

ENG4169 · English legal language: Interpretation and meaning Autumn 2021

Nicholas Allott: n.e.allott@ilos.uio.no

Seminars are on Mondays, 10-15-12.00 at [Sophus Bugges hus](#) Seminarrom 5

Course overview

In the notorious case of *Smith v. United States*¹, the defendant had exchanged a gun for illegal drugs. The question: Was he guilty of using a firearm? If so, he would be liable to a greater penalty, under a provision which mandates longer sentences for anyone who ‘uses’ a firearm ‘during and in relation to [...] a drug trafficking crime’². The US Supreme Court held that he was. In a minority opinion, Justice Scalia disagreed, arguing that the ‘ordinary meaning’ of the provision was ‘to use a firearm as a weapon’.

One can ask who was right, but also about the conceptions of meaning and interpretation employed by the judges. Is the law determined by the ‘ordinary meaning’ of the text, by the intentions of the legislature which enacted it or something else? All proposed answers face challenges. First, what is ‘ordinary meaning’? Is it the same as literal meaning, and what is that? Urged to adopt a literal interpretation of a particular text by a lawyer, an English Court of Appeal judge replied, ‘I have no idea what that means. [...] I can see three possible literal meanings.’ Second, is it possible for a body of people with such diverse opinions as a parliament to have and express a *unified* intention?

In recent years, such questions about legal interpretation and the meaning of legal texts have moved beyond the courts and the pages of law reviews, attracting the attention of linguists and philosophers of language. That makes sense, because debates in linguistics about meaning and interpretation that might have seemed dryly theoretical turn out to matter to people’s lives and livelihoods, as in *Smith*.

This course explores ways that concepts and theories from linguistics – especially linguistic pragmatics – can be applied to deepen understanding of legal interpretation and legal language, and, conversely, ways in which legal texts provide challenging problems and data for theories of language and its use. We focus on legal texts from common law (Anglo-American) jurisdictions.

Key questions for this course include:

- Can you commit perjury while telling the strict and literal truth?
- How do legal texts and their interpretations differ from other kinds of language use?
- What is the illocutionary force of statutes? Do they create new legal facts or are they (also) orders to be followed?
- What determines the meaning of a legal text? The original meanings of the words used, their meanings now, intentions of the legislature, or something else?
- How do judges and other consumers of legal texts understand and interpret them? What are the roles played by linguistic decoding, inference, and more creative legal decision-making?
- What is ‘speech’ in the context of ‘freedom of speech’ and when is it protected by law?
- What does it take to consent to something – e.g. to be searched by the police – and do the relative power of the police and ordinary citizens make a difference?

¹ *Smith v. United States*, 508 U.S. 223 (1993)

² 18 U.S.C. § 924(c) (1).

- How are pragmatics and conversation analysis used by forensic linguist expert witnesses in legal cases?

Course promises

This course makes a set of promises to you (assuming you fulfill the expectations below).

After completing this course you will have a sophisticated grasp of the central questions that are raised by legal interpretation and the semantics and pragmatics of legal texts, and of some of the best current attempts to answer those questions. You will be able to explain these issues in writing, and to provide critical, theoretically-informed commentary. You will have the foundations in place to go on to do original research work on legal interpretation and the semantics and pragmatics of legal texts.

Specifically, you will:

- be familiar with the application of linguistic theories to the analysis of legal texts, particularly statutes
- be familiar with legal canons of interpretation such as *noscitur a sociis*.
- have knowledge of theoretical accounts of implicature, pragmatic enrichment, and speech acts
- have insight into the contested notion of the meaning of a legal text, and some of the competing accounts, including textualism and intentionalism
- have advanced skills in scholarly writing that applies one or more linguistic theories to legal texts

Course expectations

This course will only fulfill these promises if you promise the following in return:

1. To attend seminars. This course will rely largely on discussion in seminars. For this format to succeed, you must be present and on time. There is no official attendance requirement this term because of the Covid situation, but this course is structured around the seminars.

If you miss a seminar, it's your responsibility to make sure that you have covered the content.

2. To read the assigned materials. The papers we read will provide the focus and jumping off point for our seminar discussions. In addition, the excerpts from textbooks will provide you with the tools – the concepts and methods – to follow and challenge the linguistic analyses that are proposed, and to propose your own analyses. Without the background from the reading, our discussion will lose a lot of its richness and you will struggle to perform the linguistic analyses.

3. To work through the preparation tasks. It's crucial that you do this preparation work, because it's the foundation for what we will be doing in the seminars. You aren't expected to immediately understand everything in the reading, or come to the seminars with perfect answers to all the questions! What is required is a serious attempt to work through them. That will help you develop a good basic understanding, and will reveal areas where there are problems. We can then fix problems together in the seminars, and build on the basic understanding, by discussing problematic issues, and comparing different answers that different students have come up with.

