in real time in arbitral hearings and cross-border negotiations, through the pragmatic and prosodic markers, such as hedging, epistemic stance and mitigation, by which an absence of neutrality tends to become visible in interaction before it becomes doctrinally consequential. The distributive hypothesis from subsection 3.3 still needs testing against the outcomes of disputes where such clauses were contested, which would show whether interpretive costs really do fall unevenly. The case base is only three concepts in contract law, so the generality of the mechanism is an open question; extending the analysis to tort, restitution or arbitral procedure would test it. And existing LELF research is still concentrated in Western European settings, so jurisdictions in transition, Ukraine among them, offer an underexplored site for testing the framework against a live case, with matching implications for curriculum design.

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