"If it be the case that the appellants are under such an obligation...": A comparative study of conditionals in English legal discourse

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Abstract

Legal communication is an area where English has increasingly been employed by both native and non-native speakers. In an attempt to carry out a comparative study, the aim of this paper is to focus on language variation in the genre of judgments. For this purpose, a key feature of judicial texts, namely conditionality, was studied. On the basis of a collection of recent EU and Irish judgments, a large sample of conditional subordinators was analysed. Data showed that conditional clauses mainly express what Quirk et al. (1985) call direct open conditions. More specifically, there is evidence that conditionals occur in four outstanding contexts: the expression of obligations; the formulation of conditions under which permissions are granted; the laying down of prohibitions; and the expression of the judge's recommendations. Finally, an important role is also played by the second category of direct condition identified by Quirk at al. (1985), i.e. hypothetical conditions. Taken together, data appear to suggest that language-relevant findings are indicative of interesting differences also to be read in terms of underlying legal culture.

Keywords

judgments, conditionals, corpus, discourse, pragmatics.

1. Introduction

The study of English across native and non-native contexts has been a favourite subject of investigation for over a decade now. In particular, scholars have long delved into the use of English in settings where speakers from heterogeneous language backgrounds come into contact. A noteworthy example is represented by the academia, where English appears to cut across disciplinary communities as the real *lingua franca* eligible for knowledge dissemination in a variety of forms, either specialised – e.g. through research articles (Bondi and Mazzi 2008) and talks (Webber 2005) – or popular (cf. Myers 1992 on textbooks and Crawford 2005 on lectures).

In addition to academic discourse, legal communication is also an area where English has increasingly been employed by both native and non-native speakers, especially where the creation of such supra-national bodies as the European Union has brought not only speakers but also different and at times heterogeneous legal systems closer together (Maley 1994; Barceló 1997). EU Membership therefore had a strong impact on common-law countries like the United Kingdom and the Republic of Ireland: from a legal point of view, these yielded to Community law, i.e. a legal system largely influenced by the civil-law tradition, and they had to create a new legal infrastructure to accommodate the influx of vast amounts of EC legislation in economic and social matters (Byrne and McCutcheon 1996; Dimitrakopoulos 2001; Tomkin 2004). From a more inherently linguistic perspective, these English-native countries had to come to terms with a distinct legal and judicial system, in which the use of English might not necessarily overlap with the standards and conventions they have traditionally been adopting in domestic legislation.

In an attempt to carry out a comparative study of English legal discourse across a native and a supra-national (by definition non-native) context, the aim of this paper is to focus on language variation in the genre of judgments. For this purpose, a key feature of judicial texts, namely conditional clauses, will be studied. The centrality of conditionals in legal texts has now been widely acknowledged (cf. Nivelle and Van Belle 2007; Mazzi 2010) and it was pointed out as far back as in Crystal and Davy's (1969: 203) scholarly work on the language of legal documents:

> Reduced to a minimal formula, the great majority of legal sentences have an underlying logical structure which says something like 'if x, then Z shall be Y' or, alternatively 'if X, then Z shall do Y'. There are of course many possible variations on this basic theme, but in nearly all of them the 'if X' component is an essential: every action or requirement, from a legal point of view, is hedged around with, and even depends upon, a set of conditions which must be satisfied before anything can happen.

Conditional clauses have been extensively studied in English (Biber et al. 1999): of all descriptive accounts, Quirk et al.'s (1985) in-depth investigation of condition-

als is remarkably clear and appears to lend itself to full implementation in the text-types or genres in which these forms may best be studied. More specifically, this work took Quirk et al.'s classification of direct conditional clauses into open and hypothetical as a valid starting point: on the one hand, direct conditions are open as "they leave unresolved the question of the fulfilment or non-fulfilment of the condition, and hence also the truth of the proposition expressed by the matrix clause"; on the other hand, hypothetical conditions convey "the speaker's belief that the condition will not be fulfilled (for future conditions), is not fulfilled (for present conditions), or was not fulfilled (for past conditions)" (Quirk et al. 1985: 1091). Of note, Quirk et al. also provide a fairly exhaustive list of the most common elements that introduce conditional clauses in English, which they call "conditional subordinators".