4. To be attentive and participate in seminars. Participation does not simply mean speaking aloud in seminars, although that is essential. You should participate by actively following the discussion, and by contributing to our semester-long conversation.

5. To complete the required assignment in a timely fashion. The assignment provides you with opportunities to practice writing about legal texts using the knowledge that you will be acquiring, and to get feedback from me on your progress. This is essential preparation for the assessed term paper. In order to qualify to present the term paper you have to complete the assignment to a satisfactory level. You are required to hand in your assignment on time.

Important note

Students with special medical conditions or learning disabilities should contact the faculty so that special needs provisions can be made available to you:

<https://www.uio.no/english/studies/special-needs-leave-part-time/>

Please also feel free to get in touch with me about how I can ensure that your needs are accommodated in and out of the seminars in this course.

Assessment

Your grade for the course depends only on the term paper.

In order to qualify to submit the term paper, you have to submit the obligatory assignment and have it approved (by me).

Assignments

You are required to submit **one assignment** in Canvas by the due date. This assignment must be approved by me for you to be allowed to submit the term paper.

The **obligatory assignment is due on 9th October**. Your assignment will be based on the content of the first half of the course. You will provide written answers, supported by argumentation and data (as appropriate), to questions about legal interpretation. The questions will be made available to you at least two weeks before the deadline for the assignment.

Term paper

Official overview at <https://www.uio.no/studier/emner/hf/ilos/ENG4169/#exam>
and <https://www.uio.no/studier/emner/hf/ilos/ENG4169/h21/eksamen/>

December 7 at 11:00 AM in Inspera – [see guides for digital exams](#)

Your term paper will be based on some of the content of the course, providing a written answer, supported by argumentation, to a question about legal interpretation. It can be primarily theoretical, mainly concerned with the analysis of data, or a combination of the two.

You will choose your question during the second half of the course, with help from me, and subject to my approval.

Academic (dis)honesty

I expect that all work you produce for the course will be your own.

If you plagiarise material from outside sources or other students on the assignment or term paper, you will get into serious trouble. Consequences for plagiarism can range from having to

submit a new assignment or paper with a short deadline, failing the course, and/or suspension from the university.

Please read these two UiO pages carefully:

On cheating: <https://www.uio.no/english/studies/examinations/cheating/>

On the proper use of citations and sources:

<https://www.uio.no/english/studies/examinations/sources-citations/>

I'll also post a file in Canvas with more information.

Seminar plan

For dates, see <https://www.uio.no/studier/emner/hf/ilos/ENG4169/h21/timeplan/>

Here's the plan for our seminars – but note that I may change some of the topics and set reading to adjust the course to your needs and interests as we go along. I'll (of course!) tell you about any changes.

Before each seminar

1. Do the reading specified in the table below.
2. Work through the study questions which I will post in Canvas, making notes to prepare for our discussions.

	Topic	Reading
1.	Welcome to the course! Literal truth, perjury and speaker's meaning	<i>Theory: §§8.1–8.3 of Kroeger, P. (2019). Analyzing Meaning : an Introduction to Semantics and Pragmatics (Second corrected and slightly revised ed.). Berlin: Language Science Press. (6 pages)</i> <i>Paper: pp. 373–402 of Tiersma, P. M. (1989). The language of perjury: Literal truth, ambiguity, and the false statement requirement. <i>Southern California Law Review</i>, 63(2), 373-432. (31 pages)</i>
2.	Pragmatics and rules for legal interpretation	<i>Theory: pp. 214–215 of Saeed, J. I. (2016). Semantics (4th ed.). Malden, Mass.: Wiley. (2 pages)</i> <i>Paper: §§1–5 and 7 (i.e. all except §6) of Carston, R. (2013). Legal texts and canons of construction: A view from current pragmatic theory. In M. D. A. Freeman & F. Smith (Eds.), <i>Law and Language</i> (pp. 8-33). Oxford: Oxford University Press. (21 pages)</i> <i>Background – on rules of interpretation: pp. 257–267 and 270–274 of Holland, J. A. & Webb, J. S. (2013). Learning Legal Rules : A Students' Guide to Legal Method and Reasoning (8th ed.). Oxford: Oxford University Press. (15 pages)</i>
3.	The illocutionary force of the law	<i>Theory: pp. 229–240 of Saeed, J. I. (2016). Semantics (4th ed.). Malden, Mass.: Wiley. (11 pages)</i> <i>Papers: pp. 2–4 of Marmor, A. (2011). Truth in law. <i>University of Southern California Legal Studies Working Paper Series</i>, 11-3. Retrieved from http://ssrn.com/paper=1760053 (3 pages)</i> <i>and Allott, N. & Shaer, B. (2017). The illocutionary force of laws. <i>Inquiry</i>, 61(4), 351-369. doi:10.1080/0020174X.2017.1371865 (20 pages)</i>
4.	Enrichment and underspecification	<i>Papers: pp. 423–430 of Marmor, A. (2008). The pragmatics of legal language. <i>Ratio Juris</i>, 21(4), 423-452. doi:10.1111/j.1467-9337.2008.00400.x (7 pages)</i> <i>and: pp. 83–109 of Allott, N. & Shaer, B. (2017). Inference and intention in legal interpretation. In J. Giltrow & D. Stein (Eds.), <i>The Pragmatic Turn: Inference and Interpretation in Legal Discourse</i> (pp. 83-118). Berlin: De Gruyter Mouton. doi:10.1515/9781501504723-004 (27 pages)</i> <i>Theoretical background: §9.3 of Kroeger, P. (2019). Analyzing Meaning : an Introduction to Semantics and Pragmatics (Second corrected and slightly revised ed.). Berlin: Language Science Press. (4 pages)</i>

