

Nominalizations and Passivizations in the Present Day UK Legal Discourse and in other Genres

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司法英語、バイバー1988年モデル、名詞化形、受動態化形
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Abstract

This article examines the uses of nominalizations and passivizations in the present day legal discourse, and investigate if these two grammatical features are overused or not, and if so, to what extent they are overused, and what possibly might explain why they are overused. In order to answer these research questions, approximately one million words of the Judgments of the House of Lords were collected and grammatically tagged. They were run through a factor analysis as Biber (1988) did. The quantitative research results on nominalizations and passivizations are compared with those of 23 genres done by Biber (1988). As many linguists and legal professionals have criticized, these two grammatical features are used more frequently in legal discourse than in these non-legal 23 genres. The data was also qualitatively examined to find out how these two grammatical features were used in legal discourse with some examples taken from the Judgments. The use of nominalizations as a kind of pro-verb to avoid ambiguity, and the categorical use of nominalizations are discussed. Lexical verbs frequently used with the passive in legal discourse and non-legal discourses are compared and discussed. The major findings are: a fewer numbers of lexical verbs are more intensively used in legal discourse; nominalizations are more frequently used as the subject head nouns in legal discourse; some lexical verbs are used predominantly with the passive in legal discourse due to the reason of the legal system; and there are some passive constructions conventionally used which increase the passive ratios in legal discourse.

He signed his name at the foot of a bald formal agreement, written in the most incomprehensible legalese.

After all these weeks I am not used to reading legalese any more.

1. Introduction

These two sentences are given in *the Oxford English Dictionary* (1989) to explain how the word “legalese”, which is defined in the above dictionary as “The complicated technical language of legal documents”, is used. But by coincidence, these two example sentences speak eloquently of how difficult legal discourse is for a layperson to understand.

There are many criticisms among linguists and legal professionals against incomprehensible wordy legal discourse (Mellinkoff, 1963; Solan, 1993; Shuy, 1996; Freedman, 2007; Mertz, 2007; Torikai, in press). Some people advocate for easier legal discourse named Plain English (Bailey, 1996; Wilson, 1996; Garner, 2001; Wydick, 2005). Some researchers have investigated what makes legal discourse difficult and how we can make it easier for laymen to understand it (Charow & Charrow, 1979; Charrow, Crandall, & Charrow, 1982). Researchers have pointed out many grammatical and lexical features which make legal discourse unreadable or hinder laypersons from understanding. Of them nominalization and passivization are the two main targets most criticisms are centered on. Bailey blames the use of passive voice as “the most important villain of readability” (p. 47) and note that “bureaucratic writers significantly overuse it” (p. 47). Tiersma (1999) warns against the overuse of nominalizations and passives, and concludes that “Overall, it is best to use straightforward, active verbs rather than nominalizations or passives” (p. 207). Garner advises to “Avoid using words ending in *-ion* to describe what people do.”(p. 38-9) in legal writing.¹⁾ He also advocates the use of active voice: “the active voice saves words, says directly who has done what, and makes for better, more interesting prose” (p. 26).²⁾ Wydick says, “Lawyers and bureaucrats love nominalizations” (p. 23) and criticizes their overuse of nominalization as “If you use nominalizations instead of base verbs, surplus words begin to swarm like gnats” (p. 23). He also criticizes the use of passive voice and nominalization, saying “With the passive voice, however, the writer can hide the identity of the actor.” (p. 30), and that “A writer who wants to befog the matter totally will couple the truncated passive³⁾ with a nominalization,” (p. 30).

All the criticisms in the previous paragraphs point out that nominalizations and passives are used too often in legal discourse, and hinder ordinary people from

understanding legal discourse.

2. Purpose, Methodology, and Date

The purpose of my present paper is twofold: the first is to investigate if nominalizations and passivizations are really overused in legal discourse compared with other genres; and if so, to what extent they are overused, and what possibly might explain why they are overused. I will try to answer these research questions within the framework of Biber (1988). Biber is the first researcher who employed a statistic method in a large scale in linguistic research, and analyzed various types of genre data. He used factor analysis and examined what types of grammatical and lexical features are used more frequently or less in 23 genres of 960,000 words and how they co-occur with each other. He compares grammatical and lexical features with variables, and explained not only which grammatical and lexical features are more commonly employed in some particular genres, but also which grammatical and lexical features co-occur positively and negatively with each other in 23 genres. I will compare the research result of my legal data with those of Biber's, and discuss the nature of legal discourse particularly in terms of nominalizations and passivizations in this paper.

I collected one million words of Judgments issued by the House of Lords in the year from 2000 to 2001 from the webpage of the United Kingdom Parliament.⁴⁾ All my data was tagged and run through a factor analysis just as was done in Biber's 1988 survey. I named these one million Judgments date the 21 Century British Legal Corpus (See Torikai, in press for the details of this corpus).⁵⁾ I used a special software program called *WordSmith* to analyze my data for the present paper.

