
CONVEYING DEONTIC VALUES IN ENGLISH AND ITALIAN CONTRACTS: A CROSS-CULTURAL ANALYSIS

Marina Bondi & Giuliana Diani

Abstract

Legal language has been the centre of increasing scholarly interest over the last two decades, and the importance of this field is constantly growing in LSP studies. The present study investigates the deontic values conveyed by legal texts, and in particular by contracts, from a cross-cultural perspective (English and Italian). While valuable analyses have already been carried out on the topic in English legal texts, mainly statutes (Gotti & Dossena 2001), cross-cultural analyses of the issue are still relatively rare in contracts, and often limited to general pragmatic features (Frade 2005). Our interest combines a focus on contrastive rhetoric (Mauranen 2001; Connor 2002, 2004), with an interest in linguistic resources in English and Italian. From this perspective, a comparative dimension of the analysis seems important, one which would allow for the study of linguistic variation across cultures. From a methodological point of view, the study adopts a position which shows the need to integrate corpus and discourse perspectives in the analysis of textual data. This allows for an integration of qualitative and quantitative methods, of text and corpus work, as well as of co-text and context analysis.

1. Introduction

The abundance of scholarly research on legal language attests to its important role in the field of linguistic studies¹. Great attention has been devoted particularly to the linguistic area of modality in English legal texts, such as statutes, contracts or EU directives (e.g. Trosborg 1997; Dossena 2001; Garzone 2001; Gotti 2001; Poppi 2008). However, so far little attention has been awarded to this area from a cross-cultural perspective (Williams 2004). This paper takes into consideration the deontic values conveyed by legal texts, and in particular, by contracts in English and Italian. Cross-cultural analyses of this linguistic area of study are still relatively rare in contracts, and often limited to general pragmatic features (Frade 2005).

Traditionally, linguistic treatments of modality have focused on the modal auxiliaries as the chief exponents of modal contrasts and meanings. This focus continues

¹ A number of books and articles might be quoted as insightful references for an overview of this topic, the most salient being Danet 1985; Kurzon 1986; Hiltunen 1990; Russel & Locke 1992; Bhatia 1993; Gibbons 1994, 2003; Trosborg 1997; Tiersma 1999; Cornu 2005; Williams 2005; Wagner & Cacciaguidi-Fahy 2006; Bhatia, Candlin & Evangelisti Allori 2008.

to exercise a strong hold over contemporary modality research (e.g. Gotti & Dossena 2001; Facchinetti, Krug & Palmer 2003; Hart 2004; Tsangalidis & Facchinetti 2009). In a study on the root/epistemic divide, based on the work of Kratzer (1977), Butler (2003: 969) remarks that “modality is realized in Standard English mainly by the use of the modal auxiliaries”. It has been accepted by many, as Palmer (1990: 2) has argued, that the study of the modals may be regarded as synonymous with the study of modality itself.

In this paper we shall be comparing the deontic use of modal auxiliaries in English and Italian legal contracts. Deontic modality appears to be especially relevant in contracts, where it is crucial that rules are formulated with the intent of telling people what to do, what they may be allowed to do and what they may be prohibited from doing.

2. Deonticity in contracts

Whatever its meaning or purpose, modality conveys the locutor’s opinion and attitude *vis-à-vis* a given proposition (Lyons 1977). Most linguists have distinguished between the diachronically older concept of ‘root’ modality and the derived category of ‘epistemic’ modality. The root meaning of modal auxiliaries is deontic insofar as it lays an obligation on the addressee or influences his/her behaviour (Palmer 1988).

Using Searle’s (1975) taxonomy, Palmer (1986) talks of two main types of deontic statement: ‘commissives’ – where we commit ourselves to doing something – and ‘directives’ – where we try to get our hearers to do something. As the main function of contracts is to provide ‘regulative’ statements (Trosborg 1997), both commissives and directives are (predictably) the most common speech acts realized by the deontic aspect of modals. According to Trosborg (1997: 63), “the commitment in contracts can be established either as an obligation issued by one party over the other (i.e. directive), or by a party committing him/herself (i.e. commissive)”.

Within a very general definition, the nature of a contract may be defined as follows: “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). Thus the language of contracts refers to mutual rights and obligations in relation to a promise, and we shall now consider the ‘value’ conveyed by deontic modality for distributing such rights and obligations.

3. Materials and methods

The study is based on the analysis of two comparable corpora of contracts downloaded from English (American English) and Italian websites providing standard formats of contracts currently used. A complete list of website addresses is provided in the Appendix. Each corpus consists of 40 contracts – comprising three contract types: Employment Agreement, Land Agreement, Lease Agreement. Variation in length, however, is considerable. The English contracts produced an electronic corpus of 165,524 words, while the Italian ones produced a corpus of 52,073 words.

The analysis combined discourse and corpus perspectives. The initial hypothesis

of the centrality of deonticity in the texts under examination was checked against quantitative data by means of the wordlist function of WordSmith Tools (Scott 1998). The wordlists produced on the basis of our corpora were carefully investigated for the presence of modal auxiliaries with deontic meanings. Concordances of the modals identified were compiled and filtered manually. This manual filtering process was necessary to make sure that only occurrences of deontic modals were included.

4. Findings

A quantitative investigation of the presence of modal auxiliaries with deontic meanings in the corpora analysed has provided the results summarized in Table 1. All frequency data reported in the table are presented as raw figures, followed by the normalized figure of the number of occurrences per 10,000 words.

