1. **ON THE FORENSIC DISCOURSE**

1.1 **Legal Language as an Indicator of Social Reality**

In many recent meetings of linguistic societies, the feeling has been expressed that linguists should be able to apply their knowledge outside of the university and the classroom, and contribute towards the solution of social problems. This is not just wishful thinking on the part of linguists. In a number of legal cases over the past ten years, linguistic evidence has been brought to bear on social issues, sometimes with positive results. In these cases, linguistic data and theory were introduced to support an expert opinion on the facts of the matter under consideration. This is the cases of taking sides on matters of right and wrong. In each of these cases, the facts are part of a larger situation involving justice and injustice, and the linguistic testimony has been used in the search for justice – at least as the linguist sees it. (Labov, W., Harris W.A. Addressing Social Issues through Linguistic Evidence, 1994: 265)

Members of each civilised society live in the world of rights and obligations. Every society creates its own sets of laws. The law is a system of rules that every member of society must obey. The legal system is a device through which society defines the rights of its members and forces them to perform their obligations and duties. It punishes murders, manslaughter and thefts but also bad faith in business dealings. Gibbons (1994: 3) points out that “laws are in essence attempts to control human behaviour, mainly through system of penalties”.

In the far past the rights and obligations of members of society did not exist in a written form. Before they were arranged into laws they had been expressed and spread orally. Maley (1994: 11) states that “in literate cultures, once norms and proceedings are recorded, standardised and institutionalised, a special legal language develops, representing a predictable process and pattern of functional specialisation”. The language of the law functions as a means of spoken and written communication in order to share and exchange information between/among people participating in various legal situations happening in the legal discourse. Maley (1994: 11) considers legal language “a medium, process and product in the various fields of the law where legal texts, spoken or written, are generated in the service of regulating social behaviour”.

1.2 The Complexity of Legal English

Legal language is a distinctive genre of English. From historical records it is apparent that the language of the law has always differed from common-use-language. For centuries it has succeeded in keeping its special position. A layman has never been able to create and understand the meaning of a legislative or legal text. Kořenský (1996: 39) believes that “the understanding of law language presupposes the understanding of the legal system and the system of legal norms”. The English legal language reflects not only the complexity of the legal system but also the complexity of its own development. Maley points out that “in the Anglo-Saxon common law system, a discrete legal language has been apparent since post-Conquest England, which in many essentials has persisted to the present day” (1993:11). Only after the Conquest all formal documents started to be written in Latin and English. Latin was dominant and became the language of formal written documents until the death of William the Conqueror. It was not classical Latin but a special kind of Latin, so-called law Latin. Around the 14th century, French managed to overcome Latin and became the language of the ‘Year Books’ (the earliest law reports and statutes) (Maley, 1993:11). It was very surprising that it happened at the time when French was losing its position and English as a language for daily communication was slowly replacing French. Mellinkoff (1993:101 In Maley, 1963: 101) thinks that “one of the reasons for the use of French in legal documents was to have a secret language and to preserve a professional monopoly”. The language of the law did not reach its definite form in the Middle Ages. English became the official language of the law around 1650.

“It was not until 1650, by An Act for Turning the Books of the Law, and all Processes and Proceedings in Courts of Justice into English (455(1650) 11 Act and Ordinances by the Interregnum) that English became the official language of the law. Since 1650 there has been a continual process of Anglicisation, but particularly in vocabulary of the law, the original source languages, Latin and French, are still apparent. By that time many Old English, Latin, Norman-French and Middle English terms had become fixed in the vocabulary of lawyers. They left its prints on the present legal language”.

(Gibbons, 1994: 12-13)

The language of the law in England reached its ‘heights’ in the early 18th century as England ruled almost one quarter of the Earth.
1.3 Forensic Discourse - the Field for the Present Research

It is unquestionable that the long and convoluted history of mankind, people’s traditions, conventions, and social relations are reflected (overtly or covertly) in their behaviour and their speech and continuously they have been recorded in written language.