This study draws on Quirk et al.'s grammar for the purpose of a corpus-based investigation of conditionality and the main discourse functions of its subordinators in a collection of recent judgments by the Court of Justice of the European Union and the Supreme Court of Ireland in the area of agriculture, a sometimes highly controversial subject-matter in which national and EC legislation have been confronting each other for a few decades now. As such, the paper is designed to provide authentic evidence of any shared or differing roles of conditionals in the discursive practices of the two courts, along the methodological guidelines provided in Section 2.

2. Materials and methods

The study is based on two synchronic comparable corpora: the first one, the so-called ECJ corpus, includes the English version of 50 judgments issued by the Court of Justice of the European Union (279,604 words altogether); the second corpus, the SCI corpus, features 46 judgments delivered by the Supreme Court of Ireland (352,753 words). The criteria of corpus design were essentially fourfold. First of all, the homogeneity of the judicial subject-matter covered by the judgments was a key parameter: for both corpora, only judgments concerning agriculture were selected.[1] Secondly, the homogeneity of the sources was secured, because the judgments were issued by two courts of last resort in the respective jurisdictions, i.e. EC law and the legal system of the Republic of Ireland. Thirdly, the two sources were chosen with a view to their capability of representing English in use in both an English-native national context – i.e. Ireland – and a supranational context such as the EU, where English is not necessarily the language of the parties involved.[2]

Finally, we made sure that the two corpora were also quantitatively comparable: for the ECJ corpus, the carefully constructed search engine of the Court's website was used to retrieve the last 50 judgments delivered by the ECJ on agriculture and its related areas; in the case of the SCI, an equivalent advanced search

based on the term *agriculture* was launched, with the effect of retrieving a total of 46 judgments. In an attempt to guarantee that the corpora reflect a comparable time span, the websites of the two courts were both accessed for the purpose of corpus design at the end of July 2012.

From a methodological point of view, the analysis was essentially corpus-based: first of all, all conditional subordinators on Quirk et al.'s (1985: 1089)[3] extensive list were concordanced across the two corpora by means of the linguistic software package *WordSmith Tools 5.0* (Scott 2008). Secondly, the occurrences of every item were studied in order to collect full-relief information about the most frequent types of conditionals in EC and Irish judgments alike: in this respect, Quirk et al.'s (1985) types of conditional clauses were initially taken as useful macro-categories for a preliminary classification of the attested conditionals. Subsequently, however, the analysis was refined by taking a look at the distinctive function the conditionals appeared to serve in the specific context instantiated by the two corpora: in an attempt to obtain solid empirical findings, therefore, the collocational environment of each operator was studied. Collocation is defined by Sinclair (1996) as the regular co-occurrence of words, whereas its closest variant, i.e. colligation, indicates the co-occurrence of grammatical choices, as is the case with a noun that preferably co-occurs with a specific range of verbs.

Both collocation and colligation proved invaluable tools against the corpus backdrop provided for the study: accordingly, the combination of a qualitative investigation of conditionals with a sound quantitative background provided concrete evidence about each court's preference for open or hypothetical conditionals, along with a number of insights about the underlying judicial cultures conditionals might serve to disclose. Section 3 is aimed at illustrating the results of the multi-layered investigation briefly sketched out here, whereas Section 4 is devoted to a final discussion of the more general implications of corpus findings.

3. Results

For the purpose of a preliminary survey of data, a quantitative overview of conditional subordinators was provided for both ECJ and SCI texts. The raw frequency of the items is reported in Table 1:

Conditional subordinator	Frequency (ECJ)	Frequency (SCI)
If	435	621
Unless	40	88
In the event	33	28
Provided that	56	48
Providing that	-	7
On condition that	15	1
In case	22	6
As long as	5	-
So long as	-	2
Supposing that	4	4
Assuming that	1	15
Had + Subj.	1	11
Were + Subj.	-	7

Table 1. Conditional operators with attested raw frequency (ECJ and SCI).