3. Nominalizations and Passivizations in legal discourse

3. 1. Nominalizations

Many people criticize the overuse of nominalizations in legal discourse. But there is a good linguistic reason for that: the writer can condense the information which was originally expressed in a clause structure into a more compact grammatical unit, namely a noun phrase, so that he can package more information within a sentence. Tiersma (1999) explains why nominalizations occur in legal discourse historically and its problem as follows:

At least historically, a nominalization is a noun derived from another word class,

usually a verb. ...many nominalizations were created in Law French by the addition of *-al* to the verb (as in *try/trial* or *propose/proposal*) or by the suffixation of *-er* (as in *demur/demurrer* or *waive/waiver*). (p. 77)

A more legitimate reason for nominalizations is that by allowing the actor to be omitted, they enable legal drafters to cover the possibility of *anyone* doing a specified act. This permits laws to be stated as broadly as possible. (p. 77–8)

A Comprehensive Grammar of the English Language (1985) (hereafter *CGEL* for short) defines nominalization as follows:

A noun phrase...which has a systematic correspondence with a clause structure will be termed a NOMINALIZATION. The noun head of such a phrase is normally related morphologically to a verb..., or to an adjective.... (p. 1288)

Biber (1988) includes only the following four noun endings *-tion*, *-ment*, *-ness* and *-ity* (plus plural forms) in the category of nominalizations. But recently nominalization is interpreted more broadly and not only nominalizations derived from related verbs and adjectives but also from related nouns (e.g. *orphanage* from *orphan*) are included. *The Longman Grammar of Spoken and Written English* (1999) (hereafter *LGSWE* for short) lists 28 suffixes which are considered to form nominalizations. *LGSWE* comments that *-tion*, *-ity*, *-ism*, *-ness* are the four most common derivational suffixes in the four registers,⁶ namely conversation, fiction, news, and academic prose, and *-tion*, *-ity*, *-er*, *-ness*, *-ism*, *-ment* are the six most common derivational suffixes in academic prose. *The Cambridge Grammar of the English Language* (hereafter *CBGEL* for short) (2002) defines nominalization as follows:

As a word-formation process, nominalisation prototypically involves the formation of a noun from bases of other classes, by affixation, conversion, or phonological modification. We also include comparable cases where one type of noun is formed from another, such as abstract *friendship* from *friend* or personal *mountaineer* from *mountain*. Certain cases of compounding may also be regarded as a matter of nominalization – most clearly, the formation of compound nouns from verb + preposition, as in *take-off*, *phone-in*, etc. (p. 1696)

CBGEL divides nominalizations into two groups: “personal/instrument nominalizations” where a person or a tool that does the designated action are included (e.g. *computer* (instrument), *writer* (person)), and “action/state/process nominalizations” where a verb, an

adjective, and a noun expressing these three categorical meanings are included (e.g. *performance*, *difficulty*, *hardship*).⁷⁾ However, in order to keep my present research comparable with Biber's I will limit my argument on nominalizations only within the nominalizations derived from the corresponding verbs that are formed by adding the following four suffixes: *-tion*, *-ment*, *-ness* and *-ity* (plus plural forms) as Biber (1988) did.⁸⁾

My research result shows that nominalizations occur 68.86 times per 1000 words in legal discourse. Among Biber's 23 genres, the highest is professional letters where nominalizations occur 44.2 times per 1000 words, followed by official documents of 39.8 and academic prose of 35.8. The average number of nominalizations in the 23 genres studied by Biber (1988) is 19.9. It is clear that nominalizations occur much more frequently in legal discourse than in any other 23 genres. Nominalizations in legal discourse occur 1.56 times as frequently as in professional letters, 1.73 times as frequently as in official documents, 1.92 times as frequently as in academic prose, and 3.46 times as frequently as in Biber's overall 1988 corpus (See Table 1). It is interesting to notice that the top 5 genres including legal discourse are all written genres produced by professionals. Another interesting finding is that genres with low frequencies of nominalizations are either conversation genres or genres consisting of many conversational interactions. It is safe to conclude that nominalizations frequently occur where discourse is produced in writing with enough time and care and in an official and formal manner, while they occur less where discourse is produced in speech under time restrictions in a casual and informal manner. This contrast overlaps very much with Biber's "informal versus involved production" on dimension 1. Biber explains why these two opposite groups of genres have emerged today as follows:

Discourse produced under real-time conditions will be constrained in its lexical precision and informational density; it is therefore not surprising that such discourse is associated with non-informational purposes. Conversely, as society has developed the need for highly informational texts, it is not surprising that we have turned to those production circumstances that enable precise lexical choice and high informational density. (p. 108)

The first half of above his explanation on the involved genres accounts for how these genres with less nominalizations are produced, and why abstract and information condensed nouns such as nominalizations are less employed. The second half, on the other hand, explains the historical background of why and how genres with high information density such as legal discourse have been produced. Nominalization is one of the grammatical phenomena which enable the writer to create such informative

discourse.