Contracts seem to correlate strongly with deontic modality that is expressed in three main semantic values: obligation, prohibition and permission. Modals of obligation, prohibition and permission were gathered in three different groups.

Table 1. Frequency of deontic modals in English and Italian contracts

Deontic item EN_contracts	EN_contracts (freq.)	normalized per 10,000 words	Deontic item IT_contratti	IT_contratti (freq.)	normalized per 10,000 words
Obligation			Obligation		
<i>shall</i>	1,939	117.14	<i>dovere</i>	130	24.96
<i>will</i>	625	37.76			
<i>must</i>	146	8.82			
<i>should</i>	52	3.14			
TOTAL	2,762	166.86			
Prohibition			Prohibition		
<i>shall</i> + neg.	348	21.02	negative form of <i>dovere</i>	1	0.19
<i>may</i> + neg.	67	4.05	negative form of <i>potere</i>	83	15.94
<i>cannot</i>	6	0.36			
<i>must</i> + neg.	1	0.06			
TOTAL	422	25.49			
Permission			Permission		
<i>may</i>	311	18.79	<i>potere</i>	66	12.67
<i>shall</i>	140	8.46			
<i>can</i>	4	0.24			
TOTAL	455	27.49			
All English deontic modals	3,639	219.84	All Italian deontic modals	280	53.77

If we take an overview of the distribution of the deontic modals used in the corpora, undoubtedly the most striking (albeit predictable) feature is the heavy concentration of one particular deontic modal in each language. In English, out of a total of

3,639 deontic modals, well over half (53.28%) are conveyed by means of the modal of obligation *shall* (1,939 occurrences) and its negative form *shall not* expressing prohibition (348 occurrences). Similarly, in Italian the modal verb occurring most frequently is *dovere* which constitutes 46.43% of all the deontic modals used (130 instances out of a total of 280 deontic modals).

Another remarkable feature of the English data is the fact that of all deontic modals contained in the corpus, modals of obligation constitute a massive 75.90%, followed – at a great distance – by modals of permission (12.50%) and prohibition (11.60%). In the Italian data, on the contrary, there is a more balanced proportion of the three deontic categories: statements with markers of obligation amount to 46.43%, exemplified by the modal *dovere*; statements of permission, represented by the modal *potere*, account for 23.57%, and statements of prohibition for 30%, where the negative form of *potere* was used almost exclusively. There was only one instance of the negative form of *dovere*.

A further point which needs underlining is that, compared to the Italian contracts, the English sample relies more heavily on deontic modals. The frequency of all deontic modals per ten thousand words is much higher than that occurring in the Italian contracts (219.84 vs. 53.77). In the English contracts all three deontic categories, obligation, prohibition and permission, are associated with a number of modal auxiliaries, although *shall* is by far the most distinctive. The situation is quite different in the Italian corpus, where only two modal auxiliaries occur: *dovere* and *potere* (in both affirmative and negative forms). The third Italian modal verb – *volere* – is almost non-existent, except for two occurrences of the infinitive (*dichiarano di volerlo adibire*).

The quantitative difference reflects a general tendency of the languages. Italian is less richly endowed with auxiliaries than English. The Italian verb is often inflected where English can resort to the auxiliaries *shall*, *should*, *will*, and *would*. And yet the pattern that emerges within a single domain or genre is distinctive of the genre and of the cultural context. Indeed, in Italian legal language the most frequent forms are the present tense and the future tense of unmodalized verbs. The language of contracts deliberately avoids the modal *volere*, while balancing *dovere* and *potere*. In English, on the other hand, the range of modals is wider, the frequency is higher, but *shall* is definitely very prominent. These discrepancies will be better understood by looking in turn at each item in terms of use, occurrence and semantic value.

4.1. *Obligation and prohibition in English contracts*

Throughout the corpus there is a clear prevalence of statements of obligation (with 166.86 instances per ten thousand words, i.e. 75.90%), in line with the genre's normative purpose. Prohibition amounted to 11.60% (25.49 occurrences per ten thousand words).

4.1.1. *Obligation*

Shall

As the main function of contracts is to place the parties under some kind of obli-

gation², obligation is (predictably) the most common pragmatic function performed by the deontic aspect of the modal *shall*. *Shall* was used to express obligation in 70.20% of the total number of obligation tokens in the corpus. In the following examples *shall* has a characteristically deontic meaning, prescribing that the (grammatical) subject perform the action predicated in the verb form:

(1) The Landlord shall rent the following business premises in the building to Tenant [...] (Lease Agreement).

(2) Employee shall submit all receipts, invoices and other such documents evidencing such expenses as may be required by the policy of Employer (Employment Agreement).

This use of *shall* is typical of prescriptive discourse, a type of discourse which expresses “what is obligatory, permitted or forbidden; the speaker gives permission, lays an obligation or in some way influences or directs the behavior of his addressee” (Palmer 1988: 98).

The prescriptive speech act performed by means of *shall* is also made more explicit by the use of the noun *order*:

(3) Any further discovery shall only be allowed by order of the Arbitrator (Land Agreement).

The deontic value of *shall* is also foregrounded when the main modal is followed by another deontic modal auxiliary such as *may* as shown in (4) below³.

(4) Tenant, upon payment of all of the sums referred to herein as being payable by Tenant and Tenant’s performance of all Tenant’s agreements contained herein and Tenant’s observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term thereof (Lease Agreement).