Moving beyond the merely quantitatively uneven distribution of the items, the extensive review of data across the two corpora showed that attested conditional clauses mainly express what Quirk et al. (1985) define as direct open conditions (cf. Section 1). At its simplest, this type of condition can be noted in (1) below, where the fulfilment or non-fulfilment of the condition that *domestic procedural rules* do not interfere with or jeopardise European law in the current dispute is left unresolved:[4]

> (1) It is well settled that rights arising under European law can be subject to domestic procedural rules provided that the same are no less favourable than those governing actions seeking similar reliefs at domestic law and provided that they do not render the exercise of European law rights virtually impossible. (SCI, *Arklow Ltd. v. an Bord Pleanála*)

However accurate the category of direct open condition may be, a closer look at those conditional forms suggests that the underlying classificatory criteria could be fruitfully refined in the light of the specific setting covered by the study. More specifically, there seems convincing evidence that conditionals tend to occur in four outstanding contexts: first of all, the expression of obligations; secondly, the formulation of conditions under which the permission to do something is granted; thirdly, the laying down of prohibitions; fourthly, the expression of the judge's recommendations.

Of the four contexts outlined above, the expression of obligations is definitely the most frequent one in ECJ judgments, where the Court's resolutions are unanimous in resuming the letter of primary or secondary sources of EC law. A strongly

prescriptive voice therefore characterizes an argumentative style where emphasis is laid on the fundamental rules serving as the background against which the Court's decisions will eventually be set. In this case, conditional operators typically introduce a subordinate proposition whose governing clause is marked by *shall*:

> (2) In case of partial division of the total amount of the regional ceiling, farmers **shall** receive entitlements whose unit value is calculated by dividing the corresponding part of the regional ceiling established under Article 58 by the number of eligible hectares, within the meaning of Article 44(2), established at regional level. (ECJ, *Arnold und Johann Harms als Gesellschaft bürgerlichen Rechts v. Freerk Heidinga*)

Passages like (2) are clear instances of a deeply intertextual trait of ECJ judgments, where judges avail themselves of the modal verb that most often denotes obligations in English legislative provisions, i.e. *shall*. In SCI texts, by contrast, the interplay of conditionals with the expression of obligations is less associated with the occurrence of *shall* than with that of *must* (cf. 3 below), whereas the two corpora share the recourse to other kinds of imperative periphrases such as *be required to…*, *place x under an obligation*, *it is for x to…* and *be to….* The somewhat strong collocational ties between these forms and conditional operators are noteworthy in the case of *provided that* in the ECJ corpus and *unless* in the SCI corpus, where they account for 39.3% and 27.3% of their respective occurrences. Furthermore, *in case* was observed to attract deontic markers across the two corpora (63.6% and 66.6% of its ECJ and SCI entries, respectively).

The use of conditionals in deontic contexts is illustrated in (4)-(7), in which judges recall the duties of competent authorities (4 and 6) as well as applicants (5) under key circumstances dictated in the current case, and they re-state a basic rule applying to proper transfers of land (7):

> (3) In the present case also the respondents have at all material times relied on the statutory power contained in section 16 of the 1956 Act and, if this appeal is to succeed, the respondents **must** in my view show that section 16 expressly permits them to remove the applicants from the payroll of the Department in the circumstances described in the evidence which is before the court. (SCI, *Marie Fuller et al. v. The Minister for Agriculture and Food and the Minister for Finance*)

> (4) In the event that that authority reaches the conclusion that the breach of the provisions of Directive 91/628 does concern the welfare of all the animals being transported, **it is required to** refuse the export refund without the need for evidence that the animals suffered actual and specific injury whilst being transported. (ECJ, *Viamex Agrar Handels GmbH v. Hauptzollamt Hamburg-Jonas*)

> (5) Paragraph 1.10 of ÖPUL 2000 also **places the applicant under an obligation**, in the event of failure to comply with the five-year commitment, to repay any aid already received during the commitment period. (ECJ, *Peter Hehenberger v. Republik Österreich*)

> (6) Consequently, in a situation such as that at issue in the main proceedings, **it is for** the competent authorities of the Member State concerned, when a request has been

made to them for confidential treatment of information supplied, **to** process it in compliance with the conditions laid down in Article 14, provided that that processing does not lead those authorities, where a request for access to that information has also been made to them, to disregarding the obligations which now rest on them pursuant to Directive 2003/4. (ECJ, *Stichting Natuur en Milieu et al. v. College voor de toelating van gewasbeschermingsmiddelen en biociden*)