In order to understand more about the nature of nominalizations, I have compared the frequency counts of nouns with those of nominalizations in legal discourse and the 23 genres in Table 1 below. Nominalizations are grammatically a sub-category of nouns, but there is an interesting difference among the genres about the frequencies of these two noun categories. The top six genres on the left side of Table 1 are genres having more than 200 nouns per 1000 words. They are: legal discourse, broadcasts, press reportage, press reviews, official documents, and press editorials. Notice that four press related genres are included in them. The right side of Table 1 is a list of genres arranged from more nominalizations to less. It is interesting that not all the four press related genres on the left side of the table are included among the top six. For example, broadcasts which is next to legal discourse and the highest among 23 genres in noun frequency counts goes down to the twenty first place on the right side. Press reportage

Table 1 Frequencies of Nouns and Nominalizations in the 23 Genres and Legal Discourse

GENRES	nouns	GENRES	nominalizations
21 Brit. Legal Disc.	281.4	21 Brit. Legal Disc.	68.86
Broadcasts	229.8	Professional Letters	44.2
Press Reportage	220.5	Official Documents	39.8
Press Reviews	208.3	Academic Prose	35.8
Official Documents	206.5	Press Editorials	27.6
Press Editorials	201.0	Religion	26.8
Hobbies	199.1	Popular Lore	21.8
Popular Lore	195.4	Press Reviews	21.6
Biographies	192.4	Biographies	20.6
Humor	190.2	Prepared Speeches	20.6
Prepared Speeches	189.1	Press Reportage	19.2
Academic Prose	188.1	Spont. Speeches	18.2
Religion	187.7	Interviews	17.7
Professional Letters	172.6	Science Fiction	14.0
Science Fiction	171.7	Hobbies	13.1
Mystery Fiction	165.7	Humor	12.1
Adventure Fiction	165.6	General Fiction	10.0
Interviews	160.9	Face-to-face Conv.	9.2
General Fiction	160.7	Romantic Fiction	8.5
Spont. Speeches	157.7	Mystery Fiction	8.3
Personal Letters	156.7	Broadcasts	8.2
Romantic Fiction	146.8	Adventure Fiction	7.8
Face-to-face Conv.	137.4	Telephone Conv.	6.6
Telephone Conv.	134.8	Personal Letters	5.2

and press reviews also lower their ranks from the third to the eleventh and from the fourth to the eighth respectively. Official documents and press editorials remain within the top six both in nouns and nominalizations, and professional letters and academic prose are listed within the top six in nominalizations.

These two different ranking orders seem to make us think about the linguistic functions of nouns and nominalizations. Nouns have a referential function (Biber, 1988; Biber, Johansson, Leech, Conrad, & Finegan, 1999; Biber, Conrad, & Leech, 2002), referring to the objects or states in the world. In this sense, it is quite understandable that press related genres whose primary purpose is to report the events in the world need to employ many nouns. But nominalizations are different. They do not usually refer to concrete objects or states. Table 2 shows the 36 most frequent nominalizations used in legal discourse.⁹⁾ Their meanings are more abstract and conceptual than ordinary nouns we use to refer to the objects or states around us.

Table 2 36 Most Frequent Nominalizations in 21 British Legal Corpus

JUDGMENT	688	CONTRIBUTION	134
ACTION	370	PUBLICATION	108
OBLIGATION	351	PROTECTION	107
QUESTION	321	TRANSACTION	104
ARGUMENT	298	PERSECUTION	103
CONSIDERATION	295	COMMUNICATION	102
PAYMENT	237	SITUATION	99
STATEMENT	236	RESTRICTION	96
REQUIREMENT	228	AGREEMENT	95
AGREEMENT	192	EXCEPTION	93
OBSERVATION	188	PROSECUTION	86
REGULATION	175	RELATION	84
APPLICATION	172	CONSTRUCTION	80
ALLEGATION	156	PROVOCATION	79
ACTIVITY	156	AMENDMENT	75
CONVENTION	146	DEVELOPMENT	69
WITNESS	141	DIRECTION	63
INSTITUTION	137	DISTINCTION	60

Most of these nominalizations in Table 2 refer to the results of actions their stem verbs did, or a comprehensive categorical concept of the action the corresponding verb does. For example, *judgment* comes into being as a result of an action *judge*, and *oblige* and *oblige* designate an action while *obligation* is a broader concept which covers all the actions of these two verbs. *Black's Law Dictionary* (2004) defines the verbs *oblige* and

oblige as "To bind by legal or moral duty." This is a lexicographical definition of these two verbs which we commonly encounter in general English dictionaries. But the nominalized form of these verbs, *obligation*, is treated in a different way with a detailed explanation as follows:

A legal or moral duty to do or not do something. • The word has many wide and varied meanings. It may refer to anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness, or morality.

This suggests that the dictionary treats the nominalization more like a word which represents a particular legal concept. Probably one of the best examples which demonstrates that nominalizations express a conceptual meaning is *consideration*. *Black's Law Dictionary* defines and explains this nominalization as follows:

Something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act. • Consideration, or a substitute such as promissory estoppel, is necessary for an agreement to be enforceable.