In the corpus *shall* only occurs in third person verbal forms, as the obligations to which the contracts refer usually concern the parties of the contract in a general way; hence the subject is often *Employer/Employee, Vendor/Vendee, Lessor/Lessee, Landlord/Tenant*. 43.22% of all subjects of *shall* are human agents referring to the parties of the contract. Collective nouns with reference to, for example, companies as the regulated party also occurred, i.e. *The Company shall pay Employee*. Only a small proportion of the references obtained makes use of personal pronouns: *they* (1.80%), *he* (1.44%), *she* (0.97). Reiteration in contractual communication typically takes place by repetition of the lexical items specifying the parties of the contract.

A further point that is worth highlighting is the conspicuous presence of non-

² A confirmation of this concept can be found in Trosborg’s (1997: 63) words: “In outlining the terms of contracts, rules are formulated with the intent of ordering human relations. One party of the contract (e.g. principal, seller, franchiser) imposes a certain behavior on the other party (e.g. agent, buyer, franchisee) and vice versa”.

³ The equivalence of the deontic value of *may* to that of *shall* has been pointed out in previous literature (Megarry 1960; Gotti 2001).

human agents as subjects of the *shall* constructions (56.78%). This is illustrated in the following example, where an abstract entity may be the subject of the proposition and the agent becomes defocalized. Passive sentences with non-human subjects, as in the following instance, did occur frequently in the corpus (34.97%):

(5) Payments shall be made to the Vendor at the location above, unless otherwise directed by the Vendor (Land Agreement).

Must

The deontic *must*, although much less frequent in the corpus, would seem to be the alternative to *shall* most widely used within our texts. Of all obligation tokens in the corpus, *must* accounts for just 5.29%. The data are in good agreement with those of Williams (2006: 242) in terms of the distribution of *must* in legal texts.

(6) Pursuant to Exchange Act Section 13 (b), 2 (B), the Company must devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the following objectives are achieved [...] (Employment Agreement).

A closer scrutiny of the 146 cases of *must* in the corpus highlights the conspicuous presence of the passive form. If we exclude the 10 cases where *must* is followed by a stative verb (generally *be*), we note that *must* is followed by passive constructions in 72 cases, as opposed to 64 cases where the active form is used. In other words, *must* occurs in the passive form in 52.94% of cases where there is a choice between active and passive voice. The preferred choice was passivization with an inanimate subject. An example can be found in the following extract:

(7) Water bill must be paid in full and copy of paid final bill sent to Landlord (Lease Agreement).

Will

In the corpus a number of obligations were undertaken through promises realized by the modal *will* which accounts for 22.63% of obligation tokens in the corpus. Most occurrences were introduced by animate subjects such as *buyer, seller, company, purchaser*, and the more direct *you*.

(8) The Company will reimburse or advance funds to the Executive for all reasonable travel, entertainment and miscellaneous expenses incurred in connection with the performance of his duties under this Agreement (Employment Agreement).

The promise realized by means of *will* expressly commits the party to doing something.

Semantically, if we compare what the parties *will* do with what the parties *shall* do, there is hardly any difference – an obligation is expressed in both cases. But there is a difference in pragmatic terms. The use of *will* commits the party by means of a promise: the parties themselves commit to doing something. The use of *shall*, on

the other hand, presents the obligation as regulated by the other party through a directive.

Will is particularly frequent in certain types of contracts: in our corpus for example almost half of the instances occur in lease agreements, where there may be a certain degree of 'good will' between the parties. But in most legislative texts *will* is comparatively rare, as judges may consider it as not having legally binding force. According to Adams (2008: 43-44), "[...] in general usage *will* expresses future time rather than obligations, and using *will* to convey obligations as well as futurity would likely result in the sort of confusion that those who advocate abandoning *shall* are hoping to avoid".

Should

In the corpus the modal *should* is a polite, indirect option with respect to more categorical alternatives such as *shall*, *must*, *will*. The most frequent phrase structure is *should* + bare infinitive with an animate subject, and the direct *you*.

(9) NOTICE TO SELLER: Your liability to pay the note assumed by Purchaser will continue unless you obtain a release of liability from the note holder. If you are concerned about future liability, you should use the Release of Liability Addendum (Land Agreement).

The analysis carried out so far has shown a very widespread presence of obligation statements in English contracts, either as direct ordering realized by *shall* (70.20%), or promise expressed through the modal *will* (22.63%). The deontic *must* was employed sparingly in the corpus (5.29%), and the modal *should* was utilized only in rare cases when a directive was intentionally weakened (1.88%).

4.1.2. *Prohibition*

Another frequent deontic category is that of prohibitions; in contracts they have the function of regulating a certain type of behaviour. In our data sentences containing prohibitions usually rely on the negative form of *shall*, as can be seen in the following example:

(10) Tenant shall not do or keep anything in or about the premises that will obstruct the public spaces available to other residents (Lease Agreement).

In other cases the negative order is conveyed by sentences in which the subject is preceded by *no* or an indefinite negative pronoun *nothing*, as in the following instances:

(11) No reimbursement shall be made for travel and lodging expenses or for any other expenditure in excess of \$ unless the Employee has received prior written authorization for the expenditure from the Company (Employment Agreement).

(12) Nothing in this Agreement shall preclude the Company from amending or terminating any employee benefit plan or practice (Employment Agreement).

In the event of two prohibitions, the second is often preceded by *nor*:

(13) It is understood and agreed between the parties that Purchaser shall not commit any strip or waste on the premises [...] nor shall the Purchaser suffer or permit any strip or waste to be committed on such premises [...] (Land Agreement).