(7) Sub-paragraph (2) goes on to provide that, where there is a transfer of land to which the milk quota attaches, the milk quota **is to be** added to the national reserve unless one of the relevant exemptions in the regulations has been availed of. (SCI, *Nicholas Philip et al. v. The Minister For Agriculture, Food and Rural Development*)

As far as the second outstanding context preferred by conditionals is concerned, namely the outline of conditions under which permissions are granted, corpus evidence indicates that it again prevails in ECJ judgments. This tends to apply to subordinators such as *as long as* (60% of attested tokens), *on condition that* (46.6%), *provided that* (42.8%) and *in case* (31.8%), which generally collocate with *provide for the possibility for* x *to…*, *permit* and *have jurisdiction to…*:

(8) Article 44(4) of Regulation No 1782/2003 also expressly **provides for the possibility** for the Member States, in duly justified circumstances, **to** authorise a farmer to modify his declaration in relation to the parcels corresponding to the eligible area linked to a payment entitlement, on condition that he respects the number of hectares corresponding to his payment entitlements and the conditions for granting the single payment for the area concerned. (ECJ, *Kornelis van Dijk v. Gemeente Kampen*)

(9) First of all, it should be noted that Article 37(4) of Regulation No 1257/1999 **permits** Member States to lay down further or more restrictive conditions for the grant of Community support for rural development, provided that those conditions are consistent with the objectives and requirements laid down in that regulation. (ECJ, *Károly Nagy v. Mezgazdasági és Vidékfejlesztési Hivatal*)

(10) It follows that, at the stage of adoption and implementation by the Member States of the emergency measures referred to in Article 34 of Regulation No 1829/2003, as long as no decision has been adopted in that regard at European Union level, the national courts before which actions have been brought to test the lawfulness of such measures **have jurisdiction to** assess the lawfulness of those measures having regard to the substantive conditions provided for in Article 34 of Regulation No 1829/2003 and the procedural conditions laid down in Article 54 of Regulation No 178/2002 […]. (ECJ, *Monsanto SAS et al. v. Ministre de l'Agriculture et de la Pêche*)

More generic permission is granted in (8) and (9), whereas the phraseology of (10) – i.e. *have jurisdiction to…* – has a more deeply technical, jurisprudential flavour. Nonetheless, the three passages share a common pragmatic trait: in interpreting the law, the Court spells out who (chiefly Member States and national courts) is entitled to do what if a number of explicit conditions are fulfilled. This occurrence of conditionals is admittedly very important in EC law, where the sometimes shifting borders between European and national legislation

constantly need to be clarified or re-asserted, especially when the text of Treaties and/or secondary law is characterized by normative caveats. Although less pervasive, the permission-granting function reviewed here can be extended to SCI judgments too: data suggest that this holds for 27.3% of the occurrences of *provided that*, 7.2% of *assuming that*, 6% of *if*, one of the two entries of *so long as* and the single token of *on condition that*. The difference with the ECJ corpus is not simply reflected by frequency, but also by the range of collocates the conditional operators are observed to combine with, *may* being the most common, followed by *be entitled to* and the passive voice of *permit*:

(11) Member States **may** advance to the exporter all or part of the amount of the refund as soon as customs export formalities are completed, on condition that he provides security to guarantee repayment of the amount advanced plus 15%. (SCI, *Kildare Meats Ltd. et al. v. The Minister for Agriculture and Food*)

(12) It must be clear that where the respondent is the owner of a site which is a national monument she **is also entitled to** exercise rights of an owner in respect of that site so long as they are compatible with and conform to provisions of relevant statutes such as the National Monuments Acts and the State Property Act, 1954. (SCI, *Timothy Casey v. The Minister For Arts, Heritage, Gaeltacht and the Islands*)

(13) Delegated legislation **is permitted** and does not infringe Article 15.2.1, provided that the principles and policies which it is the objective of the law to pursue can be discerned from the act passed by the Oireachtas so that the delegated power can only be exercised within the four walls of the law. (SCI, *Nicholas Philip et al. v. The Minister For Agriculture, Food and Rural Development*)

Within the more restricted context of Irish law, these conditionals contribute to clarifying what the relevant subjects – whether qualified respondents, legislative bodies or Member States (with concealed reference to the Republic of Ireland itself) – have a right to do pursuant to either domestic or supra-national legislation. The use of *may* seems quite interesting, because this item might as well embed a significant empowering function that would correspond to both 'have a right to do sth' and 'enjoy full discretion of doing sth' in case certain conditions are met.