The same dictionary does not even list the stem verb, *consider*. This indicates that the stem verb, *consider*, is not used as a technical term in legal discourse.

In order to find how verbs and equivalent nominalizations are actually used in legal discourse, I will examine two examples below which are taken from the Judgments of the House of Lords in the 21 Century British Legal Corpus. (A verb *pay* and the noun phrases with its nominalizations are in bold face and with a thick underline by the present author.)

Example 1

In February 1995 TGTL, which had already **paid** about £ 45m in **send-or-pay payments**, gave notice that it would not **pay** any more. It also asked for **its previous payments** to be refunded.

In Example 1 the verb *pay* is used twice to describe the action of paying; the first one refers to the action of paying done in the past, and the second one refers to the action in the future which is not done yet. Meanwhile, the first noun phrase with its nominalization describes a particular method of paying. The second noun phrase refers back all the actions of paying done before.

Example 2

In the McGuckian case a Republic of Ireland company called Ballinamore had substantial distributable reserves. The shareholders, Mr and Mrs McGuckian, wanted to receive this money but not to **pay** income tax on the dividend. So they entered into a scheme by which they first transferred their shares to an offshore trustee called Shurltrust. By a series of preplanned transactions, it then assigned the right to receive the dividend to a UK company called Mallardchoice in consideration of **the payment of a sum equal to 99% of the expected dividend**. Ballinamore then declared the dividend and **paid** it to Mallardchoice, which immediately **paid** 99% to Shurltrust. 52. The statutory question was whether Shurltrust had received income or capital. If it was income, the effect of various tax avoidance provisions concerning the transfer of assets abroad was that **the payment** would be deemed to be income of the McGuckians. If it was capital, the McGuckians would not be liable for tax. The McGuckians said that if Shurltrust had simply received the dividend, it would of course have been income. But Shurltrust did not receive the dividend. It received **a payment** from Mallardchoice which was **a capital payment** for an assignment of its right to income. 53. The Inland Revenue's argument, relying upon the formulation in the Furniss case [1984] AC 474 was that the assignment should be disregarded. The Northern Ireland Court of Appeal said (not, if I may respectfully say so, without justification) that one could not simply "disregard" the assignment. **The payment of the money by Mallardchoice to Shurltrust** was the consideration for the assignment and an integral part of that transaction.

In Example 2 the verb *pay* appears three times but the first one in the form of to infinitive is talking about the future possible action by Mr and Mrs McGuckian, and the second and third one are referring to the actions already done by Ballinamore and Mallardchoice respectively. Meanwhile, its nominalization appears five times as the head noun of each noun phrase in which they are used. The first and fourth examples of *payment* refer to special categories of payment. The second and third examples of *payment* are referring back the actual payments done by Mallardchoice, which were already mentioned by using a finite clause and the verb *pay* in the previous discourse. The last example of *payment* is very legalistic in terms of overuse of nominalization. It can be rewritten as [1] by using a passive sentence, or can be rewritten as [2] by a relative clause without changing the meaning.

[1] The money paid by Mallardchoice to Shurltrust was the consideration for ...

[2] The money Mallardchoice paid to Shurltrust was the consideration for ...

From these two Examples, we can summarize the use of verbs and nominalizations in legal discourse as follows:

Verbs refer to actual individual actions, while nominalizations refer either to the action introduced in the previous discourse or categorical names representing legal concepts.

As Biber mentions, as society has advanced we are in need for “highly informational texts” in which “precise lexical choice” and “high informational density” are required. Nominalizations are inevitable consequence of social development which demands highly technical discourses like legal discourse where unambiguous use of language is extremely important and sophisticated legal concepts are widely manipulated.

3. 2. Passivizations

Passivization is the process of changing an active construction to a corresponding passive construction. Both active and passive constructions belong to a grammatical category of voice which is defined by *CGEL* as “Voice is a grammatical category which makes it possible to view the action of a sentence in either of two ways, without changing in the facts reported.” (p. 159)

There are many different types of passives. *CGEL* categorizes them from the most passive like sentence to the least passive like sentence as follows P.171:

- I Central passives
 - (a) With expressed agents
 - (b) Without expressed agents
- II Semi-passives
- III Pseudo-passives
 - (a) With ‘current’ copular verbs *be, feel, look, etc*
 - (b) With ‘resulting’ copular verbs *get, become, grow, etc*

LGSWE classifies passive constructions into finite constructions and non-finite constructions, then sub-classifies them into the following ten sub-categories:

- A Finite constructions
 - Short passive with stative verb

Short passive with dynamic verb

Get-passives

Long passives

B Non-finite constructions

Postmodifier of noun, short passive

Postmodifier of noun, long passive

Infinitive or *ed*-clause complement of a verb, short passive

Infinitive or *ed*-clause complement of a verb, long passive

Other non-finite constructions, short passive

Other non-finite constructions, long passive

CBGEL classifies passives into the following six categories:

Long passives

Short passives

Be-passives

Get-passives

Bare passives (neither *be* or *get* is used; usually no overt subject)

Adjectival passives (using the past participle as predicative complement)

"With expressed agents" in *CGEL* and "long passives" in both *LGSWE* and *CBGEL* are the passive constructions with the prepositional *by* phrase indicating the agent, and "without expressed agents" in *CGEL* and "short passives" in both *LGSWE* and *CBGEL* are the passive constructions without the prepositional *by* phrase indicating the agent.