Of all the prohibition statements contained in the corpus, 82.46% were realized by means of the negative form of *shall*, followed – at a great distance – by negative *may* (15.88%), and *cannot* (just 1.42%). There was only one sentence containing *must* in which the subject was preceded by *no*. Here are a few examples of such rarer cases:

(14) Tenant may not use said deposit for rent owed during the term of the lease (Lease Agreement).

(15) This contract contains the entire agreement of the parties and cannot be changed except by the written agreement (Land Agreement).

(16) No mechanical or power equipment must be exposed or showing above the surface of the subsidiary properties or future buildings (Lease Agreement).

4.1.3. *Permission*

In contracts, a symmetrical relationship holds between the two parties, either of which is able to grant permission to the other party. Deontic *may* is the preferred modal for granting permission in the corpus (68.35%).

(17) Tenant may only park a vehicle that is registered in the Tenant's name (Lease Agreement).

The deontic *shall* also expresses permission in the corpus (30.77%). When permission is granted, the *shall*-form is usually accompanied by the expressions *have the right, be entitled*, as can be seen in the following quotation:

(18) Tenant shall be entitled to keep no more than ____ domestic dogs, cats or birds (Lease Agreement).

Can, in the deontic mode, is rarely used in the corpus (0.88%). Here is an example:

(19) The Lessee can make use of the Park's common areas according to the regulations and specifications included in the Park's Internal Condominium By-laws and its subsequent amendments [...] (Lease Agreement).

The data in hand indicate that deontic modality is crucial to the purpose of contracts. Some 87.50% of the deontic meanings indicate obligation and prohibition and the remaining part permission (12.50%). It is not surprising, of course, that a regulative genre relies heavily on deontic values, in its effort to impose rights and obligations.

The very widespread presence of *shall* in the corpus (53.28%) makes the occurrence of this modal verb a characterizing feature of these legal texts. However, the range of uses of this modal is not very wide and merely comprises the three semantic meanings of obligation, prohibition and permission. As the findings show, only in the expression of permission is a valid alternative available, represented by the modal *may*; as regards obligation, instead, *must* and *should* are employed only infrequently in contracts, and thus *shall* represents the most widely used auxiliary.

Negative forms of *may* have been found in the corpus to express prohibition, but the limited number of its occurrences (15.88% of all the prohibition statements contained in the corpus) proves that for the conveyance of this semantic meaning contracts clearly show a preference for *shall not* (82.46%). Instances of *cannot* and negative *must* are rare in the corpus (*cannot* 1.42%, negative *must* 0.24%).

4.2. Deontic modals in Italian contracts

4.2.1. Obligation – the case of ‘*dovere*’

The analysis of the Italian contracts has shown a very widespread presence of *dovere*-forms to express obligation, constituting 46.43% of all the deontic modals used in the corpus. Of the verbal constructions employing the modal, 51.54% of all cases are constituted by the indicative form of the present simple (*deve*, *devo*), and the remaining part by the future simple (*dovrà*), amounting to 47.69%. There was only one case of the present subjunctive (*debba*). Here are some examples.

(20) Il pagamento di quanto sopra deve avvenire – in sede di consuntivo – entro due mesi dalla richiesta (Contratto di Compravendita). [Payment for the above described property shall be made within two months from its due date]

(21) L'immobile dovrà essere destinato esclusivamente ad uso di civile abitazione del conduttore e delle persone attualmente con lui conviventi (Contratto di Locazione). [The leased premises shall be used and occupied exclusively by the tenant and the tenant's family]

(22) [...] ivi espressamente ricompreso il tragitto, con qualunque mezzo percorso, da e per il luogo in cui la collaborazione debba essere prestata (Contratto di Lavoro). [...thereby including the route to and from the agreed place of work, regardless of the means of transport used]

Given that contracts are prescriptive texts, it is not surprising to find that the present indicative form of *dovere* predominates. However, the findings reveal that obligation statements frequently resort to the future simple form of *dovere*, as is shown in (21) above, which may have modal connotations of authoritativeness (47.69% out of the total of 51.54% employing the simple present).

4.2.2. Permission – the case of ‘*potere*’

In the Italian contracts, *potere* is the only modal verb used in the deontic sense,

in order to grant permission to the parties, representing 23.57% of the total of all deontic modals in the corpus.

(23) Il conduttore può recedere in qualsiasi momento dal contratto dandone avviso al locatore con lettera raccomandata almeno 6 mesi prima dell'effettivo rilascio (Contratto di Locazione). [The tenant may terminate this tenancy at any time by giving 6 months written notice to the landlord]

(24) Il presente contratto potrà essere rinnovato tacitamente per quante volte le parti lo desiderino (Contratto di Lavoro). [This agreement may be automatically renewed for as many times as the parties desire]

Like *dovere*, the lemma *potere* alternates the present simple (*può/possono*) and the future simple (*potrà/potranno*), plus additional cases employing the present subjunctive (*possa*). The use of the subjunctive is confined exclusively to subordinate clauses, as in the following example, when introducing a hypothetical case:

(25) Qualora dovesse intervenire una causa che possa dar diritto al conduttore di ottenere la risoluzione del contratto per inidoneità sopravvenuta della cosa locata [...] (Contratto di Locazione). [In the event that the tenant is entitled to terminate the contract because the condition of the property no longer complies with the terms of the agreement...]