5.	The value of vagueness	<p><i>Theoretical background:</i> Legal Theory Lexicon 051: Vagueness and Ambiguity https://lsolum.typepad.com/legal_theory_lexicon/interpretation/ (about 2 pages)</p> <p><i>Paper:</i> Endicott, T. (2011). The value of vagueness. In A. Marmor & S. Soames (Eds.), <i>Philosophical Foundations of Language in the Law</i> (pp. 14-30). Oxford: Oxford University Press. (16 pages)</p>
6.	Can the law imply more than it says?	<p><i>Papers:</i> Marmor, A. (2011). Can the law imply more than it says? On some pragmatic aspects of strategic speech. In A. Marmor & S. Soames (Eds.), <i>Philosophical Foundations of Language in the Law</i> (pp. 83-104). Oxford: Oxford University Press. (21 pages)</p> <p>Abstract and §§1, 4 & 5 of Asgeirsson, H. (2016). On the possibility of non-literal legislative speech. In A. Capone & F. Poggi (Eds.), <i>Pragmatics and Law: Philosophical Perspectives</i> (pp. 67-101). Springer. (13 pages)</p> <p>Plus, if you want a quick refresher on implicatures and maxims, have another look at: §§8.1–8.3 of Kroeger, P. (2019). Analyzing Meaning : an Introduction to Semantics and Pragmatics (Second corrected and slightly revised ed.). Berlin: Language Science Press. (6 pages)</p>
	Study break: no seminar!	
7.	Textualism	<p><i>Theoretical background:</i> Legal Theory Lexicon 030: Textualism https://lsolum.typepad.com/legal_theory_lexicon/2004/04/legal_theory_le_3.html</p> <p><i>On the relevant part of the US constitution:</i> US government webpage: "Prohibition on the Infliction of Cruel and Unusual Punishments: Doctrine and Practice" at https://constitution.congress.gov/browse/essay/amdt8-2-1-2/ALDE_00000964/</p> <p><i>Paper:</i> Perry, J. (2011). Textualism and the discovery of rights. In A. Marmor & S. Soames (Eds.), <i>Philosophical Foundations of Language in the Law</i> (pp. 105-129). Oxford: Oxford University Press. (24 pages)</p>
8.	What is speech, and when is it legally protected?	<p>Tiersma, P. M. (1993). Nonverbal communication and the freedom of "speech". <i>Wisconsin Law Review</i>, 1993(6), 1525–1590.</p>
9.	The language of consent in police stops	<p><i>Theory revision:</i> pp. 229–240 of Saeed, J. I. (2016). Semantics (4th ed.). Malden, Mass.: Wiley. (11 pages)</p> <p><i>Paper:</i> Nadler, J. & Trout, J. D. (2012). The language of consent in police encounters. In P. M. Tiersma & L. Solan (Eds.), <i>The Oxford Handbook of Language and Law</i>. Oxford: Oxford University Press.</p>
10	Pragmatics, lies and audio tape	<p><i>Main reading:</i> Chapter 4 of Shuy, R. W. (2005). Creating Language Crimes : How Law Enforcement Uses (and Misuses) Language. Oxford; New York: Oxford University Press. (9 pages)</p> <p><i>Background:</i> §§24.1–24.2 (pp. 340–344) of Tiersma, P. M. & Solan, L. (2012). The language of crime. In P. M. Tiersma & L. Solan (Eds.), <i>The Oxford Handbook of Language and Law</i> (pp. 340-353). Oxford: Oxford University Press. (3 pages)</p>

		<i>More background: Chapters 1 and 2 of Shuy, R. W. (2005). Creating Language Crimes : How Law Enforcement Uses (and Misuses) Language. Oxford; New York: Oxford University Press. (27 pages)</i>
11	Discussion, open questions; term paper workshop; or a session on the interpretation of contracts?	We will decide together what to read – or re-read – for this session.