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СОДРЖИНА / TABLE OF CONTENTS

11 ПРЕДГОВОР

Ала Шешкен, член на Уредувачкиот одбор на „Палимпсест“

FOREWORD

Alla Sheshken, member of the Editorial Board of “Palimpsest”

ЈАЗИК / LANGUAGE

15 Lilis Handayani Napitupulu, Kristiawan Indriyanto

VERBAL THREATS AS POWER PERFORMANCE: A CRITICAL DISCOURSE ANALYSIS OF JOHN DUTTON'S IMPERATIVES IN *YELLOWSTONE SEASON 1*

27 Şirin Tufan

LANGUAGE MAINTENANCE / SHIFT AND SPEAKERS' ATTITUDES IN TURKEY: THE CASE OF MACEDONIAN IN MUSTAFAPAŞA, CAPPADOCIA

37 Марија Леонтиќ

ИЗВИЦИТЕ ЗА ОБРАЌАЊЕ И ПОВИКУВАЊЕ ВО СОВРЕМЕНИОТ ТУРСКИ ЈАЗИК, НИВНОТО ЗНАЧЕЊЕ И ЕКВИВАЛЕНТИ ВО МАКЕДОНСКИОТ ЈАЗИК

Marija Leontik

INTERJECTIONS OF ADDRESS AND CALLING IN CONTEMPORARY TURKISH, THEIR MEANINGS AND EQUIVALENTS IN MACEDONIAN

49 Mirela Papa

TRADUZIONE INTERSEMIOTICA: LE COPERTINE DEI LIBRI DI BUZZATI IN ALBANIA

Mirela Papa

INTERSEMIOTIC TRANSLATION: BUZZATI'S BOOK COVERS IN ALBANIA

61 Gazi Özdemir

XVII. YÜZYIL OSMANLI SİYASET DİLİNDE DEVLET, HUKUK VE OTORİTE: KOÇI BEY RİSALESİ'NDE KRİZİN VE İHYANIN METAFORİK TASAVVURU

Gazi Özdemir

STATE, LAW, AND AUTHORITY IN 17TH-CENTURY OTTOMAN POLITICAL LANGUAGE: THE METAPHORICAL REPRESENTATION OF CRISIS AND RESTORATION IN KOÇI BEY'S TREATISE

71 Катерина Видова

ЗА НЕКОИ КАРАКТЕРИСТИКИ НА ЛЕКСИКАТА ВО СОВРЕМЕНАТА МАКЕДОНСКА ПОЕЗИЈА

Katerina Vidova

ABOUT SOME CHARACTERISTICS OF THE LEXIS OF THE MACEDONIAN CONTEMPORARY POETRY

КНИЖЕВНОСТ / LITERATURE

- 83** **Бојана Костова, Ранко Младеноски**
ФОЛКЛОРНИОТ ХИПОТЕКСТ ВО РОМАНОТ „СИНОТ НА КРАЛОТ“ ОД
СЛАВЧО КОВИЛОСКИ
Bojana Kostova, Ranko Mladenovski
THE FOLKLORIC HYPOTEXT IN THE NOVEL *THE KING'S SON* BY
SLAVCHO KOVILOSKI
- 93** **Vagif Sultanlı**
XX. YÜZYIL GÖÇMEN NESRİNDE ZAMAN VE MEKÂNIN
DEKONSTRÜKSİYONU (AZERBAIJAN VE MAKEDON EDEBİYATI
BAĞLAMINDA)
Vagif Sultanly
DECONSTRUCTION OF TIME AND SPACE IN THE PROSE OF EMIGRATION
OF THE 20TH CENTURY (IN THE CONTEXT OF AZERBAIJANI AND
MACEDONIAN LITERATURE)
- 105** **Mümin Ali**
DİJİTALLEŞEN EDEBİYAT VE DİJİTAL EDEBİYAT
Mumin Ali
DIGITALIZING LITERATURE AND DIGITAL LITERATURE
- 117** **Natalija Pop Zarieva, Krste Iliev**
REIMAGINING HOME: LITERARY ENCOUNTERS WITH DEEP
ECOLOGICAL THOUGHT
- 129** **Zekiye Tunç**
ESKİ TÜRK DESTANLARINDA FETİH POLİTİKASI
Zekiye Tunç
THE POLICY OF CONQUEST IN ANCIENT TURKİC EPİCS