4.2.3. Prohibition – the case of the negative form of 'potere'

The negative form of the modal *potere* is used almost exclusively in the corpus to prohibit a certain type of behaviour (29.64% out of 30% of the total number of modals in this category), as can be seen in the following example:

(26) Il pagamento del canone o di quant'altro dovuto non potrà essere sospeso o ritardato da pretese o eccezioni del conduttore, qualunque ne sia il titolo (Contratto di Locazione). [Payment of rent may not be withheld or delayed unilaterally by the tenant for any reason]

In other cases prohibition is conveyed by sentences in which the subject is an indefinite negative pronoun *nulla*, as in the following case:

(27) [...] restando sin d'ora il locatore, in caso di inosservanza, autorizzato a far rimuovere e demolire ogni antenna individuale a spese del conduttore, il quale nulla può pretendere a qualsiasi titolo, fatte salve le eccezioni di legge (Contratto di Locazione). [...in the event that the tenant has installed any aerial without the landlord's consent, the landlord shall be entitled to have it removed at the expense of the tenant, the latter having no rights except as required by law]

In the event of two prohibitions, the second is often preceded by *né*:

(28) Il conduttore non può sublocare l'immobile né può cedere ad altri il contratto senza il consenso scritto del locatore (Contratto di Locazione). [The tenant may not sublease the property or assign it to others without the landlord's written consent]

If we compare these constructions with those found in the English contracts, we can see that there is a close semantic overlap between these modal auxiliaries in the two languages, both of which are used in the English and Italian contracts in the deontic sense, in order to authorize permission, or, when accompanied by a negative particle, prohibition.

In contrast with the English data, the negative form of *dovere* used to issue prohibitions is almost non-existent in the Italian contracts: the only instance of this construction is as follows:

(29) [...] il reddito fondiario dell'immobile oggetto del presente atto non doveva essere denunciato nella dichiarazione dei redditi di essa parte venditrice [...] (Contratto di Compravendita). [...]the income from the property referenced herein need not be declared for tax purposes by the buyer...]

4.3. Other deontic devices in English and Italian contracts

A detailed analysis of all deontically-charged lexicalizations in both English and Italian contracts lies beyond the scope of the present paper. It is nevertheless important to acknowledge the number and range of these devices, which may effectively replace and paraphrase certain modal auxiliaries.

In the English contracts, we find that a given behaviour, for instance, may be *obligated, imposed, prohibited, forbidden, allowed, permissible*. The modal meaning is expressed by a wide range of word forms: verbs, adjectives, nouns. A list of examples divided by type of deontic orientation (first obligation and prohibition, then permission) is given below, with the relevant expressions in italics:

(30) All of the joint owners, lessees, occupants or holders, under any title, of the Condominium's subsidiary properties, business people, workers, administrative staff and visitors, *are obliged* to abide by the environmental commitments that govern the Condominium [...] (Lease Agreement).

(31) This Agreement shall be construed by the court in such a manner as to *impose* only those restrictions on the Executive's conduct that are reasonable in the light of the circumstances [...] (Employment Agreement).

(32) [...] Purchaser's Expenses which Purchaser is *prohibited* from paying by FHA, VA, state-coordinated veteran's housing assistance programs, or other governmental loan programs [...] (Land Agreement).

(33) It is *forbidden* for any individual or company to dispose of or accumulate solid waste in places that are not expressly authorized for that purpose [...] (Employment Agreement).

(34) Tenant is offered the discount as an incentive to make his own decisions on repairs to the property and to *allow* Landlord to rent the property without the need to employ professional management (Lease Agreement).

(35) [...] such covenant or its contemplated operation, as the case may be, shall be

interpreted in a manner as broadly in favor of the beneficiary of such covenant as is legally *permissible* (Employment Agreement).

(36) Tenants agree to the following terms and conditions in exchange for this *permission* [...] (Lease Agreement).

The list would be even longer if we considered the general illocution markers that signal (and recall) the commissive function of the document: *the company hereby agrees to, Employee agrees to / agrees that / covenants / covenants and agrees that / recognizes and agrees that / specifically and expressly represents and warrants that, it is agreed and understood that, the parties agree that / recognize and agree that*, etc. Formulae of this kind, with the parties to the contract as explicit or implicit agents of the commissive act, are almost always restricted to variations on the lemma *agree* and represent a significant set of data (452 occurrences, 27.30 pttw), but they are much less frequent than modal verbs *shall* or *will*.

In the Italian data, instances of verbs such as *obbligare/arsi, impegnarsi, vietare, autorizzare* are also frequently used (cf. 37, 38, 39 below), but the range of lexical elements and phraseological patterns involved is much greater: *è facoltà delle parti* [both parties shall have the power to], *si riserva la facoltà di* [X reserves the right to], *ha facoltà di* [X shall have the power to], *è autorizzato* [X shall be entitled to], *è irrevocabile* [it is irrevocable], *avrà diritto* [X shall have the right], *ha l'onere* [X has the duty], *spetterà* [X shall be responsible for], *è a carico di* [X shall provide], *provvede/provederà* [X shall provide], *è in ogni caso vietato* [it is prohibited at all events], *si intende* [it is understood] etc.

(37) Il conduttore *si obbliga* ad osservare e far osservare dai suoi famigliari e dipendenti le regole di buon vicinato e del corretto vivere civile; specificatamente *si impegna* ad evitare emissioni di fumo, esalazioni, rumori od altre simili propagazioni [...] (Contratto di Locazione). [The tenant agrees to conduct himself and his family in a manner which will not disturb others; more specifically, he agrees to avoid fumes, smoke, noise or other causes of nuisance...]