Biber (1988) classifies passive constructions into two types: agentless passives and *by* passives. Besides these two passive constructions he takes up two other passive related constructions: past participial clauses (shortened as "P. P. Clause" in Table 3) and past participial WHIZ deletion relatives (shortened as "P. P. WHIZ del." in Table 3). In Table 3 below I compared four types of passives in legal discourse with those of 23 genres Biber investigated in 1988. I ordered 23 genres and legal discourse from the one which has the highest passive ratio (indicated as "Total passives" in Table 3) to the lowest. It is obvious that official documents, legal discourse, and academic prose are the three genres which employ passives most, followed by press related genres. Passives are not frequently used in spoken genres and fictions. *LGSWE* has the same finding, commenting "The passive forms of most verbs are most common in academic prose" (p. 477).

LGSWE further comments: "Passives are most common by far in academic prose, occurring about 18,500 times per million words" (p. 476). "Passives" in this quote mean

Table 3 Passive Frequencies in 23 Genres and Legal Discourse

	Agentless Passives	By passives	P. P. Clauses	P. P. WHIZ del.	Total passives
Official Documents	18.60	2.10	0.50	7.50	28.70
21 Brit. Legal Disc.	18.54	2.60	0.03	3.90	25.07
Academic Prose	17.00	2.00	0.40	5.60	25.00
Religion	14.60	1.10	0.10	3.40	19.20
Hobbies	15.40	0.80	0.20	2.70	19.10
Press Reportage	11.00	1.60	0.20	3.10	15.90
Press Editorials	11.70	0.80	0.10	2.90	15.50
Pop. Lore	10.60	0.90	0.00	3.70	15.20
Press Reviews	8.60	1.40	0.20	3.80	14.00
Biographies	9.90	0.90	0.00	1.80	12.60
Humor	7.80	0.30	0.20	2.80	11.10
Prepared Sps.	9.60	0.20	0.00	0.90	10.70
Professional Letters	7.30	0.60	0.20	1.30	9.40
Interviews	8.00	0.30	0.00	0.30	8.60
Broadcasts	3.60	0.70	0.00	4.30	8.60
Science Fiction	5.80	0.00	0.00	1.80	7.60
Spontaneous Sps.	6.20	0.10	0.00	0.80	7.10
General Fiction	5.70	0.20	0.00	0.70	6.60
Mystery Fiction	4.90	0.10	0.00	1.00	6.00
Romantic Fiction	5.00	0.00	0.10	0.10	5.20
Adventure Fiction	4.60	0.10	0.00	0.30	5.00
Face-to-face Conv.	4.20	0.10	0.00	0.10	4.40
Telephone Conv.	3.40	0.00	0.00	0.10	3.50
Personal Letters	2.80	0.00	0.00	0.20	3.00

“finite passives”, namely agentless passives and *by* passives. In Table 3 the normalized frequencies of agentless passives and *by* passives together in academic prose are 19.00 per 1000 words, thus the estimated finite passive numbers converted into per one million is 19,000, which is just about the same infinite passive frequency shown in *LGSWE*. Meanwhile, the normalized frequencies of agentless and *by* passives put together in legal discourse is 21.14 per thousand. The estimated number converted into per million is 21,140, which is higher than 20.70 of official documents. In terms of the frequency of finite passives legal discourse is the highest among 24 genres.

Another interesting aspect about the use of passives *LGSWE* points out is: “Passives are most common in the registers that have the fewest total number of finite verbs.” (p. 476) The approximate number of finite verbs of academic prose per one million in *LGSWE* is slightly less than 80,000. Thus the percentage of finite verbs in academic prose is slightly less than 8%. On the other hand, the total number of finite verbs in one million

word legal discourse is 62,594. The equivalent percentage of finite verbs in legal discourse is 6.26%. This result supports the above *LGSWE* finding about the relationship between the number of finite passives and the number of finite verbs. We may conclude from this research result that in a genre where fewer finite verbs are used more passives are used.

The choice of lexical verbs with the passive in legal discourse also gives us a useful insight into the relationship between the use of the passive voice and legal discourse. I randomly selected 10% of lexical verbs tagged as past participials (viz., 2938 verbs) from my 21 British Legal Corpus. I examined all of them on the concordance lines, and identified 1302 passive constructions which include both finite and nonfinite passives. Figure 1 shows the most common 17 lexical verbs used in passive constructions in legal discourse. The estimated frequencies of these 17 verbs in legal discourse are 200 occurrences or more per one million words.