КУЛТУРА / CULTURE

- 143** **Сања Ристески, Сашка Голомеова Лонгурова, Силвана Жежова, Соња
Јордева, Ванѓа Димитријева Кузманоска**
КНИЖЕВНИТЕ ДЕЛА НА ЛЕО ТОЛСТОЈ И ОСКАР ВАЈЛД КАКО МОДНА
ИНСПИРАЦИЈА
**Sanja Risteski, Saska Golomeova Longurova, Silvana Zhezhova, Sonja
Jordeva, Vanga Dimitrieva Kuzmanoska**
THE LITERARY WORKS OF LEO TOLSTOY AND OSCAR WILDE AS
FASHION INSPIRATION
- 153** **Ruska Ivanovska-Naskova, Marija Pandeva, Ema Lakinska, Davor
Jankuloski**
A SERIES OF ARTICLES ON KONESKI IN THE FOREIGN PRESS

МЕТОДИКА НА НАСТАВАТА / TEACHING METHODOLOGY

- 165 Simona Serafimovska, Nina Daskalovska**
STUDENTS' ATTITUDES TOWARD THE INTEGRATION OF THE DUOLINGO APPLICATION IN ENGLISH LANGUAGE LEARNING
- 177 Vesna Prodanovska-Poposka**
BETWEEN THEORY AND PRACTICE: A POST-LECTURE ANALYSIS OF COMMON-LAW DEFENCES
- 187 Branka Grivčevska**
MOTIVAZIONI, PERCEZIONI E RISULTATI DEI PARTECIPANTI ALLA SPERIMENTAZIONE DEL MOOC *ITALIANO ACCADEMICO PER STUDENTI SLAVOFONI*
Branka Grivčevska
MOTIVATIONS, PERCEPTIONS AND RESULTS OF THE PARTICIPANTS IN THE EXPERIMENTATION OF THE MOOC *ACADEMIC ITALIAN FOR SLAVIC-SPEAKING STUDENTS*
- 197 Özlem Kurt**
YABANCILARA TÜRKÇE ÖĞRETİMİ İÇİN HAZIRLANMIŞ YEDİ İKLİM TÜRKÇE DERS KİTABININ ETKİLEŞİM ODAKLI İNCELENMESİ
Ozlem Kurt
AN INTERACTION-FOCUSED ANALYSIS OF THE YEDI IKLİM TÜRKÇE TEXTBOOK FOR TEACHING TURKISH TO FOREIGNERS
- 209 Весна Кожинкова**
РАЗВИВАЊЕ НА КОГНИТИВНИТЕ СПОСОБНОСТИ КАЈ УЧЕНИЦИТЕ ВО НАСТАВАТА ПО ЛИТЕРАТУРА
Vesna Kozhinkova
DEVELOPING COGNITIVE SKILLS IN STUDENTS IN LITERATURE TEACHING
- 223 Tilen Smajla**
DIE MEINUNGEN SLOWENISCHER UNIVERISTÄTSSTUDIERENDER ZUM EINSATZ VON KÜNSTLICHER INTELLIGENZ IN EINEM SPRACHKURS FÜR FACHFREMDSPRACHE
Tilen Smajla
THE VIEWS OF SLOVENIAN UNIVERSITY STUDENTS OON THE APPLICATION OF ARTIFICIAL INTELLIGENCE IN LSP TEACHING
- 233 Nensi Gjetani, Ema Kristo**
INDIVIDUELLE LERNWEGE IM DEUTSCHUNTERRICHT: DIFFERENZIERUNG UND PERSONALISIERUNG
Nensi Gjetani, Ema Kristo
INDIVIDUAL LEARNING PATHWAYS IN GERMAN LANGUAGE TEACHING: DIFFERENTIATION AND PERSONALIZATION