(38) *È vietato* al conduttore apportare qualsiasi innovazione o modifica nei locali ed altri impianti di cui gli stessi sono dotati senza il consenso scritto della locatrice [...] (Contratto di Locazione). [The tenant shall not make any improvements on the premises without the landlord's written consent]

(39) L'acquirente resta *autorizzato* a eseguire a proprio favore l'intavolazione dell'immobile compravenduto, su istanza del Notaio che autenticcherà nelle firme la presente scrittura privata [...] (Contratto di Compravendita). [The buyer is still entitled to register the property in the land registry through a request by a civil law notary, who will certify the signatures of the present deed...]

The list could be extended to indirect forms, such as (*non*) *dà luogo* [does (not) entitle], or *si applica* [X is entitled to], referring to rights in the specific register:

(40) La mancata fruizione del periodo di ferie *non dà luogo* alla corresponsione di compensi sostitutivi (Contratto di Lavoro). [No extra salary payments will be given for unused holidays]

(41) Al collaboratore di ricerca *si applica* il trattamento previdenziale ed assistenziale previsto dalle vigenti disposizioni normative (Contratto di Lavoro). [The research assistant is entitled to health insurance and retirement benefits as laid down in current legislation]

The range of lexical elements includes numerous nominalizations, such as patterns with *diritto* [right], *obbligo* [duty], *impegno* [commitment], *onere* [duty], *carico* [responsibility] etc. The elements mentioned in the articles are often referred to as *pattuizioni* [terms of agreement] or *obbligazioni* [duties, obligations] in introductory or summative formulae such as *la locazione è regolata dalle pattuizioni seguenti* [the lease shall be governed by the following terms], or *a garanzia delle obbligazioni assunte con il presente contratto* [as a guarantee for obligations agreed to in the present contract]. Nominal elements are often used in adverbial phrases specifying rights and duties introduced in the main clause (see examples 42 and 43):

(42) L'immobile verrà consegnato alla data del ..., libero da cose e persone (salvo il caso in cui sia occupato da inquilino come indicato al punto 1), *con obbligo del venditore* di conservarlo fino ad allora con la diligenza del buon padre di famiglia (Contratto di Compravendita). [The property will be handed over on ..., free from things and people (unless it is occupied by a tenant as indicated in point 1) and the vendor shall keep it in good condition until that date]

(43) Il terreno descritto nell'art. 2 (due) viene venduto dalla Provincia e rispettivamente acquistato dalla Società, a corpo e non a misura, quindi *senza garanzia* di esattezza della sua superficie come indicato all'art. 2 (due), nello stato giuridico che appare dal Libro Fondiario e nello stato di fatto in cui si trova alla data di sottoscrizione del presente contratto, *con le seguenti garanzie*: [...] (Contratto di Compravendita). [The property described in Article 2 is sold by the Provincial Council and bought by the Company on the following terms: as a purchase *per aversionem*, therefore with no guarantee as to the exact measure of the area as indicated in Article 2; with the same legal status as that indicated in the Land Registry; and in the condition as it is at the time of signing the present contract, with the following guarantees:..]

Nominalizations are thus more frequent in Italian; they are realized by a wider lexical range and are more varied in their patterns. Even when the patterns look similar, they reveal a greater tendency for lexical variation and phraseological constructions. A study of the co-text of *right* and *diritto*, for example, seems to highlight similar trends in the two languages. The Italian corpus shows that the phrasal lemma *aver diritto* [have the right] is definitely the most frequent collocation (76 occurrences), followed by *riservarsi il diritto* [reserve the right] (12), *dar diritto* [confer a right] (7), *(fatto) salvo il diritto* [reserve the right] (7) and other single occurrences (*determina il diritto* [creates the right], *comporta il diritto* [entails the right], *nessun diritto le deriva* [no right is conferred], *con rinuncia ad ogni diritto* [waive any right], *concede o non concede il diritto* [grant the right or deny a right]. In English, the nominal element has almost the same number of occurrences: the lemma *have the right* occurs 86 times, followed by *exercise a right* (9), *reserve the right* (8), *waive a/right* (7), *be granted the right* (3), *allow the right* (2) and other single occur-

rences (*acknowledge, extend, acquire, deny the right, assign, create, confer, preclude, resign a right*). The total number of occurrences in English is slightly higher (124 as against 107), but the normalized frequencies show great disparity: 7.49 vs 20.54 pttw. Phraseological patterns are much more frequent than they are in Italian, whereas in English the most frequent expression of modality is represented by modal verbs.

Lexical variability is also noticeable in Italian in general illocution markers: *è convenuto tra le parti* [it is herein agreed by the parties hereto], *si conviene e si stipula quanto segue* [the parties hereby covenant and agree as follows], *vengono qui specificamente approvate* [are hereby specifically agreed to], or *le parti concordano* [parties agree]/ *promettono* [will]/ *convengono* [covenant]/ *approvano* [accept]/ *si impegnano* [mutually undertake]/ *si obbligano* [mutually oblige].

Lexical and syntactic variability contribute to more flexible patterns of word order in Italian. Passive structures, in particular, allow for postposition of the subject, as well as for the agentless structures that typically occur in both corpora (Mortara Garavelli 2001: 93). Italian passive forms are also characterized by variation in the use of auxiliaries (*venire* and *essere*), showing a preference for the pattern with the verb *venire* rather than *essere* (*Il prezzo viene pagato a corpo e non a misura* [the price shall be paid *per aversionem*]. [...] *Le nuove quote vengono applicate a decorrere...* [...The new rates shall be applied from...]).