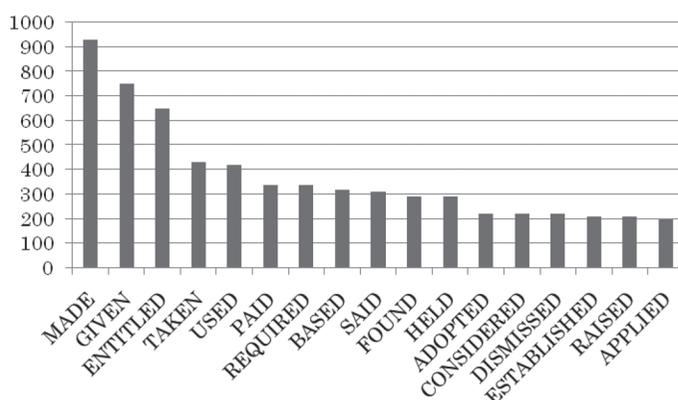


Figure 1 Most Common 17 Lexical Verbs Used with the Passive in Legal Discourse

LGSWE lists 40 lexical verbs which occur more than 20 times per million words in passive constructions in overall four registers. Among them, the following 28 verbs occur over 200 times per million. The verbs with an asterisk are the ones which also appear in the above 17 most common passive verbs in legal discourse.

*made**, *given**, *done*, *taken**, *used**, *found**, *seen*, *called*, *concerned*, *said**, *expected*,
put, *told*, *known*, *set*, *left*, *held**, *born*, *asked*, *brought*, *prepared*, *based**, *described*,
determined, *involved*, *needed*, *considered**, *shown*

These two groups of passive verbs, the one of 17 frequent lexical verbs in legal discourse in Figure 1 and the other of the above 40 lexical verbs in *LGSWE*, are classified into the

following three sub-groups:

Group 1; The verbs included in both groups:

made, given, taken, used, found, said, held, based, considered

Group 2; The verbs included only in legal discourse:

entitled, paid, required, adopted, dismissed, established, raised, applied

Group 3; The verbs included only in the list of LGSWE:

done, seen, called, concerned, expected, put, told, known, set, left, born, asked, brought, prepared, described, determined, involved, needed, shown

There are some interesting findings about the frequencies and the uses of these lexical verbs in passive constructions in legal discourse and in the four registers of LGSWE. First, a fewer number of lexical verbs are intensively used in legal discourse. There are 17 lexical verbs which occur more than 200 times with the passive in legal discourse, but the total frequency of these 17 verbs add up 6350 occurrences and account for 48.77% of the total passive constructions in one million words. Meanwhile in LGSWE, 28 lexical verbs are listed which totally account for approximately 6420 occurrences in one million words. We can roughly say that 17 lexical verbs occupy about the half of passive constructions in legal discourse while 28 lexical verbs occupy almost about the same number of passives in LGSWE. This difference indicates that fewer lexical verbs are more intensively used in legal discourse than in non-legal or general discourses.

Second, although some lexical verbs are frequently used both in the four registers and legal discourse, the way these verbs are used is different. Nine lexical verbs, as listed in group 1 above, are rather commonly used both in the four registers and in legal discourse over 200 times per million words. Four of these verbs, namely *made, given, taken, and used*, are commonly used across all the four registers and in legal discourse. *Found, said, and held* are used more than 200 times per million in legal discourse and frequently used in three registers (fiction, news, and academic prose). However, the way they are used in legal discourse is different. For example, *made* is the most frequent verb with the passive voice both in legal discourse and non-legal discourses, but typical head nouns of the subject noun phrases in legal discourse are nominalizations such as *order, claim, payment, statement, reference, arrangement*. Example 3 below shows a typical use of passives in legal discourse. (The subject head nouns are shown in bold face and with double underlines, and the passive verb phrases are shown in bold face and thick underlines.)

Example 3

The public law claim is founded on the premise that the royalties belong to Blake. The order made by the Court of Appeal was not intended to be confiscatory. It was not intended to extinguish Blake's title. The Solicitor General stated explicitly that the order was intended only to be preservative: a 'freezing' order. Indeed, the order is so drafted. Blake is merely restrained from receiving payment of the royalties 'until further order'. This is the classic form of order that seeks to preserve property pending the happening of some other event. Typically, the event is a decision by the court on who is entitled to the property.

Eight passive constructions (seven finite passives and one non-finite passive) are employed concentratedly within 108 words. The subject head nouns used are: *claim, order, It (=order), order, Blake, who*, and the passive verbs are: *founded, made, intended, intended, intended, drafted, restrained, entitled*. *Found* is also common in both discourses but the way this verb is used is rather fixed in legal discourse. The most common pattern and the example are shown below (the numbers in the parentheses indicate the frequencies of these words per million words):

[Event] + finite forms of *be* (69) + *to* (97) + *be* (160) + *found* (160) + *in* (128) + [the source]

Example 4

The most outspoken criticism of the English law of non-disclosure is to be found in the judgment in the South African case to which I have already referred, the Mutual and Federal Insurance case.