- 245 Erta Spaho-Herri, Migena Sejdini**
DIE ROLLE DER ÜBERSETZUNG IM DaF-UNTERRICHT: DIE SITUATION
IN ALBANIEN
Erta Spaho-Herri, Migena Sejdini
THE ROLE OF TRANSLATION IN TEACHING THE GERMAN LANGUAGE
(SITUATION IN ALBANIA)
- 257 Jonida Bushi, Alma Kosova**
GESUNDHEIT ALS SCHLÜSSELTHEMA IM FREMDSPRACHEN-
UNTERRICHT: EINE ANALYSE AUSGEWÄHLTER LEHRWERKE
Jonida Bushi, Alma Kosova
HEALTH AS A KEY TOPIC IN FOREIGN LANGUAGE TEACHING: AN
ANALYSIS OF SELECTED TEXTBOOKS

ПРИКАЗИ / BOOK REVIEWS

- 271 Даниела Андоновска-Трајковска**
ВАЛЕНЦИЈА НА ЛИРСКОТО ЈАС: АКТАНТНА АНАЛИЗА НА „ЧОВЕЧКИ
ТИШИНИ“ ОД БОРЧЕ ПАНОВ
Daniela Andonovska-Trajkovska
THE VALENCY OF THE LYRICAL SUBJECT: ACTANTIAL ANALYSIS OF
HUMAN SILENCES BY BORCHE PANOV
- 283 Lucia Ráčková**
L'AMALGAME LEXICAL – FRÉQUENT DANS L'USAGE, RARE DANS LE
DICTIONNAIRE DE RÉFÉRENCE
Lucia Ráčková
LEXICAL BLENDS: FREQUENT IN USE, RARE IN REFERENCE

ДОДАТОК / APPENDIX

- 295 ПОВИК ЗА ОБЈАВУВАЊЕ ТРУДОВИ**
ВО МЕЃУНАРОДНОТО НАУЧНО СПИСАНИЕ „ПАЛИМПСЕСТ“

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BETWEEN THEORY AND PRACTICE: A POST-LECTURE ANALYSIS OF COMMON-LAW DEFENCES

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Abstract: Many academics, trainers and professionals often wonder what happens in the crucial space between a lecture's end and a lawyer's first real case. In teaching Legal English, Legal ESP instructors struggle with a persistent dilemma: students can master legal terminology yet not always succeed in correctly applying it. In order to investigate this gap, the author conducted a classroom study with 45 law students learning common-law defences. While students demonstrated excellent command of theoretical definitions (>90% correct), their ability to deal with applied, ambiguous scenarios revealed a significant gap. Most unusual was that only 60% could correctly identify the 'public duty' defines in an emergency medical case scenario, often confusing it with moral necessity. These findings do more than quantifying a learning challenge because they expose a critical flaw in assuming that teaching the language *of* the law equips students to think *with* the law. The author argues that closing this gap requires a fundamental pedagogical shift in Legal ESP such as from knowledge transmission to the deliberate cultivation of professional reasoning through complex, ambiguous scenarios that mirror the true texture of legal practice.

Keywords: *Legal English; ESP; Application gap; Scenario-based learning; Usage vs. Use.*

1. INTRODUCTION

Teaching English for Specific Purposes (ESP) in law or also known as Legal English requires more than vocabulary lists. The real goal is to foster a professional discursive competence, which refers to the ability to engage in the specialized reasoning and communication of the legal world. This aligns with the evolution in ESP where the focus has shifted "from text to what makes a text possible, from discourse to genre," (Bhatia, 2002, abstract section) moving towards the deeper structures of professional communication. For law students learning common-law concepts in English, the hardest leap is often not memorizing definitions, but applying abstract principles to sometimes ambiguous, real-world fact situations. This reflects a fundamental and persistent division in professional education such as the gap between knowing a rule and knowing how to use it. Research in Legal ESP consistently highlights that students can grasp isolated concepts yet fail to integrate them into the reasoned argumentation required in practice (Howe,