The most distinguishing feature of Italian contracts is probably the use of deontic future tense and simple present indicative as shown by the two examples below:

(44) Il trattamento retributivo del collaboratore di ricerca è fissato in ... [...]. Il rapporto di lavoro regolato dal presente contratto si estingue alla scadenza dei termini (Contratto di Lavoro). [The research assistant's salary shall be ... [...]. The employment relationship established by the present contract terminates at the end of the agreed period]

(45) La prestazione avrà inizio con il giorno ... per terminare inderogabilmente il giorno Il presente contratto potrà essere rinnovato e la reiterazione per più di una volta nel medesimo anno lo trasformerà senza bisogno di ulteriori formalità in [...] (Contratto di lavoro). [This employment will commence on ... and end ... The present contract may be renewed. If the contract is renewed more than once within the same year, there is an implied agreement to change the contract into...]

The most general function of the contract is often expressed in a simple present indicative: *si conviene e si stipula quanto segue* [it is agreed as follows], *L'Università degli Studi di ... assume con rapporto di lavoro subordinato a tempo determinato il/la Dott... in qualità di...* [the University of ... recruits Mr/Mrs... for a fixed-term job], *La sig. ... di seguito denominata Locatrice [...] concede in locazione al sig. ... di seguito denominato Conduttore* [Mrs..., hereinafter referred to as Landlord leases the premise to Mr..., hereinafter referred to as Tenant]. In Italian contracts, the simple present is also used in specifying the articles of the contract. As Šarčević 2000: 139) has observed, "in prescriptive legal discourse the present indicative form in Romance languages such as Italian or French is referred to as the normative indicative, particularly in main clauses where it generally has a clearly prescriptive

function". The future is also significantly employed with deontic meaning, all through the articles.

On the whole, then, markers of deontic values are characterized by much greater formal variety in Italian than they are in English, where modal auxiliaries constitute the most obvious indicator of the single rights and duties listed in a contract.

5. Discussion and conclusions

The quantitative overview of data on modal verbs has revealed a heavy concentration of one particular deontic modal in each language – *shall* in English and *dovere* in Italian. In English, however, modals of obligation are followed at a great distance by modals of permission and prohibition, whereas in the Italian corpus there is a more balanced proportion of the three deontic categories. The frequency of all deontic modals is also much higher in English than in the Italian contracts and the range is much wider. The quantitative difference reflects a general tendency of the languages, but is also distinctive of the legal domain and in particular of the contract as a genre.

In our analysis we bore in mind the basic semantic and pragmatic distinctions that appear relevant to the case of the contract. From a semantic point of view, the most important distinction is the one between mandatory and discretionary rules, expressing respectively obligation, prohibition and permission. From a pragmatic point of view, the major distinction is one between directive and commissive speech acts. Directives are traditionally regarded as more “face-threatening” (Brown & Levinson 1987). The degree of ‘imposition’ may often suggest recourse to politeness strategies in order to lessen the impact of directives.

Expectedly, no significant difference was observed between the proportion of mandatory and discretionary rules as a whole. The difference was rather in the role played by modals in signalling them. The English contract is highly formulaic and the presence of a modal *shall* is a clear indicator of the presence of a mandatory rule. The insistence on *shall*, however, is often mitigated by choosing a non-personal subject. In Italian, on the other hand, modals of obligation and prohibition are balanced with periphrastic expressions and unmodalized statements.

In commissives – committing the speaker to a certain course of action – the sincerity condition (intention) may be relevant, while the propositional content refers to future action. This is the area where a focus on modal verbs reveals the most significant differences. The speaker’s commitment is usually expressed through an explicit performative verb in Italian (*Il locatore si impegna* [Tenant shall undertake]), whereas in English it is expressed by means of a modal (*will*). The different formal choice, however, does not seem to affect the degree of explicit marking of the function.

From the point of view of the non-expert reader, the systematic choice of different word classes (as with commissives) may not affect ease of understanding at all. Lexical variability, on the other hand, combined with the frequency of unmodalized statements (as is the case with directives), may affect the clarity of the text.

The Italian text, on the whole, is characterized by a wider range of forms and by

greater variation in signals of deontic meanings. Lexical variation is also accompanied by greater syntactic variation, especially as far as word order is concerned. Markers of deontic values are thus less formulaic than in English and not always easily recognizable for the lay reader. The differences between our English and Italian corpus are not simply due to systematic differences between the two languages. It is also the strategies typically selected in the two legal cultures that vary and the socio-pragmatic requirements of the situation. The greater degree of variation found in Italian texts does comply with tradition and convention in Italian legal writing, but may in fact result in reduced clarity for the lay reader.