A straightforward counterpart to permission is prohibition. The use of conditionals to define the scope of prohibitions laid down by the courts is a key issue with *unless*, where this can be noted in 70% of the ECJ entries of the operator, and in 13.6% of its SCI hits. As is illustrated in (14) and (15) below, *unless* introduces finite or non-finite subordinate clauses whose function is to set out the circumstances under which the elicited prohibitions do not apply, so that their scope is best clarified:

(14) However, a person **may not** plead breach of that principle unless he has been given precise assurances by the administration (see Joined Cases C182/03 and C217/03 Belgium and Forum 187 v Commission [2006] ECR I5479, paragraph 147, and judgment

of 25 October 2007 in Case C167/06 P Komninou and Others v Commission, paragraph 63). (ECJ, *AJD Tuna Ltd v. Direttur tal-Agrikoltura u s-Sajd*)

(15) Article 5(4) **prohibits** the import of processed animal proteins from a third country unless done pursuant to a licence issued by the Minister. (SCI, *The Minister for Agriculture and Food v. Albatros Feeds Ltd.*)

Besides *unless*, SCI texts suggest that 16.6% of the occurrences of *in case* preface conditional phrases or clauses that complete the formulation of prohibitions. With *in case*, however, the effect is not to circumscribe the scope of prohibitions themselves, but rather to specify exactly what improper course of action causes something – e.g. lodging an appeal as in (16) – not to be allowed:

(16) In case of an improper exercise of the power of attachment by a Court of Law or Equity, or by either branch of the High Court of Parliament, **there can be no** appeal: the only remedy is by application to the sense of justice of each Court: and it would be improper to suppose that any one of them would be more likely to abuse the power, or less likely to grant redress, than another. (SCI, *Martin Maguire et al. v. Sean Ardagh et al.*)

As the passages above show, when conditionals specify or clarify prohibitions, the selected operators principally collocate with negations in verb phrases – e.g. *may not*, *cannot* – negative quantifiers (cf. *no appeal* in 16) or lexicalized prohibitions secured by the verb *prohibit*.

A minor sub-type of direct open conditions finally appears to underlie the formulation of recommendations. These are essentially ranked lower with respect to obligations on the deontic scale of judicial modality, as it were, even if judges carefully devise recommendations with adequate illocutionary strength provided by the recurrent presence of *should*. Thus, conditional subordinators such as *as long as* and *provided that* colligate with *should* with recommending function in 40% and 7.2% of their ECJ occurrences respectively, whereas the same goes with 4.5% and 2% of the SCI entries of *unless* and *if* respectively:

(17) ...the Community procedure **should** not prevent Member States from authorising for use in their territory for a limited period plant protection products containing an active substance not yet entered on the Community list, provided that the interested party has submitted a dossier meeting Community requirements and the Member State has concluded that the active substance and the plant protection products can be expected to satisfy the Community conditions set in regard to them. (ECJ, *Hogan Lovells International LLP v. Bayer CropScience AG*)

(18) Finally, if his conclusion shows that he has adopted a wrong view of the law, they **should** be set aside. If, however, they are not based on a mistaken view of the law or a wrong interpretation of documents they **should** not be set aside unless the inferences which he made from the primary facts were ones that no reasonable commissioner could draw. (SCI, *Castleisland Cattle Breeding Society Ltd. v. Minister For Social And Family Affairs*)

The actual bindingness of such *dicta* is a question to be addressed by jurists; on a purely linguistic ground, these could be interpreted either as commentaries to existing but at times incomplete legislation whose spirit or teleology the court is willing to elucidate, or as mere jurisprudential advice yet to be fully sanctioned by valid legislation.