1990; Cary & Hirst, 2014). This paper presents a case study from a Legal English classroom that brings this challenge into focus. After a lecture on common-law defences to crime, the author assessed students' understanding not just through definitions, but through scenario-based problems. The results reveal a predictable yet instructionally critical pattern- the participants demonstrated strong command of rules which was paired with a struggle to apply them in unclear or mixed situations. By examining this gap, this study aims to contribute a concrete, data-informed and supported perspective to Legal ESP methodology, arguing that effective instruction must actively bridge the space between theoretical knowledge and the situated cognition of practical legal reasoning in English (Brown et al., 1989). Therefore, this study addresses a straightforward question: To what extent does traditional lecture-based instruction enable law students to correctly apply common-law defences, as opposed to merely defining them? Guided by the essential distinction between language usage and use (Widdowson, 1978), this study measured and compared students' performance on tests of definitional knowledge against their performance on applied-scenario assessments.

1.1 LITERATURE REVIEW

The author's classroom observation is that students know definitions but struggle to apply them, which is a challenge that precedes this study. Fortunately, it is a challenge with deep roots in our field, because the established theories in ESP and education provide us with a strong framework to understand it. This analysis draws upon three interconnected theoretical strands from English for Specific Purposes (ESP) and professional education to interpret the findings. First, the work of Henry Widdowson (1978) provides the essential starting point with his crucial distinction between usage and use. Usage refers to knowledge of a linguistic system- its vocabulary and rules. Use, in contrast, is the capacity to deploy that system to perform communicative acts in real contexts. The study is built on this very distinction, that in law, a student can master the usage of the term "necessity" but fail in its use by misapplying it to a novel case. Second, the theory of situated cognition (Brown et al., 1989) explains the cognitive roots of the gap, arguing that professional reasoning is cultivated within authentic contexts of practice, not through decontextualized knowledge transmission. Third, Bhatia's (2002) genre-based approach to professional discourse defines the target competence, shifting focus from textual features to the social practices and communicative purposes of the legal community. The scenario-based assessment that was employed was designed as a test of authentic use, measuring the 'translation' of instruction into practical professional capability. So, why is this leap from usage to use so difficult? Donald Schön's (1983) metaphor is powerfully explanatory in this regard as he contrasts the "high, hard ground" of theory with the "swampy lowlands" of practice. Academia often operates on the high ground, teaching clean, context-free principles. Professional practice, especially in a precedent-based system like common law, is swampy: problems are messy, ambiguous, and lack clear textbook answers. A student can correctly recite the rule for "self-defence" (the high ground) but misapply it when faced

with a scenario involving mistaken belief or disproportionate force (the swamp). Therefore, this study offers an empirical demonstration of students taking their first steps into this challenging terrain. To turn Widdowson's goal of use into a teachable objective in a field like law, the concept of genre seems indispensable. Following John Swales (1990), genres are classes of communicative events, such as a legal defence or a case brief, with shared purposes that shape their structure, style, and content. Mastering Legal English, therefore, is not merely lexical because it involves acquiring the schemes and rhetorical patterns of legal genres, because in essence, it is the process of learning and being able to enter into the logic of legal problems i.e. to understand not just their surface terminology but their deeper structure and argumentative core. A student's error in applying a defence can often be traced to an underdeveloped understanding of a genre's internal logic and boundaries. Hence, to overcome those difficulties ESP instructor needs more than good intentions, they need support of an effective teaching practice in order to clearly explain how this type of text or speech (e.g., a legal defence) is structured and why. The interaction between these three theoretical components results in a strong framework for the present analysis. If Widdowson (1978) defines the core objective (authentic use), then Schön (1983) explains why achieving it is so profoundly difficult (the complexity of practice). Within this context, Swales' (1990) concept of genre becomes the essential pedagogical tool, which is the map for guiding students through the swamp. This paper, therefore, places itself at the intersection of these ideas, as the author uses a classroom experiment to trace the specific challenges law students face as they move from understanding the *usage* of legal terms toward their effective *use* within the complex genre of common-law analysis.