References

- Adams K. A. 2008. *A Manual of Style for Contract Drafting*. 2nd Edition. Chicago: ABA Publishing.
- Bhatia V. K. 1993. *Analyzing Genre: Language Use in Professional Settings*. Harlow: Longman.
- Bhatia V. K., C. N. Candlin & P. Evangelisti Allori (eds.) 2008. *Language, Culture and the Law. The Formulation of Legal Concepts across Systems and Cultures*. Bern: Peter Lang.
- Brown P. & S. C. Levinson 1987. *Politeness: Some Universals in Language Usage*. Cambridge: Cambridge University Press.
- Butler J. 2003. A minimalist treatment of modality. *Lingua* 113: 967-996.
- Connor U. 2002. New directions in contrastive rhetoric. *Tesol Quarterly* 36: 493-510.
- Connor U. 2004. Intercultural rhetoric research: beyond texts. *Journal of English for Academic Purposes* 3: 291-304.
- Cornu G. 2005. *Linguistique Juridique*. Paris: Éditions Montchrestien.
- Danet B. 1985. Legal discourse. In T. A. Van Dijk (ed.), *Handbook of Discourse Analysis*. Vol. 1. London: Academic Press: 273-291.
- Dossena M. 2001. *Committed wittingly, willingly and of purpose: exclusiveness and intensification in Early Modern English legal texts*. In M. Gotti & M. Dossena (eds.), *Modality in Specialized Texts*. Bern: Peter Lang: 113-131.
- Facchinetti R., M. Krug & F. Palmer (eds.) 2003. *Modality in Contemporary English*. Berlin: Mouton de Gruyter.
- Frade C. 2005. Asymmetries in the negotiation of international contracts in Brazil. In A. Trosborg & P. E. Flyvholm Jørgensen (eds.), *Business Discourse. Texts and Contexts*. Bern: Peter Lang: 139-159.
- Garzone G. 2001. Deontic modality and performativity in English legal texts. In M. Gotti & M. Dossena (eds.), *Modality in Specialized Texts*. Bern: Peter Lang: 153-173.
- Gibbons J. (ed.) 1994. *Language and the Law*. Harlow: Longman.
- Gibbons J. 2003. *Forensic Linguistics: An Introduction to Language in the Justice System*. Oxford: Blackwell Publishing.
- Gotti M. 2001. Semantic and pragmatic values of *shall* and *will* in Early Modern English statutes. In M. Gotti & M. Dossena (eds.), *Modality in Specialized Texts*. Bern: Peter Lang: 89-111.

- Gotti M. & M. Dossena (eds.) 2001. *Modality in Specialized Texts*. Bern: Peter Lang.
- Hart D. (ed.) 2004. *English Modality in Context: Diachronic Perspectives*. Bern: Peter Lang.
- Hiltunen R. 1990. *Chapters on Legal English. Aspects Past and Present of the Language of the Law*. Helsinki: Suomalainen Tiedeakatemia.
- Kratzer A. 1977. What 'must' and 'can' must and can mean. *Linguistics and Philosophy* 1: 337-355.
- Kurzon D. 1986. *It Is Hereby Performed... Explorations in Legal Speech Acts*. Amsterdam & Philadelphia: John Benjamins.
- Lyons J. 1977. *Semantics*. Cambridge: Cambridge University Press.
- Mauranen A. 2001. Descriptions or explanations? Some methodological issues in contrastive rhetoric. In M. Hewings (ed.), *Academic Writing in Context*. Birmingham: University of Birmingham: 43-54.
- Megarry R. E. 1960. Note on whether *may* means *must*. *The Law Quarterly Review* 76: 1920.
- Mortara Garavelli B. 2001. *Le Parole e la Giustizia. Divulgazioni Grammaticali e Retoriche su Testi Giuridici Italiani*. Torino: Einaudi.
- Palmer F. R. 1986. *Mood and Modality*. Cambridge: Cambridge University Press.
- Palmer F. R. 1988. *The English Verb*. London: Longman.
- Palmer F. R. 1990. *Modality and the English Modals*. 2nd Edition. London & New York: Longman.
- Poppi F. 2008. Squaring the circle: combining freedom with responsibility in EU directives. In G. Garzone & P. Catenaccio (eds.), *Language and Bias in Specialized Discourse*. Milano: CUEM: 101-115.
- Redmond P. W. D. 1979. *General Principles of English*. Plymouth: MacDonald & Evans.
- Russel F. & C. Locke 1992. *English Law and Language*. London: Cassel.
- Šarčević S. 2000. *New Approach to Legal Translation*. The Hague: Kluwer Law International.
- Scott M. 1998. *WordSmith Tools*. Oxford: Oxford University Press.
- Searle J. R. 1975. Indirect speech acts. In P. Cole & J. Morgan (eds.), *Syntax and Semantics* 3. *Speech Acts*. New York: Academic Press: 59-82.
- Tiersma P. M. 1999. *Legal Language*. Chicago: Chicago University Press.
- Trosborg A. 1997. *Rhetorical Strategies in Legal Language. Discourse Analysis of Statutes and Contracts*. Tübingen: Narr.
- Tsangalidis A. & R. Facchinetti (eds.) 2009. *Studies on English Modality. In Honour of Frank Palmer*. Bern: Peter Lang.
- Wagner A. & S. Cacciaguidi-Fahy (eds.) 2006. *Legal Language and the Search for Clarity*. Bern: Peter Lang.
- Williams C. 2004. Pragmatic and cross-cultural considerations in translating verbal constructions in prescriptive legal texts in English and Italian. *Textus* XVII/1: 217-245.
- Williams C. 2005. *Tradition and Change in Legal English*. Bern: Peter Lang.
- Williams C. 2006. Fuzziness in legal English: what shall we do with *shall*? In A. Wagner & S. Cacciaguidi-Fahy (eds.), *Legal Language and the Search for Clarity*. Bern: Peter Lang: 237-263.

APPENDIX (contract websites)**American websites**

<http://www.allaboutforms.com>

<http://www.totalrealestatesolutions.com>

<http://www.lawsmart.com>

<http://www.contracts.onecle.com>

<http://freelegalforms.net>

<http://www.legaldocs.com>

Italian websites

<http://www.moduli.it>

<http://www.sicet.it/contratti>