The investigation of the forensic discourse, and in particular legal language for the purposes of this study, was motivated by several reasons.

Firstly: I am interested in the way communication in this type of discourse takes place. I am motivated by Kořenský (1996: 27) who further continues that:

“In the past decades certain tendencies encouraging the understanding of the linguistic side of the law within the context of the theory of verbal communication have appeared. All activities examined under the roof of forensic linguistics are to be understood within verbal-communication context”.

Secondly: legal language is considered to be an institutionalised language and legal writing has a long and well-established tradition. It is sometimes called a “frozen variety of English as legal draftsmen still prefer to use terms which have stood the test of time” (Bhatia 1994b: 140). Bhatia (1994b: 117) also declares that “the style of legal documents become firmly standardized, which means that clauses, expressions, words and consequently the complete style of writing proven efficient over period of time is accepted without imposition of any changes”. Therefore, in my view, legal texts are expected to contain prints of the past social relations. My concern is to find out whether some changes may also be observed in the institutionalised discourse that is considered to be one of the most inflexible discourses.

Thirdly: one of the most remarkable linguistic features of institutionalised discourse in general is the overuse of complex nominal phrases. A great number of heavily postmodified complex nominal groups are found mainly in legislative and legal texts (fewer than in legislative texts) but their frequency is very high academic texts too. The phenomenon is known as nominalisation. The creators of the texts do not take an aesthetic viewpoint into consideration and they subordinate the usage of noun phrases (content, form, and position) to clarity and all-inclusiveness. The foreseen high frequency of noun occurrence in these type of texts facilitated the selection of the research corpus.

Fourthly: in legislative texts the reference is mostly made to a hypothetical person - a non-concrete, unidentified target addressee – an ordinary citizen at whom laws are actually directed. Since target addressees are both male and female individuals, I foresaw quite a large number of dual nouns in legislative, legal, and academic texts. My interest is to find out how
these nouns express their orientation to biologically masculine and feminine as well as to inanimate referents.

My attention is focused also on the ways of addressing in legal discourse. The analysis is aimed primarily at the dual nouns that may express superiority or subordination in legal processes and actions. It is based on the analysis of the word-formative suffixes that are capable of differentiating contractual parties’ roles and their relationship in the legal setting.

1.4 The Documents Analysed

Social behaviour is reflected in laws that, in essence, are the attempts to control and regulate behaviour in society. As laws are collected in different types of legislative and legal writing I decided to concentrate on them. The analysed corpus comprises two basic types of texts: 1/bills and laws of British Statutes and 2/legal documents of different kinds. The examples from legislation come from randomly selected bills and acts of British Statutes from 1968 –2010, which were taken from the Internet, while some of the private legal documents (contracts, agreements, and last wills and testaments, affidavits, and other deeds) were given to me by professionals working in the field of law, the others were found on the Internet. The private ones are not provided here in a full version since they are highly confidential. If the source in the example is not stated, it means that the example is taken from a private legal document. For the purpose of the present research fifteen affidavits and fifteen last wills and testaments of famous people (made between the years 1961 and 1997) found on the Internet were subjected to analysis. A last will and testament is a legal document by which a person gives instructions to their executor/s as to how their property should be disposed of after they die. An affidavit is a written statement that is signed and sworn before a solicitor that has legal validity and can be used as evidence in court procedures. The nature and the form of both types of documents offer a good basis for the analysis. I consider them to be suitable sources for examining the ways and the means used for gender identification.

The research focus on contracts and agreements has also its justification. Contract is a legal agreement between two or more parties that contains a set of obligations between its parties, which are either fulfilled, or cancelled, or violated. An agreement sets out the contractual terms agreed between two parties The law treats agreement as the essential principle around which economic and social life is based (Dictionary of Law 1993: 20, 50). Contracts and agreements offer a suitable research material for gender analysis as well as for
determining the relationship between/among participant on the basis of word-formative processes.
(The list of the analysed texts is placed at the end of the study in the part called Texts Analysed).