2. MATERIAL AND METHOD

The core instruction was a lecture on common-law defences, delivered as part of the first-semester Legal English curriculum. To measure learning, a custom-designed questionnaire was developed, directly based on the lecture content and enriched with practical examples. This survey was administered in the eighth week of the first semester of 2025/26 academic year. The participants were 1-year Law students from Faculty of Law within the University St. Kliment Ohridski-Bitola, North Macedonia. Following the lecture, students were given one week to prepare and submit their answers. Participation was voluntary but incentivized as a graded course activity, requiring students to provide identifying information for credit. The original survey data is confidential due to the presence of student identifiers. The survey instrument (summary of answers excluding names) is available from the author upon request. It was distributed to a cohort of approximately 70 students and the final sample consisted of 45 students ((37 females, 82.2%; 8 males, 17.8%) who met the submission deadline, with several responding within the first two days and the remaining participants completed it within the specified week.

2.1. PROCEDURE AND ASSESMENT INSTRUMENT

The research was integrated into a standard teaching module:

1. Lecture: A 90-minute lecture provided explicit definitions and examples of key common-law defences (self-defence, duress, necessity, consent, and public duty).
2. Structured Preparation: Students had one week to review materials autonomously.
3. Assessment: Students completed online scenario-based assessment as a graded activity.

The author designed a questionnaire to measure different cognitive dimensions of understanding, moving from recall to application. Scenario-based problems are a recognized tool in legal education for testing applied reasoning (Mau S.D, 2009). The assessment instrument was strategically designed to measure different cognitive dimensions of understanding, progressing from foundational knowledge to complex reasoning and it consisted of four parts: Part A (Definition Matching) served as a base, measuring pure declarative knowledge by requiring students to match five defence terms to their correct textual descriptions. Building on this, Part B (Scenario Analysis) contained four items that tested procedural application. Here, students were presented with brief factual scenarios and had to select the most appropriate defence - from knowing a term to using it in context. To assess their knowledge of the said system, Part C (Conceptual Principles) contained five True/False items to evaluate comprehension of abstract legal rules covering the notion of the defences. Finally, Part D (Conceptual Application) contained two items that explored deeper analytical reasoning. This section challenged students to engage with certain concepts, such as distinguishing between justifications and excuses, requiring them to employ and apply the learned principles in a more sophisticated way.

3. DATA ANALYSIS AND KEY FINDINGS

The data for this study were collected via a structured questionnaire administered through Google Forms. For analysis, the response data was compiled and analysed with a focus on two complementary approaches. First, descriptive statistics were calculated to quantify performance. This involved determining the correct response rate (percentage and count) for each individual question and for grouped question types (e.g., definitional vs. applied). These rates were then compared to identify and measure performance gaps. Second, a qualitative analysis of error patterns was conducted. This involved examining the distribution of incorrect answers for specific questions to identify systematic conceptual misunderstandings, such as the frequent confusion between “Public Duty” and “Necessity” in at the doctor’s scenario. Crucially, the findings are interpreted within the specific context of the study. The marked “application gap” identified is understood as a reflection of the particular challenges faced by novice learners at the very start of their Legal English acquisition in an EFL setting.