In spite of their overwhelming frequency, direct open conditions do by no means cover the whole of the conditional forms of the two corpora under investigation. An important role is also played by the second category of direct condition identified by Quirk at al. (1985), i.e. hypothetical conditions (cf. Section 1). These appear to be much more widely spread in Irish than in ECJ judgments, not only in terms of overall frequency, but also with regard to the variety of conditional operators chosen by judges to give hypothetical contexts their distinctive discursive shape. It is true, therefore, that hypothetical conditions are often reserved for *if* (32% of occurrences), *unless* (18.2%), *provided that* (9.1%) and *in the event* (7.2%) – cf. (19) and (20) – but it is significant that they are also expressed through a large number of other subordinators: *assuming that* (60%), *supposing that* (25%), and in particular the whole of the 11 and 7 respective occurrences of the constructs [*had* + Subj.] as well as [*were* + Subj.]:

(19) Actions of the type in suit affect property rights. They also create the possibility of a criminal liability if disobeyed. They must be soundly based in law and when documents are served giving effect to them they must show the jurisdiction which is being relied upon. Having done so it is not in general open to the decision maker to rely upon a different jurisdictional basis for the action taken. If that were to be permitted there **could** be little legal certainty in respect of the exercise of any such powers. (SCI, *The Minister for Agriculture and Food v. Albatros Feeds Ltd.*)

(20) No finding, however, is made in either judgment of an obligation to provide a version of an Act simultaneously or at the same time. If it were the intention to do so, I consider it likely this **would** have been expressly stated. If, on the other hand, having regard to any ambiguity flowing from use of the words when/nuair in the relief sought and granted in the O'Beolain case, it could be understood that this was intended to reflect such a simultaneous obligation, I would disagree with such an interpretation, which does not flow from the plain language of Article 25, nor from the judgments. (SCI, *Pól Ó Murchú v. The Taoiseach et al.*)

(21) Had the plaintiff discharged his total liabilities to the bank, he would have paid the sum of £213,891.43 and - assuming that he had met the other conditions for eligibility - would have been entitled to be refunded by the bank the sum of £18,455.18 because of his participation in the farm rescue scheme. Nothing of the sort happened. (SCI, *James J. Behan v. The Governor And Company of The Bank of Ireland*)

(22) The Respondents argument for a reasonable time to be allowed for translation would ring more sincerely were it not for the fact that virtually no official translations of Statutes have been provided for the past twenty years. This could not be described as a reasonable time. Indeed it seems probable that the Statutes in question in this case - Statutes which are used daily in the District Court - would never have been translated were it not for the efforts of the Applicant and his legal advisers. (SCI, *Pól Ó Murchú v. The Taoiseach et al.*)

In ECJ judgments, hypothetical conditions are restricted to a few occurrences of *if* (6%) and *unless* (2.5%) – cf. (23) – while *supposing that* is only attested 4 times, and *assuming that* along with [*had* + Subj.] are virtually absent (1 occurrence each). Of note, the hypothetical nature of *supposing that* is reinforced by its regular co-occurrence with *even*, which clearly marks the judge's effort to take even the most extreme and by far remotely possible events into account, if only to explicitly discard them as implausible (24):

(23) In those circumstances, it would be inconsistent with the principle of equal treatment if the situation of farmers who applied for aid under Article 22 of Regulation No 1257/1999, which is subject to a condition relating to density of livestock, were treated differently from the situation of farmers who applied for livestock aid, with only the latter having the right to be informed by the national authorities that any animals found not to be correctly identified or registered in the system for the identification and registration for bovine animals are to count as animals found with irregularities liable to have legal consequences, such as a reduction in or exclusion from the aid concerned. (ECJ, *Károly Nagy v. Mezgazdasági és Vidékfejlesztési Hivatal*)

(24) **Even** supposing that, in paragraph 104 of the judgment under appeal, the General Court incorrectly considered that Mr Schräder's position was contradictory, even though he had put forward an alternative plea in the context of Article 62 of Regulation No 2100/94, the Court none the less finds that the General Court rejected that plea on grounds set out in paragraph 106 of the judgment under appeal, which Mr Schräder has not challenged. (ECJ, *Ralf Schräder v. Community Plant Variety Office*)

4. Conclusions

Corpus findings lent valuable insights into the distinctive discursive practices that may lie behind the use of such a common form as the conditional clause on the part of the two courts under investigation. On the one hand, the type of contexts in which conditionals were observed to occur was substantially homogeneous across corpora: thus, for instance, evidence of discourse functions we labeled as 'laying down prohibitions' and 'the expression of the judge's recommendations' was collected from both ECJ and SCI judgments. On the other hand, some key discourse functions related to the occurrence of conditionals appeared to be realised in distinctive ways, while an altogether uneven distribution of direct and hypothetical conditionals was noted for each corpus.