Thirdly, frequent lexical verbs with the passive in legal discourse are not equally frequent in non-legal discourses. The eight lexical verbs listed in group 2 occur with the passive more than 200 times per million in legal discourse, but they are not equally common in the four registers. *Entitled, adopted, dismissed, established, and raised* are not listed within the most common 40 lexical verbs nor discussed anywhere in *LGSWE* on this matter. *Paid* and *required* are listed within the most common 40 lexical verbs in *LGSWE*, but the frequency of *paid* is low and *required* is mostly used in academic prose. *Applied* occurs over 40 times per million words only in academic prose.

Another interesting aspect of these eight lexical verbs in group 2 is that they are mostly used in the passive constructions. Figure 2 shows 19 lexical verbs which occur over 50% in the passive voice. Six verbs listed in Group 2, namely *entitled, paid, adopted,*

dismissed, established, raised, are included in Figure 2. *LGSWE* lists 14 lexical verbs which occur in the passive over 90%, and 22 lexical verbs which occur with the passive over 70%. But it is interesting to notice that only two verbs in Figure 2, namely *based* and *entitled*, are included in those 36 verbs in the lists of *LGSWE*. This suggests that the lexical verbs frequently used in legal discourse and in the four registers are different. Why are they different and how are they differently used in legal discourse? In order to answer these questions, I examined some typical lexical verbs frequently used in legal discourse.

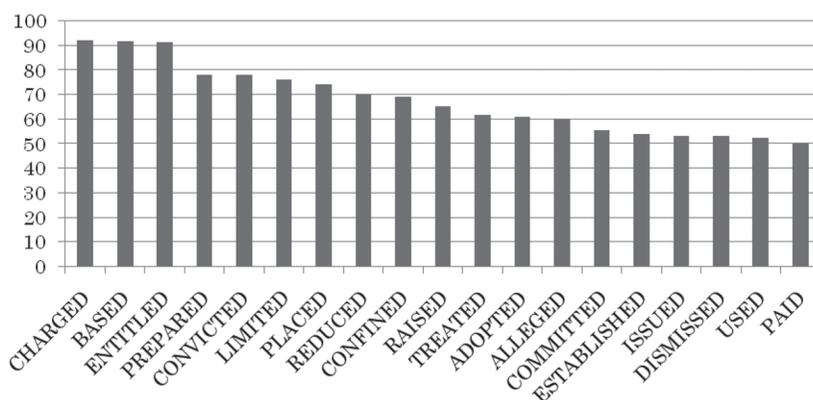


Figure 2 Lexical Verbs which Occur over 50% in the Passive Voice in Legal Discourse

The verb, *charge*, is the most frequent lexical verb used in the legal discourse, occurring 126 times in the 21 Century British Legal Corpus, and 116 of which (92%) are used in the passive constructions. Example 5 below is one of the rare examples of *charge* used in the active voice.

Example 5

On 4 January 1998 the police arrested and charged the defendant with an unrelated offence of burglary.

The basic pattern of this active sentence is as follows:

[the law enforcement institution] + *charge* + [the accused] + *with* + [a suspicion]

In the correspondent passive constructions, the above active structure is arranged in the case of the finite passive as follows:

[the accused] + a finite form of *be* + *charged* + *with* + [a suspicion]

In the case of the non-finite passive, the finite form of *be* is omitted as follows:

[the accused]+ *charged* + *with* + [a suspicion]

The examples of the above two passive patterns are quoted from the 21 Century British Legal Corpus respectively below:

Example 6

In Reg. v. Egan (Michael) [1998] 1 Cr.App.R. 121 the defendant was charged with the theft of a woman's handbag.

Example 7

The issue which arises on this appeal is whether an accused person charged with murder is entitled to rely on the defence of diminished responsibility under section 2 of the Homicide Act 1957,...

These passive constructions are overwhelmingly used in legal discourse. The communicative reason for that is clear; the court does not need to examine who charged the defendant because it is provided in the criminal law that only the police can do so. The main interest of the Law Lords is who was accused of what kind of criminal offence. Particularly, the crime the defendant is charged with is the main focus of the trial. That is why the passive constructions are predominantly used with *charge* in legal discourse. The verb *base* and *entitle* are 91.88 % and 91.39% used in the passive voice respectively in legal discourse, but according to *LGSWE* these two verbs are also used in the passive over 90% in the four registers. The verb *convict* is used 78.13% with the passive in legal discourse for the same reason as we discussed on the verb *charge* above. The verb *prepare* is used in the passives 78.13%, and ranked fourth in Figure 2. But the reason for such a high percentage is interesting. This verb is used 160 times in the 21 Century British Legal Corpus, and 125 of them are with the passive, but 66 passive sentences are used in the same way as shown below:

Example 8

My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Steyn. For the reasons which he has given, I too, would dismiss the appeal.

The first sentence where the passive voice is used is a prototypical way for the Law Lord to start writing his opinion. If this set phrase is excluded from the corpus, the passive percentage drops dramatically from 78.13% to 36.88%. This gives us a good example that there are many clichés, or conventionally predetermined expressions peculiar to legal discourse as Mellinkoff (1963) and Tiersma (1999) point out.