4. RESULTS

The results reveal a marked and meaningful trend, indicating that there is a significant divergence between what students can define and what they can do, however students demonstrated excellent command of theoretical knowledge. On tasks measuring pure recall such as matching defence terms to their definitions (Part A) or judging true/false statements about legal principles (Part C), their performance was consistently high, with average correct response rates of 91.1% and 93.8%, respectively. However, performance notably declined when procedural application was required. The average correct response rate across the four scenario-analysis questions (Part B) was 77.5%. This gap widened dramatically in scenarios that demanded mixed conceptual understanding. The most notable example involved a scenario where a doctor treats an unconscious patient. Here, only 60% of students correctly identified the applicable defence as “Public Duty,” while a significant portion chose “Necessity” (26.7%) or “Consent” (13.3%). In contrast, students excelled (95.6% correct) on a classic example of “Necessity,” such as breaking a law to obtain food during a famine. This contrast highlights that the difficulty lies not in the rules themselves, but in applying them to ambiguous, real-world situations.

4.1. SUMMARY OF THE APPLICATION GAP

Table 1 demonstrates that the core challenge is applied conceptual reasoning. Success in definitional tasks did not ensure success in scenario-based tasks, where the critical skill shifts from knowledge recall to the analytical selection and justification of the most appropriate legal concept.

Table 1. Comparison of Definitional and Applied Performance for Three Common-Law Defences

Legal Concept	Performance on Definition / Rule Questions	Performance on Applied Scenario	Application Gap (Scenario - Definition)
Public Duty	91.1% (41/45) correctly matched the term to its definition.	60.0% (27/45) correctly applied it in a medical emergency scenario.	-31.1 percentage points
Necessity	93.3% (42/45) knew the rule (“can justify breaking a law to save a life”).	95.6% (43/45) correctly applied it in a clear-cut famine scenario.	+2.3 percentage points
Justification vs. Excuse Distinction	86.7% (39/45) understood the theoretical difference.	Implied Performance: Only 60.0% could correctly apply it to distinguish defences in the medical scenario.	-26.7 percentage points

Table 1 demonstrates the core challenge of applied conceptual reasoning. It shows that success in definitional tasks did not ensure success in scenario-based tasks. The “Application Gap” column quantifies this difference. Negative values (–) highlight where application was most challenging. For instance, the large –31.1-point gap for ‘Public Duty’ reveals a critical disconnect where knowledge of the definition did not enable correct use in an ambiguous medical scenario. Conversely, the small positive value for ‘Necessity’ (+2.3 points) confirms that students could apply a rule when the example was straightforward. Finally, the –26.7-point gap for the Justification/Excuse distinction indicates a deeper, conceptual hurdle in using theoretical frameworks to analyse practical cases.

5. DISCUSSION

This study began with a straightforward, almost sceptical question, which is whether traditional lecture-based instruction enables law students to apply legal concepts, or just define them. The results indicate a clear and urgent message: the traditional lecture model is insufficient for developing applied legal reasoning. The sharp decline in performance on practical scenarios isn’t random error; it’s the clear signal of a fundamental flaw in how we bridge theory and practice. This gap points directly to specific weaknesses in the current teaching approach. The aforesaid ‘application gap’ identified in this study is not an isolated phenomenon but reflects a broader, documented deficiency of traditional lecture-based instruction in legal education. Recent research evaluating pedagogical approaches finds that “students’ understanding of Complex Legal Concepts improves significantly with alternatives to traditional lecture-based pedagogy” (Hao, 2025, Abstract section). According to the data of this study, which shows a significant decrease in performance when moving from definitional to applied tasks, provides a concrete, micro-level example of this trend that appears at macro level.

The 31-point gap for “Public Duty” is not a random error; it is a direct illustration of Widdowson’s distinction between usage and use in a legal context. The lecture successfully transmitted usage (the term and its definition), but for many students, this did not enable correct use (selecting it for the right analytical purpose). They combined a broad moral duty with a specific legal authorization. This confusion exemplifies the core challenge of Schön’s “swampy lowlands,” where the neat principles of the classroom meet the complexity of real-world application. This conceptual confusion between “Public Duty” and “Necessity” points to more than a simple error; it reveals a specific conceptual misconception, reflecting “underdeveloped genre knowledge” (Posner et.al.,1982). The genre of legal defence analysis requires an understanding of the conceptual relationships and boundaries between defences. Students’ errors suggest their internal schemes for this professional genre are still forming, leading to systematic category mistakes. Given this diagnosis, the implications for Legal ESP teaching practice are clear. Assuming that teaching definitions and clear examples is sufficient for professional readiness is demonstrably inadequate, indicating that teaching methodology must evolve to directly target the identified gaps. Therefore, Legal ESP instructors should consider the following strategies:

First, they should contrast misconceptions directly by actively teaching the boundaries between defences (e.g., “Public Duty” vs. moral duty) to force recognition of their limits.