First of all, the expression of obligations that may correlate with conditional subordinators is more often realised with *shall* in ECJ than in SCI judgments, where the preferred modal designed to achieve the purpose is *must*. This data deserves attention and it might as well be contextualised within the age-old debate over the most appropriate modal to express deontic meaning in legal texts: ECJ judges thus seem to maintain the well-established standard that *shall* is a straightforward, unambiguous tool to indicate obligatory consequences in the law, whereas in this respect at least, SCI judges may have been more prone to

enjoy the Plain English flavour of *must* as an item that "merits consideration as a replacement for *shall* due to its familiarity to the lay reader in general usage" (Foley 2002: 366).

Secondly, the tendency of ECJ judges to associate the use of direct conditionals with the peremptory re-statement of relevant sources of EC primary or secondary legislation may be indicative of a legal culture that differs from the Irish judicial tradition, where instead much greater prominence is likely to be given to hypothetical conditionality. On the one hand, the argumentative style of ECJ judgments could be depicted as an inexorable onward march towards legal truth, in which re-affirming a number of well-known and purportedly clear rules and principles is the prelude to the semi-automatic application of these to the facts of the case and the ensuing settlement of the dispute (cf. Mazzi 2006 and 2008). On the other hand, the judicial rhetoric of Irish judges reflects a more speculative practice: notwithstanding the pursuit of legal certainty, judges deliver their decisions as a set of mutually concurring or dissenting opinions, in which arguments in favour or against a verdict are carefully balanced. This includes the projection of judicial discourse into the desirable or undesirable scenarios that would arise in case a (dis-)preferred judgment were pronounced.

This option is linguistically secured through the massive recourse to hypothetical conditionals we described for the SCI corpus in Section 3. The validity of this observation is corroborated by the fact that the typically hypothetical epistemic semi-modal *would* is much more frequent in SCI than in ECJ texts, and the phraseology in which it is most commonly embedded encompasses strings such as *it would be* as well as *the appellants would*. In 57.6% of the 66 occurrences of the former, and in 45.5% of those of *the appellants would*, the Irish judge ventures out into exploring the adverse effects that a supposedly wrong interpretation of valid law would produce in the current dispute.

The size of the two corpora and the scope of the analysis presented above warrant no clear-cut generalisations. Indeed, further research is needed to shed light on the relationship between widely attested rhetorical forms and any underlying legal tradition these may be suggested to reveal: to mention but one example offered above, the expertise of legal scholars would be precious in clarifying the legal significance of the expression of recommendations we also associated with conditionals in Section 3, thereby conferring an insightful ethnographic status on the discourse-analytic investigation attempted in the paper. However, the empirical strength of the qualitative and quantitative analysis carried out on the two corpora allowed for a first-hand account of the forms of English language variation within a single specialised genre as realised across different contexts of use.

NOTES

1 Corpus judgments were downloaded from the official websites of the two courts, i.e. http://curia.europa.eu/juris/recherche.jsf?language=en&jur=C&td=ALL (ECJ) and http://www.supremecourt.ie/Judgments.nsf/SCSearch?OpenForm&l=en (SCI).

2 Cf. Berteloot (1999) and http://curia.europa.eu/jcms/jcms/J02__7024/.

3 Conditional subordinators were occasionally observed to introduce not only full clauses, but simple phrases too, cf. *in case of disobedience*. These occurrences were included in the analysis because their function, however syntactically more localized, remains inherently conditional. For this reason, the more general term 'conditional operators' is also used as a synonym of 'conditional subordinators' in the rest of the paper.

4 In each reported example, conditional operators are underlined, whereas any salient collocate discussed in the paper is in bold. In addition, the name of the case from which the examples are taken is indicated in brackets.

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