4. Conclusion

The purpose of my present paper was to examine if nominalizations and passivizations are really overused in legal discourse compared with other genres or registers, and if so, to what extent they are overused, and possibly explain why they are overused. My research results indicate that nominalizations occur 68.86 times per one thousand words in legal discourse which is more than 1.5 times as frequent as professional letters where nominalizations occur 44.2 times per thousand words which is the highest nominalization ratio among Biber's 23 genres. There are two possible reasons for this: First is the strong request for precision in legal discourse as Tiersma (1999) points out. The Law Lord needs to express precisely and exactly whose action he is referring to in his opinion. This is where nominalizations are most taken advantage of, as Example 1 and 2 demonstrate. Nominalizations are used as a kind of pro-verb to clarify which action in the previous discourse the Law Lord is referring back to in order to avoid ambiguity. The second reason lies in the categorical meaning of nominalizations. Verbs generally refer to a single action they designate, but when they are nominalized they express more comprehensive categorical meanings. For example, the verb *pay* generally designates a single action of paying as we examined in Example 1 and 2. But its nominalization, *payment*, designates not only the action, but also the process, result, and amount of paying. This nature of nominalizations is quite useful to categorize different types of paying. *Black's Law Dictionary* lists and defines 14 different types of paying methods. Law is a highly advanced and technical world where a wide variety of methods of paying are practiced. The nature of nominalization is made full use of in order to categorize and define many different types of paying the law requires.

Passivizations are also frequently used in legal discourse as we saw in Table 3. The finite passives occur most frequently in legal discourse where interestingly finite verbs are used least compared with the four registers (conversation, fiction, news, and academic prose). Fewer numbers of lexical verbs are more concentratedly used in legal discourse. Some lexical verbs such as *made*, *given*, *taken*, *used*, *found*, etc. are used frequently both in legal discourse and the four registers, but the way these verbs are used in legal discourse is sometimes peculiar to legal discourse. For example, the subject head noun of *made* is

mostly nominalizations in legal discourse, and *found* is used quite often in the same verb phrase, *be to be found in*. Some verbs like *entitled*, *paid*, *required*, *adopted*, *dismissed*, etc. are used frequently only in legal discourse. There are some lexical verbs which are predominantly used with the passive. The passivized ratios of *based* and *entitled* are higher than 90% both in legal and non-legal discourses, but others such as *charged*, *prepared*, and *convicted* are only used frequently in the passives in legal discourse. There are some reasons for that. As for *charged* and *convicted*, the subjects of the sentences in which these verbs are used in the active voice are self evident and unnecessary to be mentioned. Because of these communicative reasons the passive constructions are chosen where the subject in the corresponding active voice is unsaid.

Nominalizations and passivizations are very frequently used in legal discourse. Some of them are conventionally used and some are used because they are communicatively and discursively necessary. However, it is true that they are used more frequently in legal discourse than in other genres or registers.

Notes

- 1) Garner explains the reasons for avoiding nominalizations as follows: (p. 39)
Why concentrate on editing *-ion* words? Three reasons:
 - You'll generally eliminate prepositions in the process, especially *of*.
 - You'll often avoid inert be-verbs by replacing them with action verbs.
 - You'll humanize the text by saying who does what.
- 2) Garner raises the following four merits for using active voice:
The active voice typically has four advantages over the passive:
 - It usually requires fewer words.
 - It better reflects a chronologically ordered sequence..., as opposed to the reverse....
 - It makes the reader's job easier because its syntax meets the English-speaker's expectation that the subject of a sentence will perform the action of the verb.
 - It makes the writing more vigorous and lively.
- 3) By "truncated passive" he means a passive without a *by* phrase.
- 4) <http://www.publications.parliament.uk/pa/ld/ldjudgmt.htm>
- 5) In this present paper all the Judgments of the House of Lords I collected to make the 21 Century British Legal Corpus are called "legal discourse."
- 6) Biber (1988) uses the term "genre", while *LGSWE* uses the term "register." Thus, I will use the term "genre" when I discuss in relation with Biber (1988), and use the term "register" when I discuss in relation with *LGSWE* in this paper.
- 7) *CBGEL* sub-classifies nominalizations into two groups: **event nominalizations** "where the head noun is morphologically derived from a verb and denotes an event" and other nominalizations which "allows a range of interpretations for the subject NP" (p. 475)

- 8) With my personal communication with Dr. Biber, I have decided to include in the examples of nominalizations only when the following two conditions are met:
- (1) The nominalizations that are formed by adding the four suffixes I have adopted to the base verb forms.
 - (2) Even if we remove these suffixes people generally recognize the relationship between the base verb form and the derived nominalization.
- For example, *movement* meets the above two conditions, but *comment* does not.
- 9) I have randomly chosen one fifth of nominalizations with the four suffixes Biber (1988) chose, namely *-tion*, *-ment*, *-ness* and *-ity* (plus plural forms). Thus, their actual frequency counts in the 21 Century British Legal corpus are approximately five times as many.

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