Second, they must embrace ambiguity in practice, meaning using “grey-area” scenarios not as tests, but as the core of classroom discussion to build applied reasoning muscles.

Finally, instruction should teach the genre’s logic explicitly, such as moving from teaching defences in isolation to mapping their relationships within frameworks like justification versus excuse.

5.1. LIMITATIONS AND FUTURE DIRECTIONS

In light of this study, it must be acknowledged the key constraint which is that it focuses on Legal English at beginner’s level. The participants were first-year students meeting the specialized vocabulary for the very first time. Additionally, the gender distribution within this participant group was not balanced (37 females, 82.2%; 8 males, 17.8%). While this reflects the natural enrolment of the specific course studied, it is a factor that limits the generalizability of the findings to a more representative law student population. In this early learning phase, it is natural for students to focus inevitably on simply “getting the terms right.” This primary focus on mastering forms and definitions may have come at the expense of the applied reasoning we aimed to assess, a phenomenon directly related to what Larsen-Freeman (2013) identifies as the “inert knowledge problem”- the common failure to transfer or apply learned knowledge to new situations (p. 107). This necessary focus on basic memorization may have come as temporary state of the deeper, contextual reasoning the author aimed to assess. In short, they were learning the words, which is the essential first step, but were not yet fully practicing the professional thought. This very limitation, however, points us toward the necessary next steps in this regard. Future research studies should build on this foundation by designing teaching methods that would strive towards the issue of application. The most promising path is to engage students in the kind of work that makes memorization insufficient. This means prioritizing realistic case studies and problem-based scenarios as core classroom activities, not just as final tests. An even better direction would be to explore the intercultural dimension of this learning challenge. Legal ESP students operate with a characteristic dual framework: their own national legal tradition and the Anglo-Saxon common law tradition they are studying in English or Legal ESP class. How does their rooted understanding of “how law works” at home help or hinder their comprehension of these new foreign concepts? Research that examines this clash and fusion of legal mind-sets could transform how ESP instructors teach Legal English, making it not just a language course, but a bridge between professional worlds.

6. CONCLUSION

In conclusion, this study provides more than measure a test score gap because it captures a fundamental moment of transition in a lawyer’s education. It presents clear, empirical evidence for a classic challenge: the difficult leap from

knowing a rule to using it in practice witnessed in the Legal English classroom. This challenge is at the core of legal socialization, a process that, as Elizabeth Mertz demonstrates, requires students to undergo a “linguistic re-socialization” into a new way of processing the world i.e. learning to “think like a lawyer” (Mertz, 2007). According to the findings it is confirmed what many educators sense, that for novice law students, the traditional lecture, while excellent for building a declarative foundation, does not build the bridge to applied, procedural reasoning on its own. The “application gap” is not just an idea as from the given data it is real, measurable, and instructionally significant. Therefore, closing this gap demands a conscious and deliberate shift in how FL instructors think about teaching. Legal English instruction must move beyond presenting the language of the law and toward simulating the practiced reasoning within the law. This means redesigning classrooms to be spaces of active learning, where students regularly come across, learn and solve ambiguous free-interpreting scenarios that reflect professional reality. By making this shift, the ESP instructors move beyond knowledge transmission toward capacity building. In doing so, Legal ESP truly fulfils its core promise: not just to teach students about legal communication, but to prepare them to think, argue, and act as competent members of their future professional world.

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ГОД. 11
БР. 21

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NO 21